ORIGINAL

RETURN TO CORPORATION
SECRETARY ARCHIVES FILE

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS MEETING

RECEIVED
JUL 10 1991
Executive Office

July 8, 1991

9:00 a.m.

HYATT REGENCY
400 New Jersey Avenue
Columbia A Ballroom
Washington, D.C.

Board Members Present:

George Wittgraf, Chairman
Luis Guinot, Jr.
Howard Dana
William L. Kirk, Jr.
Blakeley Hall
Jo Betts Love
Penny Pullen (by telephone)
Jeanine E. Wolbeck
Guy V. Molinari
Thomas D. Rath
Basile E. Uddo

Staff Present:

David Martin, President
Patricia Batie, Corporation Secretary
Ken Boehm
Christopher Sunset
David Richardson
Alan Severson

C O N T E N T S

	PAGE
Presentation of David Martin President, Legal Services Corporation	18
Presentation of Alan Severson	21
Presentation of Luis Guinot, Jr.	26
Presentation of Howard M. Dana Report of Audit and Appropriations Committee	28
Presentation of David Martin President, Legal Services Corporation	49
Presentation of Victor Fortuno Legal Counsel, Legal Services Corporation	67

MOTIONS: 5, 11, 12, 25, 29, 32, 45, 47, 87, 100, 101, 107,

115, 131, 141, 145, 150, 182, 193, 200, 206, 214, 218, 224, 225, 233, 234, 235, 250, 256, 257, 267, 274, 276

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

2 MR. WITTGRAF: The regularly scheduled meeting of
3 the board of directors of the Legal Services Corporation will
4 be in order. The first order of business pertains to the
5 approval of the agenda.

6 We have before us the proposed agenda, and I should
7 clarify for those who received an agenda and the enclosed
8 documents earlier the Reauthorization Committee resolutions or
9 the report of the Reauthorization Committee included in the
10 earlier draft of the agenda was incorrect or not current, I
11 should say, as to a couple of the resolutions.

12 So I say to the board members, in particular, you
13 want to be sure that you have one of the copies of the agenda
14 with materials available today so that particularly the
15 resolutions appearing on page 29 and -- excuse me, not 29, but
16 rather 21 and 19, pertaining to time-keeping and competition
17 are the resolutions adopted by the Reauthorization Committee
18 when last it met on June 24. Mr. Dana.

19 MR. DANA: I think, Mr. Chairman, page 18 has got
20 the time sheet, and maybe that's what you got.

21 CHAIRMAN WITTGRAF: Yes, sir, probably not, 18 and
22 21. It's the Chair's understanding that Ms. Pullen will not

1 be with us in person but will be available by telephone to
2 vote as she desires. Mr. Molinari, so far as we know, is
3 scheduled to arrive on a flight at approximately 9:30 a.m. and
4 should be with us by approximately 10 a.m.
5 Mr. Rath, early this morning, was fog-bound in
6 Manchester, New Hampshire, was hoping if at all possible to be
7 here at approximately 10 a.m. Mr. Uddo was unable to arrange
8 flight connections to get him to Washington yesterday and now
9 anticipates being here between 11:30 and noon today.
10 In light of the schedules of the last three members
11 of the board I mentioned, Mr. Molinari, Mr. Rath and Mr. Uddo,
12 and particularly in light of the fact that Mr. Uddo is the
13 Chairman of the Special Reauthorization Committee, it's the
14 Chair's expectation that that agenda item will not be
15 considered by the board until this afternoon more or less upon
16 resumption of our board meeting following executive or closed
17 session.
18 That session will take place at approximately noon
19 and will include the board's lunch. Mr. Uddo also had asked,
20 and without objection or unless there is objection, I will
21 hold agenda item 5, consideration of the motion to amend the
22 resolution on board compensation, for consideration this

1 afternoon as well.

2 MR. GUINOT: Mr. Chairman.

3 CHAIRMAN WITTGRAF: Mr. Guinot.

4 MR. GUINOT: There is an objection to that. I

5 intend to propose that in the order in which it appears on the

6 agenda. I consider it extremely important. I think Mr. Uddo

7 can be obtained by telephone. That's fine with me.

8 CHAIRMAN WITTGRAF: I doubt that he can. I assume

9 he, like Mr. Molinari and Mr. Rath, are flying at this time,

10 Mr. Guinot.

11 MR. GUINOT: I'm sorry to hear that, however, I

12 would like the board to consider continuing it in the place it

13 appears.

14 MR. DANA: Mr. Chairman.

15 CHAIRMAN WITTGRAF: Mr. Dana.

16 M O T I O N

17 MR. DANA: I would move that the item 5 be placed

18 immediately following item 7, which is to be considered after

19 the lunch recess.

