

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS  
REAUTHORIZATION COMMITTEE MEETING

April 5, 1992

4:30 p.m.

The Hilton Palacio Del Rio Hotel  
200 South Alamo  
The La Condesa Room  
San Antonio, Texas 78205

Board Members Present:

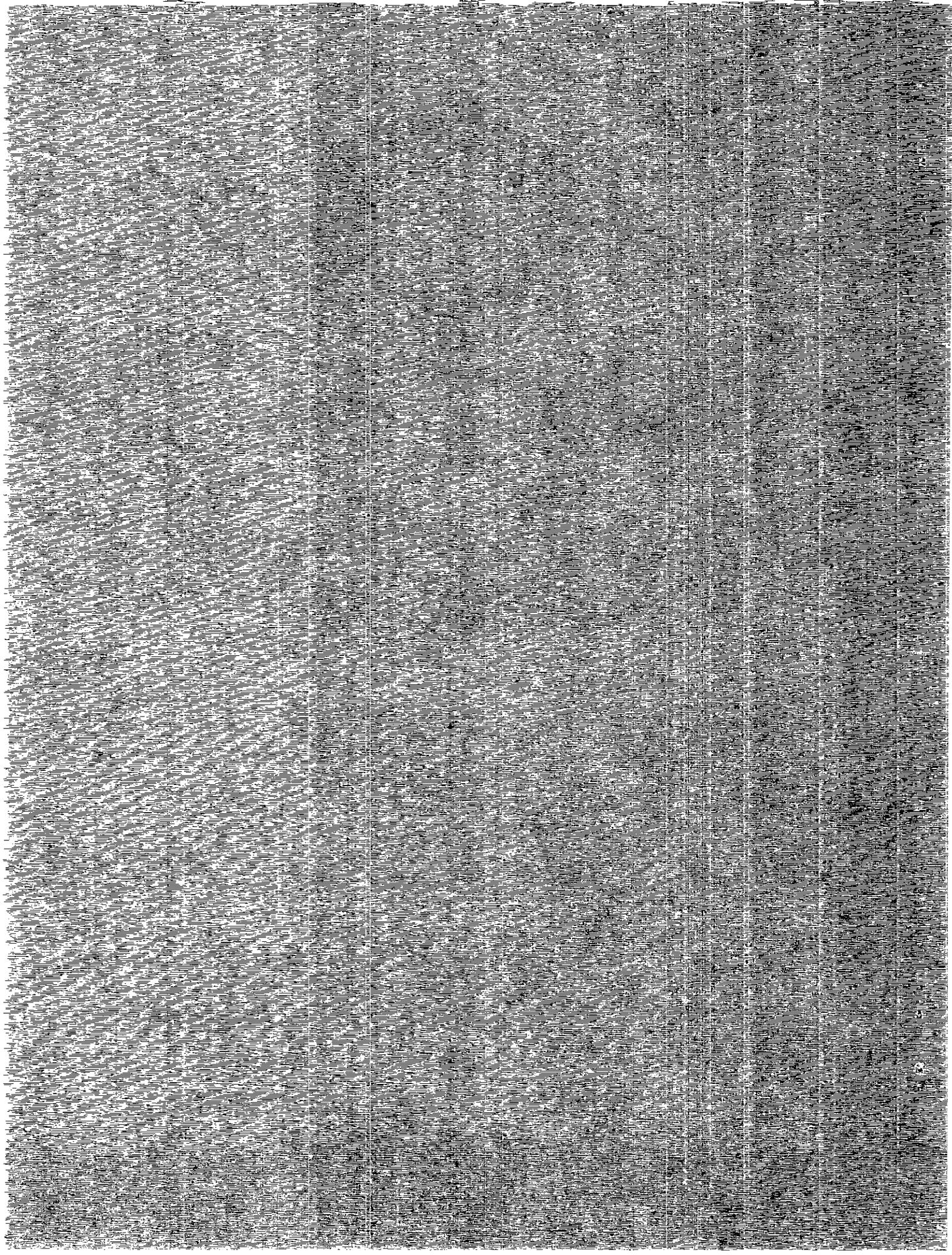
Basile J. Uddo, Chairman  
Howard H. Dana  
William L. Kirk  
Penny L. Pullen

Other Board Members Present:

Jo Betts Love  
George W. Wittgraf  
J. Blakeley Hall  
Jeanine E. Wolbeck

Staff Present:

John P. O'Hara, President  
Patricia Batie, Secretary  
David Richardson, Treasurer and Comptroller  
Victor Fortunato, General Counsel



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

1  
2 CHAIRMAN UDDO: I would like to call this meeting  
3 of the Legal Services Corporation Board's Reauthorization  
4 Committee to order. We apologize for starting somewhat  
5 behind schedule, but that's Mr. Wittgraf's fault.

6 The record should reflect that three of the members  
7 of the committee are in attendance; Mr. Kirk, Ms. Pullen, and  
8 myself. In addition, Ms. Love and Chairman Wittgraf are with  
9 us and Mr. Hall.

## A P P R O V A L O F T H E A G E N D A

10  
11 CHAIRMAN UDDO: The first order of business on the  
12 agenda is the approval of the agenda. If there is a motion  
13 to so approve, I would entertain it at this point.

## M O T I O N

14  
15 MR. KIRK: I will so move.

16 CHAIRMAN UDDO: Moved by Mr. Kirk. Is there a  
17 second?

18 MS. PULLEN: Second.

19 CHAIRMAN UDDO: Ms. Pullen seconds it.

20 All those in favor of approving the agenda as  
21 published, signify by saying aye.

22 (A chorus of ayes.)

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1 CHAIRMAN UDDO: Opposed nay?

2 (No response.)

3 CHAIRMAN UDDO: The ayes have it. The agenda is  
4 approved.

5 APPROVAL OF MINUTES OF FEBRUARY 17, 1992 MEETING

6 CHAIRMAN UDDO: The next order of business is  
7 approval of the minutes from the February 17th meeting. They  
8 are quite brief. I will assume that you have had occasion to  
9 read the minutes. Is there a motion to approve the minutes  
10 as published in the committee book.

11 M O T I O N

12 MR. KIRK: I will so move.

13 CHAIRMAN UDDO: Moved by Mr. Kirk. Second?

14 MS. PULLEN: Second.

15 CHAIRMAN UDDO: Second by Ms. Pullen.

16 All those in favor of approval of the minutes of  
17 the February 17th meeting, please signify by saying aye.

18 (A chorus of ayes.)

19 CHAIRMAN UDDO: Opposed, nay?

20 (No response.)

21 CHAIRMAN UDDO: The ayes have it. The minutes are  
22 approved.

1           The balance of the agenda deals with what when this  
2 meeting was first scheduled we thought was going to be an  
3 opportunity to talk a little bit more in the abstract about  
4 where we were with reauthorization and garner some more  
5 comments and opinions about some particular problems or  
6 concerns that have arisen, particularly with reference to the  
7 inspector general's comments.

8           But I'm sure everyone here knows that it's not a  
9 theoretical exercise any more, that the House did begin  
10 debate on the reauthorization bill on Thursday and that we  
11 anticipate a vote next week. So there's a little bit more  
12 sense of urgency about what we do today. If we're going to  
13 communicate anything from this committee to the Board and  
14 ultimately to the folks in the House, it's going to be done  
15 today or not at all.

16           So the first item of substance on the agenda is  
17 public comment regarding the inspector general's February  
18 17th comments. I'm going to exercise the prerogative of the  
19 Chair and let Mr. Quatrevaux come to the table first because  
20 I think before we have that public comment, he had a couple  
21 of changes from his original comments.

22           Also, I'm going to ask him to maybe give us some

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1 insight into where his comments are with respect to the  
2 reauthorization process. That way folks from the public can  
3 also understand where Mr. Quatrevaux is now and what he's  
4 done since the last time he's spoken, and what he sees as the  
5 course of his concerns before the House.

6 Mr. Quatrevaux?

7 PUBLIC COMMENT REGARDING INSPECTOR GENERAL'S  
8 FEBRUARY 17, 1992 COMMENTS ON PROPOSED REAUTHORIZATION  
9 LEGISLATION FOR THE CORPORATION

10 MR. QUATREVAUX: Thank you, Mr. Chairman. The  
11 correction I would like to make -- there is an error of fact  
12 in the statement I provided in New Orleans. It deals with  
13 the reference -- this is just for the record -- Spokane Legal  
14 Services.

15 There's a statement in there to the effect that the  
16 grantee's staff read to the monitoring team from documents  
17 that they were seeking excess to. I am informed that that  
18 was not related to Spokane Legal Services. So I think the  
19 best thing to do is simply to delete that phrase. I don't  
20 think it's that significant, but I'd like to get it correct  
21 for the record.

22 Of the 37 amendments that I understand have been

1 submitted, 5 deal with the inspector general function at  
2 Legal Services.

3 CHAIRMAN UDDO: Let me just ask, do the other  
4 members of the committee have this packet that shows the  
5 amendments? We just got this today? I think Mr. Boehm just  
6 managed to complete it on Friday. This will give you  
7 something to follow along with as Mr. Quatrevaux speaks.

8 MR. QUATREVAUX: I'll speak first to Amendment No.  
9 7 which was submitted by Mr. Frank. It's an improvement.  
10 The language of the amendment itself, however, limits it to  
11 the subsection in which it appears. The bill itself repeats  
12 various language throughout.

13 Our opinion is that it will not provide general  
14 relief from the restrictions, only in certain situations. It  
15 can be read, in fact, to be in direct conflict with the  
16 relief in the amendment provided by Mr. Frank. That so, it  
17 would seem that it would likely end up in court and for the  
18 courts to resolve what the intent of the Congress is.

19 As I've indicated earlier, we've got a collision of  
20 interest here. I think it's appropriate for the Congress to  
21 decide which it wants to do but not place the burden on the  
22 Treasury to fund litigation.

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1 CHAIRMAN UDDO: That's No. 7?

2 MR. QUATREVAUX: That's No. 7.

3 CHAIRMAN UDDO: Do you want to just go through the  
4 others that you say would apply?

5 MR. QUATREVAUX: There are four others, three  
6 submitted by Mr. Horton, who is the ranking minority member  
7 of the House Government Operations Committee which has  
8 jurisdiction over IG affairs. Those amendments are mutually  
9 exclusive.

10 CHAIRMAN UDDO: Is that 21 and 22?

11 MR. QUATREVAUX: Thirty-four, thirty-five and  
12 thirty-six. Those were amendments submitted as a result of  
13 our activities; that is to say they are friendly, intended to  
14 be friendly. We do believe -- and you have to understand  
15 that all of this was happening very hurriedly and with  
16 deadlines and that sort of thing, with little or no  
17 opportunity to confer.

18 We don't believe that 34 and 35 really do the job.  
19 Thirty-six does technically. Within it it appears to have  
20 some rewriting of the Inspector General Act in it. So that  
21 potential flaw could do it.

22 The Amendment No. 26 was the result of --

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1 MR. KIRK: Mr. Chairman?

2 CHAIRMAN UDDO: Yes, Mr. Kirk?

3 MR. KIRK: Are you saying that 36 may do what you  
4 need to have done but 34 and 35 do not?

5 MR. QUATREVAUX: Correct.

6 MR. KIRK: Thank you.

7 MR. QUATREVAUX: That's an opinion, of course.

8 CHAIRMAN UDDO: You are now addressing 26, you say?

9 MR. QUATREVAUX: Twenty-six. I received an  
10 invitation via the Corporation to brief Mr. Fish, who is the  
11 ranking minority member of the Judiciary Committee. As a  
12 result of that briefing, there was a request for a paper and  
13 substitute language. Those were provided to Mr. Fish and  
14 also to the majority staffers.

15 Amendment No. 26 was submitted I understand by Mr.  
16 McCollum. One of his staffers attended that meeting. Mr.  
17 Frank chose a different route in the form of Amendment No. 7.  
18 But the Amendment No. 26 certainly does the job, or at least  
19 we believe it does. We drafted it.

20 CHAIRMAN UDDO: That's your language?

21 MR. QUATREVAUX: That's correct.

22 CHAIRMAN UDDO: Twenty-six represents what your

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1 office drafted?

2 MR. QUATREVAUX: Correct, Mr. Chairman.

3 CHAIRMAN UDDO: Would 26 solve all your problems?

4 MR. QUATREVAUX: We believe so.

5 CHAIRMAN UDDO: So that's really the only one that  
6 you feel is essential?

7 MR. QUATREVAUX: That's correct.

8 CHAIRMAN UDDO: Any questions from members of the  
9 committee? Ms. Pullen?

10 MS. PULLEN: When you say that's the only one you  
11 feel essentially, you mean to the specific objections that  
12 you have raised relative to your office?

13 MR. QUATREVAUX: That's correct. All of the other  
14 amendments in part address those concerns and fix some of  
15 them. But obviously we don't think that any other than the  
16 one that we drafted can accomplish that.

17 CHAIRMAN UDDO: Do you have a copy of your  
18 amendment? Would you care to share it with the committee or  
19 prefer not to?

20 MR. QUATREVAUX: Yes, I'm pretty sure.

21 CHAIRMAN UDDO: Any other questions? Mr. Kirk, any  
22 questions?

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1 MR. KIRK: No questions.

2 CHAIRMAN UDDO: Any questions from other members of  
3 the Board?

4 (No response.)

5 CHAIRMAN UDDO: Then, Mr. Quatrevaux, if you would,  
6 we're going to take comments from -- let's see. Let's go  
7 public comments particularly on the inspector general. Then  
8 when we do staff comments and reauthorization generally,  
9 we'll see if there are any other additional staff comments.

10 Any members of the public who would like to address  
11 the inspector general question? Mr. Snow, if you would come  
12 up to the table.

13 STATEMENT OF CUBBEDGE SNOW, JR.

14 MR. SNOW: I was at a case down in eastern Georgia  
15 one time where the court reporter had the mask, so they had  
16 to have the microphone. I kept wandering around, as lawyers  
17 want to do. The judge finally stood up at the bench and  
18 said, "You stand right there by that microphone or I'm  
19 putting you in jail," and I did.

20 For the record, Mr. Chairman, I'm Cubbedge Snow,  
21 Jr., private lawyer in private practice from Macon, Georgia.  
22 I'm a member of the -- my reason for being here is I'm a

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1 member of the Standing Committee on Legal Aid and Indigent  
2 Defendants of the American Bar Association. I was asked to  
3 come and present these two papers to you.

4 I do not hold myself out personally as an expert on  
5 ethics. I try to be ethical, as I'm sure all of us do. But  
6 I'm not a member of the Standing Committee on Ethics and I'm  
7 not a -- I try to practice that way, of course, as we all do.

8 One of the remarks that was in this report from Mr.  
9 Quatrevaux concerned the question of client anonymity.  
10 That's all that I'm going to speak to, and I'll be very  
11 brief. We asked the staff of the Standing Committee on  
12 Ethics to give us an opinion on two things: what are the  
13 client's names that are not otherwise publicly revealed, are  
14 protected by ethical rules; and, in the Legal Services  
15 context, can the client's confidences and secrets be  
16 disclosed to third parties, including funding sources without  
17 client agreement or prior public disclosure? Can they be  
18 disclosed to a program's auditor if the auditor preserves  
19 confidentiality?

20 Those are the answers that we reflect or that we  
21 feel that the name of the client -- we're not talking about  
22 the subject matter now -- of course, the confidence or secret

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1 maybe but I mean the general subject matter -- this is a  
2 divorce or a property matter or whatever.

3 But the name of the client should be kept  
4 confidential unless the client wants it to. We all do that  
5 in our private practice. If someone comes to see me about a  
6 domestic matter, I don't tell anybody that they've come to  
7 see me because it's confidential. We feel that people that  
8 come to Legal Services offices ought to have that same right  
9 that any other person in the public does for confidentiality.

10 I would say the second document that I gave is  
11 something that Ms. DiSanto was of help to us in. Our  
12 committee labored long and hard over a period of two or three  
13 years in creating standards for monitoring and evaluation of  
14 providers of legal services.

15 This standard of monitoring, I don't know how many  
16 of you have ever seen it, but it's really a work for criminal  
17 offices or anybody being audited by United Way or by the  
18 state or anything else. We tried to come up with some uniform  
19 standards for monitoring. Of course, that's what the  
20 auditing to some extent is.

21 The little section that I gave you called Refusal  
22 to Provide Access does have some standards there about names.

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1 We think that the names can be substituted with numbers or  
2 stricken through the names and, therefore, the audit function  
3 or the monitoring function, for that matter. I know that's  
4 not what Mr. Quatrevaux was really concerned about, although  
5 he referred to it.

6 But those can be handled and solved by substitution  
7 of a number of redacting or striking out the name and still  
8 give a full audit. That's all that -- we feel that it would  
9 be unethical to reveal the confidentiality of the name of a  
10 client unless they agree to it.

11 Having said that, that's all I have, Mr. Chairman.

12 CHAIRMAN UDDO: Thank you, Mr. Snow. Let me see if  
13 there are some questions. Mr. Kirk?

14 MR. KIRK: Mr. Snow, before you leave, I'd like to  
15 ask some of our staff members if they would comment. But  
16 specifically to you, what do you think about going a step  
17 further and having an ability to request that the service  
18 provider write to the client and say as part of our audit  
19 functions, so-and-so would like to find out certain  
20 information about the way that your case was handled, what  
21 sort of things -- you have the right to not do this.

22 If you do not find that it's going to violate your

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1 confidences, would you be willing to cooperate? Would the  
2 ABA be amenable to something like that?

3 MR. SNOW: I personally think as long as it's a  
4 fair and not a pressurized request -- you know what I'm  
5 saying -- that if it was fully disclosed -- and I think  
6 that's referred to in some of this -- that they could. But I  
7 think it should be -- the question should be asked by the  
8 provider's office, you know, not by the auditor or something  
9 like that.

10 I think that's what you're saying too. I don't see  
11 any problem with that if it's in an unpressurized situation.  
12 I know a lot of clients who would probably say I don't care.

13 MR. KIRK: That's all I have, Mr. Chairman.

14 CHAIRMAN UDDO: Ms. Pullen?

15 MS. PULLEN: How would the Corporation discharge  
16 its statutory responsibility to ensure that clients are  
17 eligible if the Corporation cannot know who the clients are?

18 MR. SNOW: I think that the check that the provider  
19 does gives the record sufficient information for the  
20 Corporation. They establish that.

21 MS. PULLEN: Thank you.

22 CHAIRMAN UDDO: Any other questions from members of

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1 the Board?

2 (No response.)

3 CHAIRMAN UDDO: Thank you, Mr. Snow.

4 MR. SNOW: Thank you. I'm sorry about the  
5 microphone.

6 CHAIRMAN UDDO: That's okay. Mr. Quatrevaux, have  
7 you seen the standards for monitoring that Mr. Snow referred  
8 to?

9 MR. QUATREVAUX: I have it here now.

10 CHAIRMAN UDDO: Before today?

11 MR. QUATREVAUX: I may have seen them. I'm  
12 reluctant to answer definitively.

13 CHAIRMAN UDDO: That's okay. I won't hold you to  
14 it. Do you have an opinion about whether or not this  
15 particular standard solves your concern?

16 MR. QUATREVAUX: I'm sure it does not, simply to  
17 judge by the balance of Mr. Snow's comments. What he's  
18 proposing, or I should say what SCLAID is proposing, or feels  
19 would be an adequate solution would be to resort to a coding  
20 scheme.

21 While I would trust Mr. Snow completely, the  
22 auditors and investigators who work for me from their

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1 professional infancy have been taught not to trust anyone.  
2 That's just an element of faith. If you can't see all the  
3 records, then there's suspicion as to why not. That's the  
4 reaction of the people in those two professions.

5 CHAIRMAN UDDO: Thank you, Mr. Quatrevaux.

6 Any other members of the public who want to comment  
7 particularly on the inspector general's concerns and comments  
8 and proposed solutions, including his proposed amendment that  
9 Mr. McCollum is going to introduce?

10 (No response.)

11 CHAIRMAN UDDO: All right, then staff comments?  
12 Anyone from the staff? I know Mr. Kirk says he would like to  
13 hear the staff's comments particularly about Mr. Snow's and  
14 the SCLAID Committee's proposal.

15 Yes, Ms. Sparks?

16 STATEMENT OF SUSAN SPARKS

17 MS. SPARKS: For the record, my name is Susan  
18 Sparks, and I'm acting director of the Office of Monitoring,  
19 Audit and Compliance. Mr. Kirk, I'll be happy to respond to  
20 your concerns on client names. First of all, we certainly do  
21 not seek access to client names in and of themselves during  
22 monitoring.

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1           There are times when access to client names are  
2 important to our work in order to ensure accountability of  
3 our funds. In particular, in the review of client trust  
4 funds, generally when we're dealing with small amounts, the  
5 systems in place, and the records look appropriate, we can  
6 often accept a coding scheme, as the IG refers to it, in  
7 order to do our work to a level of confidence that we will  
8 accept.

9           Our auditors who monitor those funds would prefer  
10 more confidence and would prefer to have access to unredacted  
11 client trust funds. There have been situations where  
12 programs have had embezzlements of client trust funds where  
13 we would want unrestricted access. We have had difficulty  
14 getting that access.

15           To your question on whether or not programs can  
16 contact clients, we have had programs do that. As recently  
17 as two weeks ago, a program who had client names in their  
18 fiscal records, which, as you can see by my remarks, is where  
19 our concern is, this is not a question of access to client  
20 names as to who they are serving. But when client names  
21 obstruct the review of original fiscal records, we have a  
22 concern.

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1           A couple weeks ago a program contacted clients to  
2 seek their permission in releasing their names out of the  
3 client trust records as well as the other fiscal records. I  
4 understand that the response was not forthcoming from the  
5 clients, but I didn't pursue that to find out how many  
6 clients responded. But the program did make that effort.

7           CHAIRMAN UDDO: Mr. Kirk?

8           MR. KIRK: Ms. Sparks, I'm concerned about why a  
9 client would ever say, no I don't want someone to come in and  
10 make sure that my money is being taken care of.

11           MS. SPARKS: I think if the question was posed in  
12 that way, most clients would agree.

13           MR. KIRK: You mean you're having difficulty with  
14 the field and the way they pose the questions?

15           MS. SPARKS: I don't know how the question is  
16 posed. I think if the question is posed that someone wants  
17 to check to make sure the money that you have given us is  
18 taken care of, there perhaps could be a particular response.  
19 In the event that a question was posed that we had been asked  
20 to release confidential information, including your name, to  
21 a third party, the response may be different. I think the  
22 way the question is posed is important.

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1           CHAIRMAN UDDO: Ms. Pullen, any questions?

2           MS. PULLEN: Are we going to get into, Mr.  
3 Chairman, commentary on the reauthorization bill and proposed  
4 amendments beyond this particular limited discussion?

5           CHAIRMAN UDDO: Yes. The next agenda item is the  
6 reauthorization legislation.

7           MS. PULLEN: I don't have any more questions at  
8 this time.

9           CHAIRMAN UDDO: Any questions from other members of  
10 the Board?

11           (No response.)

12           CHAIRMAN UDDO: Let the record reflect that Mr.  
13 Dana has joined us. He is a member of the committee. Any  
14 questions, Mr. Dana?

15           MR. DANA: Not at this time, Mr. Chairman. I  
16 apologize to you and the committee for being late.

17           CHAIRMAN UDDO: Mr. O'Hara had a question. I think  
18 he may want Ms. Sparks to stay here for that.

19           MR. O'HARA: Thank you, Mr. Chairman. Ms. Sparks,  
20 in the situation you referred to, wherein the program  
21 required of the clients, was that done at the request of the  
22 Corporation or was that done on their own?

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1 MS. SPARKS: That was done on their own.

2 MR. O'HARA: Okay, thank you.

3 CHAIRMAN UDDO: Thank you, Ms. Sparks.

4 The materials that Mr. Snow gave me have some ABA  
5 opinions and other material attached to them. I don't think  
6 everyone got copies of that. So I'm going to put these into  
7 the record. Ken, you want to make sure this gets into the  
8 record? These are the two documents that everyone has plus  
9 the attached opinions and other authority.

10 MR. SNOW: That are referenced in the letter.

11 CHAIRMAN UDDO: In the letter, right. Mr. Snow,  
12 could you come back to the table?

13 MR. SNOW: Yes, sir.

14 CHAIRMAN UDDO: I should have asked you a question  
15 when you were up here and didn't think to do it. You don't  
16 happen to know if SCLAID has done a survey of individual  
17 states to know what the individual state bar associations say  
18 about this particular question, whether it varies from what  
19 the ABA has suggested?

20 MR. SNOW: No. I do not think they have. I can  
21 answer your question. I don't think there's been a survey of  
22 every state's ethical rules. Speaking of my own state, I

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1 think client anonymity is in Georgia unethical principle for  
2 lawyers.