20 CHAIRMAN WITTGRAF: Is there a second?

21 (No response.)

22 CHAIRMAN WITTGRAF: The motion fails for want of a

1 second. Also, the --

2 MR. HALL: Mr. Chairman.

3 CHAIRMAN DANA: Mr. Hall.

4 MR. HALL: I don't know procedurally if I can do
5 this, but I don't mind, I second Mr. Dana's motion. When it
6 was made, I was reading something else and didn't know what he
7 was wanting to do, but I don't see any problem with that, and
8 I'll second that, if I'm permitted to.

9 CHAIRMAN WITTGRAF: Yes, I'll consider that that's a
10 second. In fact, I think that's a more appropriate way to
11 proceed so that if we're going to have a vote on this item, we
12 can at least go to the substance of it.

13 The Chair will consider that Mr. Dana has moved that
14 agenda item 5 be considered after agenda item 7, which, as a
15 practical matter, will be this afternoon.

16 Discussion on the motion. Mr. Dana.

17 MR. DANA: It's my feeling that if a board member is
18 not able to be here due to no fault of his own and is on his
19 way here and asks that a matter be held up, it is a matter of
20 courtesy to that board member, no matter what the motion, that
21 we permit him to be here.

22 Since we have a rather long agenda, I didn't think

1 there would be a problem to do that, and since he's asked, I
2 feel that that's just a matter of common courtesy.
3 CHAIRMAN WITTGRAF: Further discussion. Mr. Guinot.
4
5 MR. GUINOT: Yes, I'll address that. I also feel
6 that normally it's a matter of courtesy to a board member to
7 accommodate his wishes. I do not know why Mr. Uddo is not
8 here.
9 CHAIRMAN WITTGRAF: Mr. Guinot excuse me. I think I
10 indicated earlier, and I will reiterate, that he was, to my
11 understanding, and you can confirm this, if you wish, with the
12 board's secretary, Ms. Batie --
13 MR. GUINOT: I don't have to confirm it.
14 CHAIRMAN WITTGRAF: He was enable to obtain flight
15 arrangements, and he was not able to get here until 11:30,
16 12 o'clock today.
17 MR. GUINOT: I'm fine. I do not know whether I will
18 be present here later on this afternoon, assuming that it's
19 going to appear late in the afternoon. This is a resolution
20 that I consider to be extremely important and one that I
21 really would like to vote for, and I am here, and there is a
22 quorum here, and extending it to the point where I may not be

1 around is something that I can not support.

2 CHAIRMAN WITTGRAF: Further discussion.

3 MR. HALL: Mr. Chairman.

4 CHAIRMAN WITTGRAF: Mr. Hall.

5 MR. HALL: How did these get set in line initially?

6 CHAIRMAN WITTGRAF: It's typically based upon the
7 joint effort between the president and the chairman of the
8 board, and Mr. Martin, as president, is aware of certain items
9 that need to be on the agenda. As Chairman, I have certain
10 items that I'm aware or are concerned need to be on the
11 agenda.

12 I put them on the agenda. I believe, probably, the
13 sequence was based upon my recommendations, particularly to
14 Ms. Batie, the secretary, and actually, I did it out of
15 deference to the commitment made by me on April 28th or 29th,
16 when last we had a board meeting, to Mr. Guinot that this
17 matter would be taken up promptly when next we had a board
18 meeting, and that certainly was my intention.

19 Obviously, when the agenda was put together for
20 publication in the Federal Register, I had no idea about
21 anybody's travel plans, Mr. Uddo's or anyone else's. It was
22 there at the request of Mr. Guinot and a request that I was

1 attempting to honor

2 MR. HALL: Lou, will this knock you out of voting on

3 this?

4 MR. GUINOT: It very well might.

5 MR. HALL: You have a plane that's leaving -- not a

6 plane, I guess --

7 MR. GUINOT: Yes. I may not be available this

8 afternoon right after lunch. As a matter of fact, I'm pretty

9 sure I won't.

10 CHAIRMAN WITTGRAF: Excuse me. Mr. Guinot, if I can

11 inquire, are you indicating that you'll be gone all afternoon

12 today?

13 MR. GUINOT: Yes, sir.

14 CHAIRMAN WITTGRAF: Mr. Dana.

15 MR. DANA: If Mr. Guinot is not going to be here

16 after lunch, then I would amend my motion to take this matter

17 up precisely at noon, just before lunch, so that both he and

18 perhaps Mr. Uddo could be present.