3 CHAIRMAN UDDO: Okay.

4 MR. SNOW: Of course, each one of us are in  
5 different states.

6 CHAIRMAN UDDO: Well, the reason I ask is that  
7 those are the rules that really effectively constrain what  
8 the lawyers in that jurisdiction do.

9 MR. SNOW: As we often remind ourselves, the ABA  
10 rules are strictly aspirational and --

11 CHAIRMAN UDDO: Advisory and not binding.

12 MR. SNOW: You're exactly right.

13 CHAIRMAN UDDO: So I was just curious to know if  
14 they had looked at what the bar associations that are  
15 actually proposing the rules and the guidelines that govern  
16 what the programs do in their states is any different from  
17 what the ABA suggested.

18 MR. SNOW: I will say, and I don't know the exact  
19 number -- I hate to quote numbers -- but a great many states  
20 have adopted the newer model rules, professional discipline  
21 and model rules, but I think this principle that's reflected  
22 in the ABA's code of disciplinary responsibility and the

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1 model rules.

2 I think every state in the Unites States has some  
3 version of either the older or in the great majority of the  
4 newer that has these provisions in it.

5 CHAIRMAN UDDO: Thank you, Mr. Snow.

6 MR. SNOW: Thank you.

7 CHAIRMAN UDDO: Any other comments?

8 (No response.)

9 CHAIRMAN UDDO: I was just reminded that I went to  
10 staff comments without putting into the record a memorandum  
11 that was submitted to me and to members of the committee by  
12 Linda Perle and Alan Houseman concerning the LSC inspector  
13 general.

14 I think it addresses several of the inspector  
15 general's concerns, particularly the one that we've been  
16 talking about with respect to disclosure of identity of a  
17 client. We will put that into the record also.

18 Mr. Kirk?

19 MR. KIRK: Do I have a copy of that?

20 CHAIRMAN UDDO: Does Mr. Kirk have a copy of that?

21 It looked like everybody had a copy.

22 MR. McIVER: I gave copies to Pat Batie so

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1 everybody should have one.

2 CHAIRMAN UDDO: The next item on the agenda is to -

3 -

4 MR. FORTUNO: If I may, Mr. Chairman?

5 CHAIRMAN UDDO: I'm sorry.

6 MR. FORTUNO: I have been asked to call attention  
7 to a couple of points.

8 CHAIRMAN UDDO: Identify yourself for the record,  
9 Mr. Fortunio.

10 MR. FORTUNO: For the record, my name is Victor  
11 Fortunio. I'm general counsel for the Corporation. I would,  
12 if I could, just take up a couple minutes of your time. I  
13 was asked to call attention to two or three points. I don't  
14 know that they are points that have escaped anyone's  
15 attention, but I was asked to at least call attention to them  
16 again.

17 CHAIRMAN UDDO: This is going to be about the  
18 inspector general?

19 MR. FORTUNO: No. This would be just  
20 reauthorization generally, more impacting on monitoring.

21 CHAIRMAN UDDO: Impacting on monitoring?

22 MR. FORTUNO: Yes. It's not the inspector general

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1 specifically, no.

2 CHAIRMAN UDDO: Then why don't you give me a  
3 minute. I think I would rather finish with the inspector  
4 general's particular concerns first and then we'll get to the  
5 general reauthorization bill and we can take comments about  
6 the other portions of it.

7 In fact, what I was going to suggest, even though I  
8 know we approved the agenda, but without any objection,  
9 agenda item 5 is consideration of comments of the inspector  
10 general, consideration by this committee. I'd like to move  
11 that up and see if the committee has any particular action it  
12 wants to recommend to the Board with respect to the comments  
13 or concerns or proposed amendments impacting on the inspector  
14 general function.

15 Now, I confess that we're at something of a  
16 disadvantage because we haven't seen your amendment that Mr.  
17 McCollum is going to introduce. So I guess it would be  
18 difficult for us to recommend to the Board that that's a good  
19 or bad amendment.

20 But I leave it up to the committee to decide if  
21 there is anything in particular, any action they want to  
22 take, or not. You are aware that we don't have to take any

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1 action.

2 The inspector general has the authority to make his  
3 thoughts and views known directly to Congress and to  
4 encourage Congress to make appropriate changes in the  
5 Reauthorization Act without this committee or the Board doing  
6 anything about it one way or the other. But I leave it to  
7 the committee for your pleasure.

8 Mr. Kirk?

9 M O T I O N

10 MR. KIRK: I would move that this committee  
11 recommend to the Board of Directors that they adopt the  
12 amendments suggested and proposed by the inspector general  
13 for the amendments to the current House bill to comply with  
14 what Mr. Quatrevaux feels are the requirements of the IG Act.

15 CHAIRMAN UDDO: Before I ask for a second, let me  
16 just clarify. You're not saying the particular amendment  
17 identified as 26 on our list; you're speaking generically  
18 that the committee should recommend to the Board support of  
19 Mr. Quatrevaux's concerns for amendments?

20 MR. KIRK: No. As he has prepared it, I would  
21 recommend that. It happens to be No. 26 but that's not the  
22 reason. The reason is because I would recommend it as a

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1 result that that's what our inspector general has  
2 recommended.

3 CHAIRMAN UDDO: You don't want to see it?

4 MR. KIRK: I have looked it over.

5 CHAIRMAN UDDO: Well, have you seen it, Ms. Pullen?  
6 I haven't. I think I'd like to just take a look at it before  
7 we consider that. If you don't mind, Mr. Kirk, could we just  
8 take a look?

9 MS. PULLEN: I'd like to second the motion.

10 CHAIRMAN UDDO: Do you want to see the amendment?

11 MS. PULLEN: I know enough about the damage that  
12 the bill intends to make to the operation of the inspector  
13 general to feel that our inspector general should be  
14 respected by this committee and supported in his efforts to  
15 preserve his ability to do his job. I'm prepared to second  
16 the motion now, Mr. Chairman.

17 CHAIRMAN UDDO: All right. Well, the motion has  
18 been made and seconded. Any discussion on the motion?

19 (No response.)

20 CHAIRMAN UDDO: Well, let me tell you what I'm  
21 going to recommend. The Board is going to have to vote on  
22 this tomorrow, so you ought to get copies made and

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1 distributed to all the Board members. We can go ahead and  
2 take this action at the committee level however we want and  
3 just make sure everybody gets a chance to read it before  
4 tomorrow.

5 I would like to make it clear, and I think Mr.  
6 Quatrevaux understands this, my concern with wanting to see  
7 the amendment is not questioning his insight or intentions or  
8 ability; it's that I think that -- in fact, I would hope that  
9 he would welcome our looking at it to make sure that we feel  
10 comfortable with the particular approach taken.

11 Any other discussion on the motion?

12 (No response.)

13 CHAIRMAN UDDO: All right, we'll call the question  
14 on the motion. All those in favor of the motion to recommend  
15 to the Board the endorsement of Mr. Quatrevaux' amendment  
16 listed on our list as No. 26, please signify by saying aye.

17 (A chorus of ayes.)

18 CHAIRMAN UDDO: Opposed?

19 (Mr. Dana voted nay.)

20 CHAIRMAN UDDO: I'm abstaining until I read the  
21 amendment. So the motion carries 2 to 1 with 1 abstention  
22 and will be recommended to the Board tomorrow. Thank you.

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1           Now, let's go back to the agenda item, staff  
2 comment regarding proposed reauthorization legislation for  
3 the Corporation. Now, we can do this one of two ways. We  
4 could either get Mr. Boehm up here to just kind of bring us  
5 up to date on where we are, what's happened since our last  
6 meeting, some insight into the amendments that we know are  
7 going to be proposed, and then maybe general staff comments  
8 in light of whatever he tells us, because there may be some  
9 things he tells us that will have an effect on what staff  
10 comments might be made.

11           So, Ken, why don't you come up first and fill us in  
12 as best you can on where the whole process stands?

13                           STATEMENT OF KEN BOEHM

14           MR. BOEHM: Thank you, Mr. Chairman. For the  
15 record, my name is Ken Boehm. I'm assistant to the president  
16 counsel to the Board. A lot has happened in the short period  
17 of time since the last Board meeting of LSC. We have already  
18 had general debate on Legal Services Corporation  
19 reauthorization on the floor of the House this past Thursday.

20           The actual vote on the bill is scheduled for  
21 Wednesday. The day before, Tuesday, there is going to be a  
22 vote of the Rules Committee. The Rules Committee has

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1 submitted before it a total of 37 amendments. You should all  
2 have a short summary of those 37 amendments.

3 We also have, I think, two complete sets. We  
4 received it literally at the close of business on Friday.  
5 Chairman Uddo has a complete set. I've got a complete set.  
6 We can have copies made by tomorrow morning.

7 No more amendments can be accepted, as the deadline  
8 for those has expired. The vote will probably take place  
9 after a full afternoon of debate on the House floor. This  
10 will mark the first time since 1981 there has been  
11 reauthorization of Legal Services Corporation debated on the  
12 House floor. The last reauthorization that passed Congress  
13 that came into law was 1977, just to put this in perspective.

14 As you know, the history of the reauthorization of  
15 Legal Services is fairly brief. It started and was  
16 incorporated in 1974 with the first reauthorization. That  
17 was good for three years. That expired in 1977. It was duly  
18 reauthorized, expired in September of 1980. From September  
19 of 1980 until present, we've been an unauthorized  
20 corporation.

21 Legally, what that means is that any legislation  
22 that would have an impact on legal services would have to be

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1 accomplished as an appropriations rider. So since September  
2 1980, the only legislative action with respect to our  
3 Corporation has been legislative riders.

4 Many of those legislative riders have become almost  
5 boilerplate in the sense that the same language is  
6 incorporated year after year without much debate. There are  
7 legislative riders on a number of different issues; alien  
8 representation, lobbying, abortion, and so forth.

9 Many of those riders are incorporated either into  
10 H.R. 2039, which is Congressman Frank's legislation, which is  
11 the bill that's being considered on Wednesday, or, in some  
12 cases, they are embodied in the alternative proposals.

13 The quick review of H.R. 2039, which is titled "The  
14 Legal Services Reauthorization Act of 1991," and, by the way,  
15 that name may change. Mr. Frank has an amendment in to  
16 rename the legislation "The Legal Services Act of 1992," just  
17 reflecting the fact it wasn't taken up last year -- this year  
18 and to keep it more in keeping with the original language  
19 which was Legal Services Corporation Act.

20 The history of this piece of legislation is that  
21 there were hearings. In 1989, there were two hearings in  
22 Barney Frank's subcommittee, which is a Subcommittee on

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1 Administrative Law and Government Relations. In 1990, there  
2 were two more hearings. Last year there was one. There were  
3 no hearings at the full committee level, no hearings in the  
4 Senate.

5 You have before you or should have, each member of  
6 the committee, four documents that will be helpful in  
7 understanding this. First there's the side-by-side. That's  
8 reads lengthwise, and that compares the current law which is  
9 the Legal Services Corporation Act and the current  
10 legislative riders. That's in the left-most column.

11 Moving to the right, the next column over is H.R.  
12 2039 as it came out of committee. That's what's actually  
13 going to be on the floor of the House. The next column over  
14 are the proposals made by Congressman McCollum and Stenholm  
15 that were offered in subcommittee and committee in most  
16 cases. Many of them will be offered again on Wednesday as  
17 amendments from the floor.

18 The final column represents the resolutions of this  
19 committee and the Board with respect to those issues.  
20 There's also an index on the front. You can quickly key into  
21 any of the particular subjects. You also have a copy of the  
22 H.R. 2039 itself and the committee report.

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1           If you're reviewing this for tomorrow, the  
2 committee report is very worthwhile. There's a  
3 section-by-section analysis. They have both majority and  
4 dissenting views. They have changes in existing law where  
5 they actually go line by line through the Act and show you  
6 what's been omitted, what's been replaced, what's new.

7           The only caveat on reading that, if you're reading  
8 it very carefully, is it doesn't contain the appropriations  
9 rider which are, in fact, part of current law. So that  
10 smaller legislative report is very useful in analyzing this.

11           Briefly, what H.R. 2039 would do is first, of  
12 course, it would reauthorize Legal Services Corporation.  
13 That would mean that the legislative proposals would not have  
14 to be done every year on appropriations bills. This, in  
15 effect, sets Legal Services, defines it for the next five  
16 years.

17           If it passes and is signed into law, it would cover  
18 Legal Services for fiscal year 1992 through 1996. It's five  
19 years. There is one amendment that would shorten that to  
20 three years, as the previous ones have been three years.  
21 Without going into detail, because you have all of that in  
22 front of you, there are a long list of changes in many ways.

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1           There are some consensus positions, positions in  
2 which the opposing points of view, the McCollum-Stenholm  
3 proponents and Mr. Frank and proponents of his legislation  
4 have actually agreed. Several of them in particular deserve  
5 mention. Protection against theft and fraud, that's Section  
6 4. That's a consensus position. It basically extends  
7 federal waste, fraud and abuse laws to Legal Services funds,  
8 and both Mr. Frank and Mr. McCollum are in agreement on that.

9           The other one is timekeeping. That was one of the  
10 few substantive changes made in full committee. There is a  
11 timekeeping provision in there. Mr. McCollum agrees with it.  
12 That's not subject to an amendment. That will be part of the  
13 legislation no matter what happens on Wednesday.

14           MS. PULLEN: Does that have a section number, Ken?

15           MR. BOEHM: On timekeeping?

16           MS. PULLEN: Yes.

17           MR. BOEHM: Yes. It would be on your side-by-side,  
18 it's page 28. In the legislation itself it's Section 18,  
19 Recordkeeping and Non-LSC Funds. That would be in H.R. 2039  
20 that sites Section 18.

21           MS. PULLEN: That says Section 19 on the --

22           MR. BOEHM: On?

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1 MS. PULLEN: On the committee report.

2 MR. BOEHM: It changed. There was one entry  
3 additional in there, and that changed it. This had been  
4 prepared in February. The report on the committee just came  
5 out this past -- literally four days ago.

6 MS. PULLEN: So the section in this report that's  
7 labeled Section 19 --

8 MR. BOEHM: That should be correct, yes.

9 MS. PULLEN: That's consensus?

10 MR. BOEHM: Yes. That's consensus. Mr. Frank and  
11 Mr. McCollum agree on that. That happened in full committee.  
12 Congressman Synar offered that and it was accepted. To my  
13 knowledge, none of the 37 amendments were deleted. So that  
14 will be in the new law.

15 As I say, there are several things where there are  
16 consensus. For the most part, there isn't. There are a lot  
17 of controversial areas that still remain, questions as to  
18 what should be restricted.

19 A couple of highlights there. On abortion-related  
20 activities, the current law, which is the Act and the  
21 regulations, say that no LSC funds, federal funds or private  
22 funds, under the Act can be spent for abortion-related

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1 activities. This was tightened up in the appropriations  
2 riders. It was originally in the Act but it was tightened up  
3 in appropriations riders, and that's the status of current  
4 law.

5 Under Frank's H.R. 2039, the restriction would be  
6 removed with respect to private funds. Private funds could  
7 be used for abortion-related activities, litigation,  
8 lobbying, et cetera. There is an amendment also by  
9 Congressman Frank that would remove the restriction from  
10 federal funds as well.

11 This is important for a couple of reasons, aside  
12 from the fact that that's a high profile issue. One of the  
13 very specific points mentioned by the administration in the  
14 statement of administration policy that was issued June 25th  
15 of last year was where the president's senior advisors  
16 recommended to the president that there would be a veto if  
17 certain provisions stayed in H.R. 2039. That was  
18 specifically mentioned as one of them.

19 There are major differences of opinion with respect  
20 to monitoring and compliance. That's in Section 6 of the  
21 Act. Basically, to put it generally, there have been  
22 restrictions on monitoring added, H.R. 2039. One of them is

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1 that all monitoring would have to be done pursuant to  
2 regulation.

3 Right now it's done administratively without the  
4 need for a regulation. There is no provision for a phase-in  
5 period which is to say that if the bill passed tomorrow,  
6 there could be no monitoring. There would be no authority for  
7 monitoring.

8 There's been talk within the amendments of having  
9 either a phase-in period -- different people have different  
10 views. I don't know that the objection so much is to be done  
11 by regulation as much as the fact that you could have a gap  
12 there, especially considering this Corporation can't pass  
13 regulations.

14 You could have a gap of a year or so where there's  
15 no monitoring because there would be no authority because  
16 there would be no regulations. So that has been a subject of  
17 some of the amendments and some of the debate. I'm sure on  
18 Wednesday we'll cover that particular point.

19 There was something that was in H.R. 2039 that was  
20 actually a deletion from the current law which was, I  
21 believe, characterized by Representative Frank's staff as an  
22 oversight. That was the restriction on comingling of funds

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1 was removed.

2 In the Act itself, there is a requirement for  
3 separate accounting of federal and nonfederal funds to make  
4 sure that the purposes for which both were given are  
5 followed. That was not in H.R. 2039. That was an oversight  
6 and Mr. Frank is correcting that with one of his own  
7 amendments. He has 13 amendments of his own. So comingling  
8 of funds I know was mentioned.

9 There was a lot of controversy in the last weeks or  
10 so on the Hill, and that presumably will be taken care of by  
11 a technical amendment.

12 There are a lot of miscellaneous items in there.  
13 There's a requirement for an older American study, a study of  
14 legal needs of older Americans. There are a number of less  
15 controversial or marginal issues that will be covered as  
16 well.

17 If you look through the list of amendments, you'll  
18 see that there's provision for a legal services clinic at a  
19 local law school in Washington, for example, that really  
20 hasn't been part of the debate up to this point. It's just  
21 one of those extraneous points that is added in.

22 There are differences of opinion, although there's

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1     been some consensus on the issue of redistricting. That's  
2     another thing signaled by the White House as something of  
3     concern to them, whether funds could be used for  
4     redistricting.

5             Also in the interim, since H.R. 2039 passed, the  
6     Corporation was successful in federal court with the  
7     regulation on redistricting being upheld, the U.S. Court of  
8     Appeals in Washington. The current differences are fairly  
9     easy to state between the alternative pieces of legislation  
10    with respect to redistricting.

11            The Frank bill would restrict the use of funds for  
12    congressional and/or state legislative districts. The  
13    alternative legislation Mr. McCollum is supporting would ban  
14    any kind of redistricting activity at any level of  
15    government, local or state, and would also restrict the use  
16    of funds for census litigation. So there's some differences  
17    of opinion still remaining there, although there has been  
18    some consensus with respect to congressional and state  
19    legislative districts.

20            The question of legal services with assistance to  
21    aliens is another area where there's a real difference of  
22    opinion. Currently aliens can be served in certain

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1 circumstances. The net effect of H.R. 2039 would be to  
2 extend those categories of aliens who may be represented by  
3 Legal Services attorneys. That is a hot issue in some areas,  
4 and there is an amendment that will be proposed for the Rules  
5 Committee covering that.

6 Many different areas that are now incorporated in  
7 the appropriations language will find their way into the  
8 final Act. A couple of examples of that are the governing  
9 bodies of recipients, McCollum amendment as it's called. The  
10 requirement for the organized bar had a fixed percentage of  
11 seats on the Board of local legal services. That's been in  
12 the appropriations rider and that would also be in H.R. 2039.

13 Also, some of the lobbying restrictions are in H.R.  
14 2039, very closely tailored after what's been in the  
15 appropriations riders. There's still differences of opinion.  
16 There's differences of opinion on what constitutes grassroots  
17 lobbying. Both the H.R. 2039 proposal with respect to  
18 lobbying and grassroots lobbying and the alternative to the  
19 amendment seek to prohibit it, but it gets down to what  
20 exactly is defined as grassroots lobbying. So there's a  
21 difference of opinion there as well.

22 The dissenting opinions are also listed in your

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1 report. They are in the back at page 91 of the legislative  
2 report. It's a very brief section. There are basically four  
3 primary issue areas that are listed as being of interest to  
4 the seven or eight members of Congress that signed the  
5 dissent. Those issue areas are lobbying, redistricting,  
6 prohibition on the use of nonfederal funds for activities  
7 prohibited by Congress or being conducted with federal funds,  
8 and competition.

9 With respect to the competition issue, the  
10 shorthand description of what's in the Act is that  
11 Congressman Frank would require a study of competition but  
12 without any authority to the Corporation to follow through  
13 and actually implement it.

14 The proposed amendment that would cover competition  
15 that Mr. McCollum has sponsored would call for a study of  
16 competition by the Corporation but would allow authority for  
17 competition to be implemented by the Board. We'd do that by  
18 lifting the refunding rights that are currently in the Act  
19 when it comes to refunding as part of competitive programmer  
20 arrangement. So, as I say, those four particular points are  
21 the four so-called reform amendments.

22 Also, the minority took exception on a couple of

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1 other points. They took exception on the restrictions on LSC  
2 monitoring, took exception to the majority opinion on the  
3 expansion of eligibility and new categories of aliens and  
4 generally raised the theme that scarce federal resources  
5 should be directed more towards more conventional legal needs  
6 and less towards activities such as lobbying, redistricting  
7 and those sorts of activities. That's, as I said, all  
8 encapsulated in the dissenting opinion which is in the back  
9 of the report.

10 As for what will happen with the administration at  
11 this point it's anticipated that some statement will be  
12 released probably Monday or Tuesday by the administration.  
13 In June of 1991, the administration released a statement of  
14 administration policy, said they were dissatisfied with H.R.  
15 2039 in its form at that point, recommended a veto by -- the  
16 president's senior staff would recommend a veto if it was  
17 passed in that form. They cited the issues of abortion,  
18 redistricting, competition, and accountability as their top  
19 points.

20 There are two types of SAPs as they are called,  
21 statement of administration policy. One is the senior staff  
22 level; that is, the senior staff is recommending the

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1 president veto. That's the strongest one. The second one is  
2 the attorney general recommendation. That's just the  
3 attorney general recommends that the president veto a  
4 particular piece of legislation.

5 It's not known at this point, because it hasn't  
6 been released, which of those two methods of expressing the  
7 views will be taken by the administration. As I say, that's  
8 expected sometime prior to the vote. The last one was  
9 released literally a day or two before the full committee had  
10 their vote. Things have changed a little bit since then.

11 As for the amendments, even though 37 have been  
12 proposed and the door is now closed to that, the Rules  
13 Committee will decide how many are allowed and what the rules  
14 will be as for those amendments. They had a vast number of  
15 ways of dealing with it from a parliamentary standpoint.

16 The general feeling is that because it's been so  
17 many years, 1977 to be exact, that a piece of legislation  
18 passed the House and went on to become law, that they will be  
19 fairly generous in allowing amendments. As to what fairly  
20 generous means, nobody knows. But the expectation is that  
21 the major issues of concern will be allowed as amendments on  
22 Wednesday.

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1           By close of business Wednesday we should know what  
2 the status is. Several things have to happen if this is to  
3 become law. Clearly the Senate, which has not had any bills  
4 introduced and has not had any hearings will have to decide  
5 very quickly what they want to do with this because this is a  
6 shorter legislative year. Election years are in session  
7 generally a little less than nonelection years.

8           The committee that would deal with it is Labor and  
9 Human Resources Committee over in the Senate. The  
10 expectation is that that is what they will do. While they  
11 have a number of issues on their agenda right now, hearings  
12 are scheduled, et cetera, it would be possible to have a fast  
13 consideration for several reasons.

14           One is there is no subcommittee that would deal  
15 with this. It would be dealt with by the full committee. So  
16 you wouldn't have that process you have in the House where it  
17 has to go to subcommittee hearings up to full committee and  
18 mark up. It would just be one committee and that would be  
19 Senator Kennedy's committee. They could hold hearings, mark  
20 up a bill, and report it out.

21           One of the reasons they held off, at least  
22 according to staff over there, is that they're waiting to see

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1 what the House does. They will probably take whatever is  
2 passed by the House on Wednesday as their starting point,  
3 pick up on that, make whatever changes they're going to make,  
4 and then they'd report it out to the floor. Then it goes to  
5 the President.

6 At that point, the key question is what the  
7 President is willing to sign. As I say, there's been one  
8 veto message already. The general thinking is if the  
9 President vetoed it, it would be dead at least for this  
10 Congress because the votes probably aren't there to override  
11 a veto.

12 There may be, if there's some differences between  
13 the House and the Senate, an opportunity to resolve those  
14 differences and conference in a way that may pass muster with  
15 the White House and be signed into law, and we could end this  
16 year with a new reauthorization.

17 The general feeling all the way around is that  
18 reauthorization is long overdue. The chairmen of the various  
19 appropriations committees have been arguing for it nonstop.  
20 They don't like legislating on appropriations bills. They  
21 want this done. Both sides of the aisle want it done. The  
22 only question is what is it. That's where it sits.

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1 CHAIRMAN UDDO: Thank you very much, Ken. As  
2 usual, very informative and concise.