19 CHAIRMAN WITTGRAF: As well as, perhaps, Mr.

20 Molinari and Mr. Rath.

21 MR. DANA: Correct.

22 CHAIRMAN WITTGRAF: Do you accept that amendment,

1 Mr. Hall?

2 MR. HALL: I'll keep my second, second the

3 amendment.

4 CHAIRMAN WITTGRAF: Okay. It's the Chair's

5 understanding that Mr. Dana has moved that the consideration

6 of agenda item 5 come at approximately 11:45 a.m. or 12 noon

7 today. Mr. Hall has seconded that amended motion. Is there

8 further discussion?

9 (No response.)

10 CHAIRMAN WITTGRAF: Hearing none, those in favor of

11 the motion will signify by saying aye.

12 (A chorus of ayes.)

13 CHAIRMAN WITTGRAF: Those opposed, nay.

14 (A chorus of no.)

15 CHAIRMAN WITTGRAF: The ayes appear to have it. The

16 ayes do have it. The motion is carried. Additionally, there

17 is no reference on here simply because of a lack of awareness,

18 I think, both by the president and by the chairman of the need

19 for a report from the Audit and Appropriations Committee.

20 It's the Chair's expectation that that report will

21 be called for after the report of the Office of Inspector

22 General Oversight Committee is called for, and we'll proceed

1 on that basis, unless there is objection.

2 (No response.)

3 CHAIRMAN WITTGRAF: Hearing none, the Chair is

4 prepared to receive a motion to adopt the agenda as amended.

5 M O T I O N

6 MR. DANA: So moved.

7 CHAIRMAN WITTGRAF: It's been moved by Mr. Dana,

8 seconded by Ms. Wolbeck. Discussion?

9 (No response.)

10 CHAIRMAN WITTGRAF: Hearing none, those in favor

11 will signify by saying eye.

12 (A chorus of ayes.)

13 CHAIRMAN WITTGRAF: Those opposed, nay.

14 (A chorus of no.)

15 CHAIRMAN WITTGRAF: The ayes appear to have it. The

16 ayes do have it. The agenda is adopted.

17 MR. KIRK: Mr. Chairman.

18 CHAIRMAN WITTGRAF: Mr. Kirk.

19 MR. KIRK: Would you repeat for me what the changes

20 in the agenda are at this point?

21 CHAIRMAN WITTGRAF: The Chair plans to be flexible

22 to keep the board engaged while at the same time trying to

1 accommodate the schedules of Mr. Guinot, Mr. Uddo, and others.
2 At this point, forgetting the numbers necessarily
3 that go with the agenda items, but looking, perhaps, at the
4 time of the day instead, the Chair anticipates that agenda
5 item No. 5 will be considered by the board at approximately
6 11:45 a.m. to 12 noon.
7 In turn, agenda item No. 7 will be considered by the
8 board beginning immediately or soon after we return to open
9 our public session at approximately 1:30 p.m.
10 MR. KIRK: Thank you.
11 CHAIRMAN WITTGRAF: The other agenda items will be
12 dealt with as the meeting unfolds. The next agenda item
13 pertains to the minutes of our last board meeting, that of
14 April 29, 1991. You all have a draft of those minutes before
15 you. The Chair is prepared to entertain, then, a motion for
16 the adoption of those minutes as presented.
17 M O T I O N
18 MR. DANA: So move.
19 CHAIRMAN WITTGRAF: We have such a motion by Mr.
20 Dana. Is there a second?
21 MS. WOLBECK: Second.
22 CHAIRMAN WITTGRAF: A second by Ms. Wolbeck. Is

1 there discussion?

2 (No response.)

3 CHAIRMAN WITTGRAF: Hearing none, those in favor of

4 the adoption of the minutes of the meeting of April 29, 1991,

5 will signify by saying aye.

6 (A chorus of ayes.)

7 CHAIRMAN WITTGRAF: Those opposed, nay.

8 (A chorus of no.)

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

10 eyes do have it. The minutes are approved as presented. The

11 next agenda item, then, is the so-called Chairman's report. I

12 have just a couple of things I'd like to comment on. I've

13 mentioned already the travel plans for today of our four board

14 members who are not here.