3 Any questions from members of the committee for Mr.  
4 Boehm about any of the matters to do with reauthorization?

5 Howard?

6 MR. DANA: Ken, the Rules Committee is meeting  
7 when?

8 MR. BOEHM: They are meeting Tuesday afternoon, I  
9 believe.

10 MR. DANA: So we'll know the form of the rule by  
11 then, that evening?

12 MR. BOEHM: Yes.

13 CHAIRMAN UDDO: Any other questions?

14 (No response.)

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

17 (No response.)

18 CHAIRMAN UDDO: Thank you, Mr. Boehm.

19 Any staff comments with respect to the  
20 reauthorization?

21 (No response.)

22 CHAIRMAN UDDO: Mr. Fortunato, do you want to tell us

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1 what you were going to tell us before?

2 STATEMENT OF VICTOR FORTUNO

3 MR. FORTUNO: Yes. As I said, I'll only take up a  
4 couple minutes of your time. I've been asked to call  
5 attention to two or three points for, I guess, whatever  
6 additional discussion they may generate. I'm not here to  
7 lobby you, if you'll excuse that expression, and I'm not here  
8 to advocate the position one way or the other. I recognize  
9 that there are competing considerations.

10 In any event, the current law provides a broad  
11 right of access to documents in the possession of grantees.  
12 This broad right of access has been recognized certainly at  
13 least as far back as 1985 when the U.S. District Court for  
14 the District of Columbia issued its opinion in the National  
15 Client's Council, and more recently on the cases of Multnoma  
16 in the 9th Circuit and Lawyers Union of Rural California in  
17 the Northern District of California.

18 I don't think that there's any serious question but  
19 that the proposed Reauthorization Act, H.R. 2039, cuts back  
20 or restricts this broad right of access. Without  
21 editorializing, I think it may fairly be said that less  
22 access may translate to less accountability.

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1           In addition, I think it's also significant that  
2 what has taken some time to settle, that is the Corporation's  
3 right of access, has taken a great many years to settle. I  
4 think it has now reached the point where it's relatively well  
5 settled and will, if anything, be unsettled some. So there  
6 may be some additional litigation to settle whatever form the  
7 Reauthorization Act takes, what that means, and what right of  
8 access the Corporation does then have.

9           Lastly, another change that may result is that  
10 instead of having a federal statute that applies across the  
11 board, if we have a federal statute that in a sense looks to  
12 state law, say on issues such as privacy rights, what you're  
13 going to have is rules that differ from state to state. So  
14 grantees in different states wouldn't necessarily be subject  
15 to the same rule, if you will.

16           That, among other things, would result, I think, in  
17 a substantial cause to the monitoring of the Corporation in  
18 that they'd be dealing with a great many more rules than they  
19 are right now. As I said before, I'm not here to lobby the  
20 Board on these or advocate one position over another, but  
21 simply to call attention to these three points for whatever  
22 discussion it may generate.

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1           CHAIRMAN UDDO: You said right of access, the state  
2 laws on privacy. What's the third?

3           MR. FORTUNO: I think what I tipped on first was  
4 the lessening of access, reduction of what the Corporation is  
5 entitled to in the way of access, possibly translating to  
6 less accountability.

7           The second would be the change resulting in an  
8 unsettling of a law that's at long last becoming purely well  
9 settled. That is, just what the parameters of the  
10 Corporation's right of access are.

11           Thirdly is the notion that instead of having a  
12 federal statute that applies across the board, what you're  
13 going to have in some instances is a federal statute that  
14 looks to state law. So you're going to have a more complex  
15 situation confronting the monitoring folks. They are going  
16 to be looking to state law in a great many instances where  
17 they don't do that now or don't have the obligation to do  
18 that at this point.

19           So that's going to change for them. It will  
20 require additional resources. It will result in the rules.  
21 Just how this will impact is unclear, but it will result in  
22 slightly different rules, possibly across the river, one

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1 jurisdiction across the river from another.

2 So if there's a privacy statute in one jurisdiction  
3 and no privacy statute or a different one in another  
4 jurisdiction across the river, that's going to impact on what  
5 the monitoring folks are going to be able to see or make.

6 CHAIRMAN UDDO: Do you know if any of these three  
7 points have been directly addressed by the Board in their  
8 recommendations on reauthorization, or are these things that  
9 just sort of skirt around the recommendations that came from  
10 the Board?

11 MR. FORTUNO: I don't know that they were directly  
12 addressed by the Board.

13 CHAIRMAN UDDO: Any questions? Mr. Dana?

14 MR. DANA: Yes. Vic, you indicate, and I think the  
15 inspector general has made this point in his communications  
16 to us, that if state law controls what is and is not subject  
17 to the attorney/client privilege or should be withheld and is  
18 protectable, if state law is going to control, that's going  
19 to cause a problem for our monitors because they go from  
20 state to state.

21 There's a desire for every bureaucrat to have a  
22 uniform approach to what is and is not reachable by our

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1 monitors. I don't blame a monitor or somebody at this  
2 Corporation, like the inspector general or the president or  
3 particularly the head of MAC, wanting to have one set of  
4 rules. But unfortunately, that's not the way it works in  
5 this country.

6 We've got 50 different states, and human beings in  
7 one state typically have one set of rules that they live by.  
8 What is the law for a client or for a lawyer in Maine is true  
9 for all lawyers in Maine and all clients in Maine. What you  
10 appear to be advocating, and what the Corporation appears to  
11 be advocating, and what Mr. McCollum and the IG appear to be  
12 advocating is cutting through all that, making it real easy  
13 on our monitors, and creating two classes of people, people  
14 who are represented by lawyers who are not paid by LSC funds  
15 and people represented by lawyers whose salaries are paid in  
16 whole or in part with LSC funds.

17 That seems to me to establish a very bad precedent.  
18 I think that is the reason why that's been rejected and why I  
19 voted against the proposal of Mr. Kirk's motion. I think we  
20 need to make sure that poor people have the same rights and  
21 same protections and are represented by lawyers who advocate  
22 in their behalf equally, whether they are rich or poor or

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1 whether they are represented by us or not.

2 MR. FORTUNO: As I hastened to add when I started,  
3 I didn't mean to be advocating one position or another. I'm  
4 simply calling attention to these points. I think that your  
5 point is a narrower one than I was raising. I think that if  
6 we're talking about lawyer ethics privilege, that's a little  
7 narrower than state law generally.

8 For example, state privacy statutes wouldn't have  
9 to do with privilege. In fact, the Reauthorization Act does  
10 make the Act subject to state privacy laws. It doesn't have  
11 to do this. The Reauthorization Act could, in effect,  
12 preempt all that. Under the supremacy clause, depending on  
13 how the statute was drafted, the monitors might not be  
14 subject to state privacy laws.

15 So as I was raising the point, I was trying to  
16 raise it in a broader fashion so that it didn't go only to  
17 attorney/client privilege or to attorney ethics but would go  
18 to things such as privacy laws.

19 CHAIRMAN UDDO: Ms. Pullen?

20 MS. PULLEN: Mr. Chairman, there isn't anybody who  
21 is more desirous of protecting the sovereign right of states  
22 to control their own laws than I am, in this room anyway.

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1 But I think that it ought to be noted that we're dealing with  
2 federal funds here. Taxpayers in one state who are having  
3 money taken from them by the federal government for a variety  
4 of purposes, including this one, ought to have the right to  
5 expect that those funds will be treated in accordance with a  
6 uniform standard regardless what the laws are in another  
7 state where those funds are being spent, as long as those  
8 funds are being spent by the federal government that is  
9 taking those funds away from them for that purpose.

10 I would like to know, Mr. Fortuno, whether you have  
11 an opinion and whether you would express it to us as to  
12 whether H.R. 2039 in its totality or in specifics is damaging  
13 in any way to the ability of this Corporation compared to its  
14 current act to properly discharge its responsibilities of  
15 trust to the taxpayers of the United States in providing  
16 legal services in a way that respects the needs of indigent  
17 Americans and respects the taxpayers who provide the funds  
18 for that purpose?

19 MR. FORTUNO: That was a long question. I think  
20 certainly it results in significant restrictions over what  
21 the Corporation has on it now. It has a corresponding  
22 reduction and accountability, but it depends on whether you

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1 think that the accountability that exists at this time is  
2 adequate or not.

3 MS. PULLEN: Well, are you saying that there are  
4 some who think that the accountability that exists now is  
5 more than adequate? If it reduces the accountability beyond  
6 what it is now and what it is now is not adequate, then that  
7 makes it even more inadequate; doesn't it?

8 MR. FORTUNO: Yes. The question is one's  
9 perspective. If one views the accountability that exists at  
10 this time is inadequate, then yes it would be more  
11 inadequate. There would be even less accountability. If one  
12 considers what we have now as adequate, then there's a  
13 question as to whether reducing it some will still keep it in  
14 the adequate range or whether we've gotten to the point where  
15 it truly is inadequate. That is just --

16 MS. PULLEN: It would in any case be less adequate?

17 MR. FORTUNO: Oh, there's no doubt about that.

18 CHAIRMAN UDDO: Mr. Kirk, do you have any questions  
19 before I go to other Board members?

20 MR. KIRK: Yes. I was just going to make a  
21 comment. Just turning a little bit from what Board member  
22 Dana commented, it seems to me that a uniform system

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1 throughout the country would treat all poor people the same,  
2 whether they were from one state or another.

3 If they chose to take advantage of the free legal  
4 services, each one would be treated the same no matter what  
5 state they're from. It might be said that it's even a more  
6 fair precedent to follow as has been recommended by  
7 Monitoring, Audit, and Compliance Division.

8 MR. DANA: Could I briefly respond?

9 CHAIRMAN UDDO: Yes.

10 MR. DANA: I agree with Mr. Kirk. It would treat  
11 all poor people the same. It would treat them differently  
12 than non-poor people. That is the essence of my objection.

13 MR. KIRK: Well, I would note that this is a  
14 privilege that we're offering. I think that there's a lot of  
15 things that need to be changed in our legal system to make  
16 equal access to justice truly equal to everyone, nor is it  
17 going to be done from this particular position.

18 But I do think that certainly whatever minor  
19 restrictions are placed upon it, the utilization of these  
20 funds by poor people is of minor inconvenience compared to  
21 the fact that it is available to them. There are still  
22 hundreds of thousands of people and millions who still cannot

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1 afford legal services and yet are not eligible for these  
2 funds.

3 CHAIRMAN UDDO: Mr. Wittgraf?

4 MR. WITTGRAF: Mr. Chairman, I was just wondering  
5 if Mr. Fortuno could go beyond the response he gave Ms.  
6 Pullen to her question, go beyond the comments that he made  
7 at the outset, to any specific comments that he might have  
8 regarding H.R. 2039 as it came out of the House Judiciary  
9 Committee or as to the 37 amendments that have been filed.  
10 Can you get more specific?

11 MR. FORTUNO: I don't have any specific comments to  
12 offer. It occurs to me that it's not a model of legislative  
13 craftsmanship, but I would be more comfortable responding to  
14 specific questions than just making general statements.

15 MR. WITTGRAF: Is it fair to assume that your  
16 comments both at the outset and in response to Ms. Pullen's  
17 question are directed largely at Section 6 of the Act?

18 MR. FORTUNO: Yes, that's correct, the monitoring  
19 and compliance section.

20 MR. WITTGRAF: There are, as best I understand them  
21 from the list prepared by Mr. Boehm, several amendments that  
22 have been submitted to the Rules Committee that do pertain to

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1 Section 6?

2 MR. FORTUNO: Yes. Now, I've not seen the  
3 amendments, so I can't express an opinion as to those.

4 MR. WITTGRAF: He's answered my question, Mr.  
5 Chairman. Thank you.

6 CHAIRMAN UDDO: Any other questions for Mr.  
7 Fortuno?

8 (No response.)

9 CHAIRMAN UDDO: Any other staff comments?

10 MR. DANA: I'd like to go to Ms. DiSanto, if I  
11 could.

12 CHAIRMAN UDDO: Ms. DiSanto?

13 MR. DANA: Or Ms. Sparks, either one.

14 CHAIRMAN UDDO: Or Ms. Sparks or both. While they  
15 are coming to the table, let the record reflect that Ms.  
16 Wolbeck has joined us some time ago, actually. I've been  
17 remiss in not recognizing that on the record.

18 If you would, please, identify yourself for the  
19 record.

20 MS. DiSANTO: Good afternoon. My name is Emilia  
21 DiSanto. I am the acting vice president of the Legal  
22 Services Corporation.

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1 MS. SPARKS: Susan Sparks, acting director of the  
2 Office of Monitoring, Audit and Compliance.

3 CHAIRMAN UDDO: Do you have comments or do you just  
4 want to ask questions?

5 MR. DANA: I just want to hear what their comments  
6 are.

7 MS. DiSANTO: What we'll try to do is try to split  
8 up our comments. Susan will give a little bit more specific  
9 information with regard to the specific amendments. I'll  
10 make some more general comments in response to some of the  
11 things I've heard from the Board members today during the  
12 last half hour.

13 CHAIRMAN UDDO: Can you give me just a rough idea  
14 how long you think you'll need, because I'm starting to watch  
15 the clock a little bit here? There's a reception to follow  
16 this meeting. I want to try to stay within some limit. I  
17 want to have a few minutes for the committee to discuss some  
18 of these things.

19 MS. SPARKS: I should be about three minutes.

20 CHAIRMAN UDDO: That sounds good. Emilia?

21 MS. DiSANTO: Two or three minutes.

22 CHAIRMAN UDDO: I'll bet neither one of you stick

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1 to three minutes, but go ahead.

2 STATEMENT OF SUSAN SPARKS AND EMILIA DiSANTO

3 MS. SPARKS: We have no prepared comments, just  
4 some thoughts. Again, I'd like to preface my comments as Vic  
5 did. These are just general comments. I certainly am not  
6 here to lobby you one way or the other on any of this  
7 language.

8 The proposed language raises will change our world  
9 in monitoring. There will be restriction on access to  
10 records. That will limit our ability to account for funds.  
11 The imposition of the state privacy laws, which relates to  
12 the employees of the grantees as opposed to eligible clients  
13 being a part of that section, will mean things such as we may  
14 not be able to see payroll records in some states. We have a  
15 concern about that from an accountability perspective.

16 We have a concern about the comingling of funds  
17 that I understand from Mr. Boehm's comments is going to be  
18 rectified, but we would have a concern if funds were  
19 comingled.

20 We have a concern on the deadlines being imposed on  
21 investigations, complaint investigations, only to the extent  
22 that we're not sure that we're going to be able to do a

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1 thorough job.

2 We may just have to have an investigation conclude  
3 because at 90 days in the proposed language it's over. From  
4 my experience on some of the more complex questions of  
5 compliance investigations, it takes longer than 90 days.

6 We have a concern that on the language relating to  
7 the monitoring through regulation, although that's certainly  
8 whatever Congress decides on that, the concern from our  
9 perspective would be that monitoring would not occur for  
10 however long that takes. Again, from an accountability  
11 perspective, that raises some questions on whether or not the  
12 funds will be reviewed.

13 The two amendments we have had an opportunity just  
14 to look at very briefly, not any of the specific language,  
15 but I believe the first amendment, No. 1 by Congressman Fish  
16 and No. 25 by Congressman McCollum, they do appear, based on  
17 my limited knowledge of those two, put back some of the  
18 accountability that, in my opinion, is lost. That will  
19 restrict the Corporation's ability to account for the federal  
20 funds that it sends out.

21 Those are my general thoughts on the language. If  
22 there are any questions on that, I'd be happy to respond.

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1 CHAIRMAN UDDO: Mr. Kirk?

2 MR. KIRK: I just want to make sure I understand  
3 what you're saying about the timing. If it's passed as it is  
4 now, then new regulations have to be passed in order for  
5 monitoring to take place?

6 MS. SPARKS: That's correct. That's my  
7 understanding from Mr. Boehm.

8 MR. KIRK: We can't pass regulations because we  
9 have been confirmed by the Senate?

10 MS. SPARKS: That's correct.

11 MR. KIRK: So, whenever the Senate confirmed us,  
12 then we'd start. I've never been through the regulation  
13 process. Is that 60 to 90 days?

14 MS. SPARKS: Since I've been at the Corporation,  
15 we've done two. They were long. It was a long time, long  
16 process.

17 MR. KIRK: So there would be no monitoring during  
18 that period of time?

19 MS. SPARKS: That's correct.

20 CHAIRMAN UDDO: Mr. Dana?

21 MR. DANA: Two of our staff members today have said  
22 we do not have the power to pass regulations. I don't think

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1 that's accurate. I think the law is that we have the power  
2 to pass regulations. They just don't go into effect until  
3 October 1, 1992, which is about as quickly as we could move  
4 given the time limit you say it takes to get regulations done  
5 with.

6 We don't know what the law will say the next time  
7 about our capacity to pass regulations. My suspicion is that  
8 it might have something to do with the regulations we've  
9 passed in the meantime. But, then again, if we don't pass  
10 any regulations, Congress will have no basis for assessing  
11 our capacity to do so.

12 MS. SPARKS: I appreciate that clarification.

13 Thank you, Mr. Dana.

14 CHAIRMAN UDDO: Ms. DiSanto?

15 MS. DiSANTO: Again, I'll preface my remarks the  
16 same as Ms. Sparks and Mr. Fortuno. I'm not here to lobby  
17 the Board. I don't know whether or not I can be as eloquent  
18 as some of my colleagues. But I do want to call, I guess,  
19 upon my own experience and my own expertise, both as a  
20 monitor, both as a compliance reviewer, both as a deputy  
21 director of the Office of Monitoring, Audit, and Compliance,  
22 then as the director for four years.

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1 I know you've heard this probably several times  
2 before, but let me tell you what it is we don't want to do.  
3 What we don't want to do is we don't want to treat poor  
4 people differently than people who pay. At the same time, we  
5 have the very difficult task of trying to balance that with  
6 accountability for federal funds.

7 Another thing we don't want to do is we don't want  
8 access to attorney/client privileged information. We are not  
9 seeking specifically to gain access to the specific names of  
10 a particular client to know that that client is being  
11 provided service by a legal services program. That's not  
12 what the point is.

13 The point is sometimes it's important to know who  
14 the client is when a question is raised about whether or not  
15 that client was eligible for service. A question is raised  
16 when a client name is in a public pleading and you ask the  
17 program for the name of a particular client and you're told  
18 to go to the court house and you can find it out.

19 That is the problem. We have a job to do. Our job  
20 more or less centers around accountability. I think finally  
21 after a long time, and I came into the Corporation in 1985, a  
22 kind of balance was reached. I don't think we're trying to

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1 set up different rules for poor people. I don't think we're  
2 trying to make things easy on monitoring.

3 I think what we've finally reached after a very  
4 long time is a standard. I think we've reached a level where  
5 programs know what we do. They know how we do it. It's not  
6 a big surprise to them. I think we're helping programs. I  
7 think programs have written to me countless letters about the  
8 fact that we are assisting them.

9 Those things all need to be taken into  
10 consideration. After a very long time, I was greatly  
11 gratified by some of the decisions that came out in Multnoma  
12 and that came out in CRLA. What we had been saying for years  
13 and years regarding access to documents was in fact correct  
14 and it was finally affirmed by a court, and it was affirmed  
15 by the 9th Circuit, and it was affirmed by a court in  
16 California.

17 We have a job to do. It's that simple. We're  
18 trying to do that job. We kind of reached that kind of  
19 balance after a lot of years, a lot of arguments, a lot of  
20 disagreements, just a lot of difficulties. The law being  
21 settled somewhat on access was of great help for us.

22 When I look at something like formal and informal

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1 opinions, I have never in my six years ever seen a formal or  
2 informal opinion from an association that said that the  
3 Corporation could have access to any document. Yet, I have  
4 reviewed case law in states that say client identity is not  
5 protected.

6 I'm not sure which way to go, and we've been kind  
7 of walking on egg shells for a very long time, trying to  
8 balance it and trying to deal with it on a case-by-case  
9 basis, but it's been a difficult job. We thought we'd kind  
10 of got the box somewhat, that we could work in it and the  
11 programs have been working with us a lot in doing that.

12 Settling the loan access, well that was, I think,  
13 something that became very important to us. I think it's  
14 important that the Corporation is not reduced to check  
15 writers because that ultimately isn't going to benefit the  
16 Corporation. It's not going to benefit taxpayers. In the  
17 end, it's ultimately not going to benefit the poor people for  
18 whom we're all striving to assist.

19 Those are my comments.

20 CHAIRMAN UDDO: Any questions? Ms. Pullen?

21 MS. PULLEN: After reviewing H.R. 2039, do you  
22 believe that its provisions, as it has appeared in this

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1 document, would have the effect of substantially reducing the  
2 Corporation to a check writer?

3 MS. DiSANTO: In my opinion, it would greatly tend  
4 in that direction, yes.

5 MS. PULLEN: Thank you.

6 CHAIRMAN UDDO: Any other questions from committee  
7 members?

8 Mr. Dana?

9 MR. DANA: Ms. DiSanto, I sense that or I would  
10 make the observation that this legislation is coming at  
11 monitoring from one side and the inspector general is coming  
12 at monitoring from another side. Both approaches appear to  
13 be squeezing MAC. Do you sense that?

14 MS. DiSANTO: I'm not sure what you're referring  
15 to, Mr. Dana. If you could restate the question, I'm sorry.

16 MR. DANA: Have you reviewed the inspector  
17 general's concerns with this legislation?

18 MS. DiSANTO: Somewhat, yes.

19 MR. DANA: And do you find them helpful and  
20 supportive? Are you generally supportive of them?

21 MS. DiSANTO: To the extent that the 2039 does not  
22 conflict with the Inspector General's Act, yes.

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1 CHAIRMAN UDDO: Mr. Wittgraf?

2 MR. WITTGRAF: Question for either Ms. Sparks or  
3 Ms. DiSanto. Section 25 of H.R. 2039 provides that all  
4 grants and contracts made for calendar years 1992 through  
5 1996 shall be made for at least 12 months. What, if any,  
6 understanding do you have as to the effect of that provision  
7 on the month to month funding status that has been utilized,  
8 at least to my knowledge, in the last few years as an  
9 accountability tool?

10 MS. SPARKS: I think my initial reading is that we  
11 would not be able to put grantees on month-to-month funding.  
12 That would simply be one less enforcement mechanism.

13 CHAIRMAN UDDO: You agree, Ms. DiSanto?

14 MS. DiSANTO: Yes. I would agree. I think as  
15 we've spoken to the Board on other occasions, the number of  
16 enforcement mechanisms available to the Corporation are  
17 relatively few. This is just one less.

18 MR. WITTGRAF: Refresh my recollection if you will.  
19 I think at the president's urging or direction you have been  
20 providing us monthly or bi-monthly with such lists.  
21 Approximately how many grantees are showing currently?

22 MS. SPARKS: At the current time, if you just let

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1 me count for a moment --

2 CHAIRMAN UDDO: Ellen, do you have that off the top  
3 of your head?

4 MS. DiSANTO: We've got the month-to-month list.

5 CHAIRMAN UDDO: Oh, okay.

6 MS. SPARKS: My rough count is 10.

7 MR. WITTGRAF: Thank you. Thank you, Mr. Chairman.

8 MR. DANA: Could I have a follow up on that?

9 CHAIRMAN UDDO: Mr. Dana?

10 MR. DANA: Why does Section 25 bother you when the  
11 proviso in the appropriation's language that provides that  
12 the Legal Services Corporation shall, with funds  
13 appropriated, be made for a period of at least 12 months  
14 beginning on January 1, 1991.

15 It provides that all grants and contracts made for  
16 the calendar year 1991 and all grantees receiving funds under  
17 Section umpty-umph, with funds appropriated by this Act or  
18 prior appropriations acts, shall be made for a period of at  
19 least 12 months beginning January 1, 1991.

20 MR. WITTGRAF: Where are you reading, Mr. Dana?

21 MR. DANA: I'm reading from the Public Law 101-515  
22 which is our Appropriation Act that we've been operating

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1 under. I was reading from the appropriation rider. That's  
2 been our law for the last two or three years.

3 MS. DiSANTO: Mr. Dana, are you speaking about the  
4 legality of month-to-month funding of our current  
5 Appropriation Act?

6 MR. DANA: Yes.

7 MS. DiSANTO: I think Mr. Fortuno is probably in  
8 the best position to answer that question. That was, I  
9 think, brought up at the last Board meeting.

10 MR. DANA: I understand you to tell this committee  
11 that if this statute is passed, you won't be able to do month  
12 to month any more. Yet, Mr. Fortuno and the Corporation has  
13 been blithely doing month to month for the last two years. I  
14 don't understand what the difference between the  
15 appropriations limitation is and this limitation?

16 MS. DiSANTO: Mr. Dana, I haven't really studied  
17 Section 25 until Mr. Wittgraf brought it up. Just a brief  
18 reading of that would suggest that month-to-month funding  
19 could no longer be done. It is my understanding, I think  
20 from Vic Fortuno, that month-to-month funding is appropriate  
21 under our current Appropriations Act, but I'd like to defer  
22 to him for a moment on that.

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1 MR. DANA: Let me ask you to turn to page 66 of  
2 this pamphlet that's been passed out. On page 66, under  
3 Section 25, it describes Section 25. It says the language is  
4 based upon the current Appropriations Act rider. Since the  
5 inception of the Corporation, annualized grants have been  
6 made for a 12-month period, except for grants to new programs  
7 beginning their operations during a calendar year or grants  
8 for special purposes.

9 In 1989, the Corporation staff attempted to fund  
10 recipients with less than 12-month grants without any notice  
11 to recipients and without any congressional authorizations.  
12 The rider provision was adopted in response to that action by  
13 the Corporation to prevent Corporation staff from reducing  
14 the period for which grants are made.

15 The committee bill would require 12-month grants  
16 for legal assistance and activities relating to the delivery  
17 of legal services.

18 MS. DiSANTO: Keep reading and that answers Mr.  
19 Wittgraf's question.

20 MR. WITTGRAF: As I've just read the next paragraph  
21 under Section 25 in the committee report, I'm not sure that  
22 it's internally consistent. I'm not sure that all paragraphs

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1 of all committee reports are, by definition, internally  
2 consistent.

3 But it does say in the first sentence that the  
4 authority will remain and that it does say in subsequent  
5 sentences that the Corporation at least should not -- I am  
6 perplexed as to the meaning of Section 25. That's why I  
7 raised the question.

8 I wasn't necessarily meaning to aggravate the late  
9 afternoon of Ms. DiSanto or Ms. Sparks or Mr. Fortuno. I'm  
10 not sure what the intent is. I think there is some  
11 unhappiness over month-to-month funding. But I'm not sure  
12 what the Congress is trying to do.

13 CHAIRMAN UDDO: Let me restore order here. I'm not  
14 exactly sure what we're driving at. We're not going to  
15 interpret today what the Act means or what the committee  
16 report means. God bless anybody who can figure out what a  
17 committee report means these days. I don't think it's our  
18 job to try to figure that out.

19 If you have an answer to the question as to whether  
20 or not you, Mr. Fortuno, read this bill to prohibit  
21 month-to-month funding, if you have an opinion, since, if it  
22 passes, you'll be charged with rendering an opinion on that,

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## EVENING SESSION

1  
2 MR. FORTUNO: I do have an opinion. In fact, the  
3 committee report is consistent with the Corporation's  
4 interpretation of the provisions since its inception back in  
5 1989. I think originally the provision came about because  
6 the Corporation at one point put everybody on month-to-month  
7 in anticipation of competition, developing and implementing  
8 some form of competition.

9 Congress didn't like that and didn't want that  
10 process continued. It did not mean to address the situation  
11 where a grantee was not in compliance with the law as in the  
12 situation where there's a serious violation of law which may  
13 result in the denial of refunding.

14 That option was intended to continue to be  
15 available to the Corporation. Congress has done nothing  
16 since then to suggest that it meant to do otherwise. In  
17 fact, I think this report is consistent with that. I think  
18 month-to-month funding is available in appropriate  
19 circumstances; that is, when a grantee appears to have  
20 violated the law in a serious fashion which warrants closer  
21 attention in determining whether or not to grant the  
22 application for refunding.

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1 I think it's intended that that process be an  
2 expeditious one. So I think that month-to-month funding is  
3 available during those circumstances. There's a reason to  
4 think that the law may have been violated, reason to think  
5 that a denial of refunding may be appropriate. So you put  
6 them on month-to-month funding to take the necessary time to  
7 review it to make a determination as to whether or not to  
8 refund.

9 I don't think that month-to-month funding is  
10 available, for example, as was done back in 1989, 1988 or  
11 1989, to prepare for competition. I think that's what this  
12 is really all about. Mr. Dana did raise a question last  
13 time. I worked up an opinion which my office is typing up as  
14 we speak. That's why I was on the phone earlier. They'll  
15 fax it to us and I will have something available for you  
16 later on.

1 I think that the language that we see here is the  
2 same language, I think the same thing as what's intended. I  
3 don't think it precludes the Corporation from putting  
4 grantees, under appropriate circumstances, on month-to-month  
5 funding. I do think it prevents the Corporation from putting  
6 all grantees on month-to-month funding in preparation for  
7 competition.

8 CHAIRMAN UDDO: Thank you, Mr. Fortuno.

9 Are there any other questions to what has now grown  
10 to be a panel of four? Mr. Kirk?

11 MR. KIRK: Ms. Sparks, Ms. DiSanto, Ms. Smead, do  
12 you have a proposal that this committee could endorse and  
13 adopt and make a recommendation, or are we stuck with just  
14 one of the two amendments that have been submitted? With Mr.  
15 Quatrevaux, he had his own list. I found it much more  
16 pleasing to take his list than to adopt some politically  
17 charged congressman's.

18 MS. DiSANTO: We have not worked up or drafted  
19 specific language to accommodate any of the concerns that  
20 we've addressed here.

21 MR. KIRK: Well, let me say that I can recall in  
22 California when Ms. DiSanto made a presentation to this

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1 committee. I remember writing you a note and saying it was a  
2 good presentation. We did not act on it. I think that we  
3 probably ought to make a recommendation on where it should  
4 go.

5 But as we stand, it would have to be one of these  
6 two amendments. Was it 25 and --

7 MS. DiSANTO: Number 1.

8 MR. KIRK: Are they identical?

9 MS. DiSANTO: No, sir.

10 CHAIRMAN UDDO: Mr. Kirk, as a point of  
11 information, the committee did recommend -- the Board did  
12 adopt what is reauthorization Resolution No. 14, which was  
13 adopted on July 8, 1991, which was admittedly generic. We've  
14 handled all the resolutions in generic form and not trying to  
15 recommend specific language.

16 But I think that Resolution 14 does address the  
17 Board's support for the ability for the Corporation to retain  
18 sufficient authority to effectively monitor. I just want to  
19 make sure that everyone is aware of that.

20 MR. KIRK: I understand. I felt that my  
21 participation was probably a little short in that. I could  
22 have been a lot more specific.

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1 MS. DiSANTO: Mr. Kirk, No. 25 would in fact, I  
2 think, address the majority of our concerns.

3 CHAIRMAN UDDO: Any other questions?

4 (No response.)

5 CHAIRMAN UDDO: Thank you all very much.

6 That brings us to the point of the agenda of  
7 consideration of proposed reauthorization legislation which I  
8 think means that if there are any recommendations from this  
9 committee to the Board, now would be the time for members of  
10 the committee to make them.

11 Are there any specific recommendations?

12 M O T I O N

13 MR. KIRK: I would move that this committee  
14 recommend to the Board of Directors that it adopt Amendment  
15 25 as proposed on the list submitted by Mr. Boehm.

16 CHAIRMAN UDDO: Is there a second?

17 MS. PULLEN: Second.

18 CHAIRMAN UDDO: Motion by Mr. Kirk, seconded by Ms.  
19 Pullen to recommend to the Board the adoption of Amendment 25  
20 from the list of amendments that we've been working from.

21 Any discussion? Mr. Dana?

22 MR. DANA: Mr. Chairman, I guess I'm fortunate to

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1 have had an opportunity to review these recommendations,  
2 since I do have a copy of what it is that Mr. Kirk is  
3 proposing. But I only reviewed it on the plane coming down  
4 here. I am hopeful that this committee would at least  
5 understand what it is that they are recommending before they  
6 move it.

7 Since I think that I've probably got more access to  
8 this than anybody else, I'm hopeful that we do not at this  
9 time endorse a particular amendment to a bipartisan proposal,  
10 at least until we have fully understood it. It's possible  
11 that I could fully understand it between now and then, but I  
12 sure don't understand it now. I would hope that we not adopt  
13 this at this time.

14 CHAIRMAN UDDO: Thank you, Mr. Dana. Let me also  
15 comment on the motion. I have similar concerns. First of  
16 all, I got the amendments this afternoon when I got here  
17 about 3:00 o'clock, and I haven't read any of them yet. I'd  
18 be hard pressed to vote to support an amendment that I  
19 haven't read.

20 Let me say that in this case I won't abstain  
21 because I don't want this to go to the Board with a  
22 recommendation. I'm going to vote against it because I

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1 haven't read it. That's not to say that if it comes up again  
2 at the Board tomorrow, which I guess it won't if we don't  
3 recommend it, I wouldn't change my mind. But I have a  
4 problem voting on an amendment I haven't seen.

5           Secondly, I have a problem endorsing a specific  
6 amendment. We don't know what that amendment is going to  
7 look like through the whole process. Now, will the Board  
8 have endorsed the amendment throughout the entire legislative  
9 process so that even if it gets changed into something that  
10 the Board doesn't like or doesn't agree with, the record is  
11 going to reflect that we support that amendment?

12           I think that's a very precarious way to express our  
13 support for particular principles. I think our Resolution 14  
14 does support particular principles without being tied to a  
15 specific amendment that may get butchered in the process and  
16 may end up saying something very different from what you  
17 think you're recommending today.

18           So I'm going to vote against the motion. I'm going  
19 to continue to support our recommendation 14 which the record  
20 reflects was adopted unanimously back in July.

21           Any other comments? Mr. Kirk?

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## M O T I O N

1  
2 MR. KIRK: I would move to amend my motion to  
3 provide that it only refer to the specific wording of No. 25  
4 and not to it as the amendment or as something that would  
5 have the taint that would follow it throughout. Do you  
6 accept that amendment?

7 MS. PULLEN: Does the effect of your amendment say  
8 that you endorse 25 as it exists on April 5th, which is when  
9 we're taking this action?

10 MR. KIRK: Yes, just the wording of it as it  
11 exists.

12 MS. PULLEN: I second your amendment which I don't  
13 think is necessary, but if it makes some people feel better,  
14 fine.

15 CHAIRMAN UDDO: Let me ask you a question, Mr.  
16 Kirk. If the wording is changed, does that mean you no  
17 longer support the principles of that amendment?

18 MR. KIRK: No. I certainly would support the  
19 principles.

20 CHAIRMAN UDDO: Which is Resolution 14, basically?

21 MR. KIRK: Well, I think that we apparently need to  
22 do something stronger than Resolution 14. That's my concern.

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1 CHAIRMAN UDDO: All right. Any further discussion?

2 (No response.)

3 CHAIRMAN UDDO: Call the question. All those in  
4 favor of the motion as amended, signify by saying aye.

5 (A chorus of ayes.)

6 CHAIRMAN UDDO: Those opposed, signify by saying  
7 nay.

8 (Mr. Dana votes nay.)

9 CHAIRMAN UDDO: The Chairman votes no. It's  
10 apparent that the motion fails as a tie.

11 Any other motions or proposals?

12 (No response.)

13 CHAIRMAN UDDO: I have one concern that I want to  
14 bring to the committee. That's my distress over No. 20. No.  
15 20 is Mr. Frank's proposed amendment to strike the  
16 restrictions on legal representation related to abortion  
17 contained in Legal Services Corporation Act.

18 I'm distressed about that for two reasons. One is  
19 as contentious as this process has been from the beginning  
20 and as much disagreement as there has been over so many  
21 different provisions, the one provision that I kept hearing  
22 that there really much disagreement over was that legal

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1 services lawyers shouldn't be involved in abortion  
2 litigation.

3 It's not that important to legal services grantees.  
4 It creates too much disagreement. It creates too much  
5 contentiousness. It creates a degeneration of support for  
6 legal services from folks who might otherwise support them.  
7 I kept hearing from leaders in the field that that was not  
8 something that the field was pushing for and didn't think was  
9 necessary.

10 It seemed that that was going to be the case at the  
11 subcommittee and the committee level. Now I see that this is  
12 being put on the agenda not only to not extend the  
13 restrictions as this Board had recommended but to do away  
14 with all the restrictions.

15 In addition to what I think is something of a  
16 breach of faith from folks who have said that that wasn't  
17 going to happen, I think that there's also the rather  
18 ridiculous problem that that's the one thing that's clear in  
19 the statement of the administration policy that would cause  
20 the reauthorization to be vetoed.

21 I think everyone who is concerned about legal  
22 services and reauthorization should be quite clear that that

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1 would be a tragedy if a reauthorization act manages to get  
2 out of Congress or get out of the House and get seriously  
3 considered maybe in the Senate and maybe get out of the  
4 Senate, that it's going to be vetoed because of this  
5 particular provision.

6 I think quite clearly it's going to be vetoed if  
7 this particular amendment applies. So I think it's a  
8 distressing move on the part of Mr. Frank and on the part of  
9 whoever is encouraging Mr. Frank to do that. I am expressing  
10 very strongly my feelings that this is something of a change  
11 of what I was hearing folks were agreeing on on this  
12 particular matter.

13 I would entertain a motion from the committee or  
14 any member of the committee to reassert this committee's  
15 recommendation to the Board to endorse our Resolution No. 6  
16 which reads the Board of Directors of the Legal Services  
17 Corporation believes that LSC-funded recipients should be  
18 barred from using LSC, IOLTA, other public funds or private  
19 funds for the provision of an abortion-related legal  
20 services.

21 MS. PULLEN: Mr. Chairman?

22 CHAIRMAN UDDO: Yes, Ms. Pullen?

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## M O T I O N

1  
2 MS. PULLEN: I so move, and I would like to reserve  
3 further comment until after a second, if you would call it.

4 CHAIRMAN UDDO: Is there a second to the motion?

5 MR. KIRK: Just a second.

6 CHAIRMAN UDDO: Sure.

## M O T I O N

7  
8 MR. KIRK: I will second and move to amend her  
9 motion to include not only Resolution 6 but also Resolution  
10 14 as being reurged upon Congress.

11 CHAIRMAN UDDO: Fourteen is the one we referred to  
12 earlier?

13 MR. KIRK: Yes.

14 MS. PULLEN: I would second that amendment, Mr.  
15 Chairman.

16 CHAIRMAN UDDO: Motion has been made and seconded.  
17 Any discussion? Yes, 14 is the one we discussed before  
18 about -- in fact, let me read it so everybody knows what  
19 we're talking about.

20 Resolution 14, which had been previously proposed  
21 by the Board, "the Board of Directors of the Legal Services  
22 Corporation favors both evaluating recipients to determine

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

9 That was adopted by voice vote which I think meant  
10 that it was unanimous on July 8, 1991.

11 Mr. Wittgraf?

12 MR. WITTGRAF: Ms. Pullen may want to say  
13 something.

14 CHAIRMAN UDDO: Ms. Pullen, I think you reserved  
15 the right to speak after there was a second.

16 MS. PULLEN: I wanted to ask Mr. Boehm whether he  
17 could, in greater detail, describe to us what Amendment 24  
18 is.

19 CHAIRMAN UDDO: I can read you 24 it's not that  
20 long. Twenty-four is an amendment offered by Mr. Gekas, "No  
21 funds made available to any recipient or other grantee or  
22 contractor of the Corporation from any source including funds

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1 derived from interest on lawyer's trust accounts may be used  
2 to participate in any proceeding or litigation pertaining to  
3 abortion or for any activity to influence the passage or  
4 defeat of any legislation or regulatory measure pertaining to  
5 abortion."

6 It's been referred to as abortion neutral in that  
7 it does not support either side but takes legal services out  
8 of the abortion litigation and regulation and legislation  
9 arena.

10 MS. PULLEN: Mr. Chairman, my motion does not refer  
11 to a specific amendment number in the package of amendments.  
12 It refers rather to our previously adapted resolution, but it  
13 is my interpretation that Resolution 6 and Amendment 24 treat  
14 abortion-related legal services activities in the same  
15 manner. Is that correct?

16 CHAIRMAN UDDO: Resolution 6 and 24, yes. I  
17 believe it would be my interpretation that our Resolution 6  
18 and the amendment that I just read, the Gekas Amendment,  
19 embody the same abortion-neutral language.

20 MS. PULLEN: Thank you, Mr. Chairman. I am  
21 satisfied to leave the motion in the form of reasserting our  
22 Resolution No. 6. But I did want to clarify that as it

1 relates to the currently pending amendments.

2 CHAIRMAN UDDO: Thank you, Ms. Pullen.

3 Mr. Wittgraf?

4 MR. WITTGRAF: Mr. Chairman, just a suggestion. It  
5 would seem to me that if the thought is that the committee is  
6 urging the Board to send sort of a special 11th hour message  
7 to the Congress that you may want to develop a preamble to  
8 that message to the effect that the committee has acted since  
9 we adopted these resolutions. We recognize that they've  
10 addressed many of the concerns we have.

11 As they are preparing for debate, we think that a  
12 couple of our concerns are worth reiterating to the full  
13 House as it proceeds to debate as the whole body, to just  
14 explain why it is that we are doing something that we did on  
15 July 8th now again on April 5th or 6th.

16 CHAIRMAN UDDO: I have no problem with that. To  
17 save time, I think we could probably vote on the motion and  
18 by tomorrow propose some sort of introductory language.

19 MR. WITTGRAF: Certainly. Just a suggestion, Mr.  
20 Chairman, to try to clarify what it seems to me your  
21 committee is kind of letting doing.

22 CHAIRMAN UDDO: Mr. Dana?

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1 MR. DANA: Mr. Chairman, the committee has focused  
2 and you have focused when you read Section 6 on the first  
3 paragraph which relates to the provision of abortion-related  
4 legal services.

5 CHAIRMAN UDDO: That's the only part that I  
6 interpret the motion applying to. The rest of that has  
7 already been proposed by the Board. I think the purpose of  
8 this motion is to reiterate the recommendation of the  
9 committee and hopefully the Board recommendation on the first  
10 paragraph.

11 MR. DANA: Fine. So your resolution focuses only  
12 on the first paragraph.

13 CHAIRMAN UDDO: My concern related to the Frank  
14 amendment removing abortion restrictions. Ms. Pullen's  
15 motion, as I understand it, was reflective of her support  
16 fore reiterating the Board's support for that first paragraph  
17 of Resolution 6.

18 The rest of the resolution has already been  
19 recommended by the Board. I think in light of Mr. Frank's  
20 11th hour proposal, it justifies the Board's 11th hour  
21 response.

22 Any further discussion?

1 (No response.)

2 CHAIRMAN UDDO: All those in favor of the motion,  
3 signify by saying aye.

4 (A chorus of ayes.)

5 CHAIRMAN UDDO: All those opposed?

6 (No response.)

7 CHAIRMAN UDDO: The vote is in favor, unanimous as  
8 I counted, and the motion carries.

9 MR. DANA: Paragraph 1 of 6 and 14.

10 CHAIRMAN UDDO: Right, paragraph 1 of 6 and 14.  
11 I'll have this clear in something to present to the Board  
12 tomorrow.

13 Any other questions or concerns or comments of any  
14 of the members of the committee?

15 (No response.)

16 CHAIRMAN UDDO: The Board? Ms. Pullen, I'm sorry.

17 MS. PULLEN: Mr. Chairman, you have rightly brought  
18 to our attention the unfortunate effort in the Congress to  
19 open the Legal Services Corporation's funds to use in  
20 abortion-related litigation and our objections to that. In  
21 addition, the pending legislation would weaken the  
22 prohibition and redistricting activities by legal services

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1 lawyers.

2 I would like to call attention to the committee the  
3 fact that there is an Amendment 17 pending that would restore  
4 the prohibition and redistricting activities for the full  
5 range of redistricting activities, which would include local  
6 and judicial districts in the prohibition.

7 Mr. Chairman, I think after long and expensively  
8 fought litigation on the subject of redistricting involvement  
9 in which the Corporation was successful, it would be  
10 unfortunate if the Congress, without further comment from us,  
11 unsettled that question by limiting the restriction to  
12 redistricting activities at the federal and state levels.

13 M O T I O N

14 MS. PULLEN: I move to recommend to the Board that  
15 the Board recommend to Congress the adoption of Amendment 17.

16 CHAIRMAN UDDO: Is there a second for the motion?

17 MR. KIRK: Second.

18 CHAIRMAN UDDO: Discussion?

19 MS. PULLEN: Mr. Chairman, as you know,  
20 redistricting is a highly political activity. The  
21 involvement of legal services attorneys in this type of  
22 political litigation does focus significant controversy on

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1 the legal services program and has been specifically  
2 mentioned by the White House as a major concern of the  
3 administration with respect to the administration's view on  
4 the reauthorization legislation.

5 So I urge that we take this action to be totally  
6 clear about our own concern that there not be a distinction  
7 and level of government when we're dealing with the principle  
8 involved here.

9 CHAIRMAN UDDO: Thank you, Ms. Pullen. Let me just  
10 say, Ms. Pullen, and you may want to consider this, I  
11 supported the redistricting legislation last time I was on  
12 the Board and I supported it through this process. I don't  
13 know what Amendment 17 says.

14 I would prefer, if I were to vote to support this,  
15 the same mechanism that we used on the last motion, and that  
16 is to reurge what would be the second paragraph of Resolution  
17 6 which reads, "The Board believes further that LSC-funded  
18 recipients should be barred from using LSC, IOLTA, other  
19 public funds or private funds for the provision of  
20 redistricting related to legal services."

21 I'm just going to have a problem voting for an  
22 amendment that I'm not that familiar with. It's the reason

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1 why I wouldn't have even voted to support the Gekas  
2 Amendment. I think that the principle that we've already  
3 articulated is what we need to reassert.

4 Ms. Pullen?

5 MS. PULLEN: Mr. Chairman, I'm certainly willing to  
6 accept that with an amendment that in view of the particular  
7 controversy involved in the pending legislation, there should  
8 be a phrase appended to the end of paragraph 2 of Resolution  
9 6 to clarify that the Board believes that this prohibition  
10 should include redistricting-related legal services at any  
11 and all levels of government.

12 CHAIRMAN UDDO: All right, then, if I understand  
13 what you're proposing would be to amend your motion to --

14 MS. PULLEN: To reference instead paragraph 2 of  
15 Resolution 6.

16 CHAIRMAN UDDO: Resolution 6 with a clarifying  
17 sentence at the end which I can write before tomorrow which  
18 says that this principle applies to all levels of government.

19 MS. PULLEN: A sentence or a phrase.

20 CHAIRMAN UDDO: Okay.

21 MR. KIRK: I will accept those two amendments in my  
22 second.

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1 CHAIRMAN UDDO: Any further discussion?

2 (No response.)

3 CHAIRMAN UDDO: Hearing none, all those in favor  
4 say aye.

5 (A chorus of ayes.)

6 CHAIRMAN UDDO: Opposed?

7 (Mr. Dana votes nay.)

8 CHAIRMAN UDDO: The ayes have it. The motion  
9 carries.

10 Any further discussion, comments?

11 MR. KIRK: Yes, sir. We received a letter that I  
12 did not read until just now from Linda Perle and Alan  
13 Houseman. The bottom paragraph states "Section 6 was drafted  
14 to deal with issues raised by the LSC staff's overzealous and  
15 inappropriate use of the monitoring and investigation  
16 process, specifically the actions of the Monitoring, Audit,  
17 and Compliance Division."

18 If anyone is here representing the Center for Law  
19 and Social Policy, I'd like to get personally or at least the  
20 Corporation get a list of all these abuses that have taken  
21 place in the last three years. Give me a couple weeks. Let  
22 me look at them and I'd like to investigate them.

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1           So if somebody could get the word to Mr. Houseman  
2 to let me have that list in two weeks, I'd appreciate it.

3           CHAIRMAN UDDO: I will entertain amotion to  
4 adjourn.

5                           M O T I O N

6           MR. KIRK: So moved.

7           CHAIRMAN UDDO: Second?

8           MS. PULLEN: Second.

9           MR. GILL: May I just say --

10          CHAIRMAN UDDO: The motion to adjourn --

11          MR. GILL: I'm Brendan Gill. I'm the local project  
12 director. I want to cordially invite all of you to our  
13 reception at 6:30. We are going to have vans to take people  
14 over. It's the Meteara Restaurant. It's in Market Square  
15 for those of you that are familiar with our downtown area.  
16 Several members of our staff, several members of our Board,  
17 some local bar leaders will be there to greet you.

18           Every member here in the room, guests of the Board,  
19 are all welcome at our reception. There will be food and  
20 sufficient food to suffice for a meal for those of you who  
21 are planning one before or after, although it is going to be  
22 a very informal gathering.

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1                   CHAIRMAN UDDO: Thank you, Mr. Gill. You might  
2 want to hold that bus until about 6:45 to give people a  
3 chance to --

4                   MR. GILL: We now know what everyone looks like.  
5 We'll be looking for you to try to get you to the right bus.

6                   CHAIRMAN UDDO: Thank you, Mr. Gill. We stand  
7 adjourned.

8                   (Whereupon, at 6:30 p.m., the meeting was  
9 adjourned.)

10

\* \* \* \* \*

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