15 Beyond that, and, in part, anticipating agenda item

16 No. 11, let me suggest that as we look to the months of

17 August, September, October, November, December, for the month

18 of August, I'm looking toward a meeting of the board on

19 Monday, August 12.

20 There may be several items of business to be

21 considered by the board at that time. I do believe, though,

22 Mr. Guinot, correct me if I have any reason to think

1 otherwise, that as the board is moving forward, we will be
2 prepared to interview final candidates for the position of
3 inspector general on that date, and, if possible, to move to
4 the selection of an inspector general on that date.
5 MR. GUINOT: Mr. Chairman.
6 CHAIRMAN WITTGRAF: Mr. Guinot.
7 MR. GUINOT: What date are you referring to?
8 CHAIRMAN WITTGRAF: Monday, August 12.
9 MR. GUINOT: Mr. Chairman, it was my understanding
10 that we would be interviewing the candidates tomorrow.
11 CHAIRMAN WITTGRAF: Certainly the committee will be
12 to select the finalists to be interviewed by the board.
13 MR. GUINOT: Oh, oh, I beg your pardon. Yes, sir,
14 you're assumption is correct.
15 CHAIRMAN WITTGRAF: Thank you, Mr. Guinot. In turn,
16 I'm looking toward the possibility of a meeting on Monday,
17 September 9, tentatively in Jackson, Mississippi.
18 In turn, a meeting on October 21, in Portland,
19 Maine. If necessary, a meeting on Monday, November 11, likely
20 in Washington, and finally, a meeting on Monday, December 9,
21 the so-called annual meeting referred to at agenda item No. 10
22 that we'll discuss further.

1 As we discuss the meeting schedule later in the day,
2 you may want to reflect upon those tentative meeting dates and
3 be prepared to either in the meeting or to visit with me in
4 the meantime about any conflicts of which you're aware.
5 Also, at this time, it's my recommendation to the
6 board that our oversight committee for the Office of Inspector
7 General be expanded at this time from three to five members.
8 The three members we have presently, you'll recall, are
9 Mr. Guinot as Chair, Ms. Pullen and me.
10 It has proved, I guess, impossible for Ms. Pullen to
11 be able to join us to date for any of our deliberations as a
12 committee. Mr. Guinot, certainly, has been present for all of
13 our deliberations, but because of his pending nomination as
14 Ambassador to Costa Rica, may not be able to complete his
15 service on the committee beyond the next few days.
16 For the purposes of completing the interview process
17 and presenting candidates for the Office of Inspector General
18 to the board, I think that we should expand the committee so
19 we have no problem with maintaining a quorum through the
20 balance of its deliberations, both for the selection process
21 and for the remainder of this calendar year.
22 With that in mind, my recommendation to the board is

1 that Mr. Hall and Ms. Wolbeck be added to the Inspector
2 General Oversight Committee as forth and fifth members at this
3 time, and that they then, with the board's concurrence, will
4 be able to function with the committee tomorrow -- Mr. Guinot
5 and me. I don't believe Ms. Pullen will be here -- as we
6 interview candidates for that position.
7 MR. GUINOT: Mr. Chairman.
8 CHAIRMAN WITTGRAF: Mr. Guinot.
9 MR. GUINOT: I would like to suggest also that
10 Mr. Kirk be included as a member of the IG committee if that's
11 possible.
12 CHAIRMAN WITTGRAF: At this time, the board will be
13 in recess for 3 minutes.
14 (A brief recess was taken.)
15 CHAIRMAN WITTGRAF: The meeting will be back in
16 order at this time. The Chair has been attempting
17 unsuccessfully thus far to reach Penny Pullen, the other of
18 the present three members of the Inspector General Oversight
19 Committee, by telephone to see whether or not she wishes to
20 remain as a member of that committee or not with the
21 possibility in mind of substituting Mr. Kirk for Ms. Pullen on
22 that committee.

1 To date, we have been enable to reach Ms. Pullen.
2 Apparently, she's in transit between home and Springfield, and
3 we'll visit with her a little bit later in the day.
4 That being the case, the Chair has stated his
5 concern regarding the continued functioning of the Inspector
6 General Oversight Committee, and will ask the board to
7 consider further his recommendation regarding the addition of
8 Mr. Hall and Ms. Wolbeck to that committee at a time later in
9 the meeting, after the Chair has had an opportunity to visit
10 with Ms. Pullen.
11 The only other thing that I had to mention at this
12 point was regarding the confirmation process for the 11
13 nominees or, I guess, effectively, the 10 nominees, I'm not
14 aware that we're in any track at all, and certainly not on the
15 fast track that Mr. Guinot is on.
16 Perhaps Mr. Severson or Mr. Martin will have
17 additional information, but I have no information at this time
18 regarding any plans for hearings involving our ten
19 nominations, not counting Mr. Guinot.
20 We have all, within the last few weeks, received
21 from the Senate Labor and Human Resources Committee a
22 questionnaire and be filled out, and I imagine it behooves all

1 of us to complete that questionnaire and to return it to the
2 committee staff if that hasn't been done already, so that at
3 least that impediment or excuse won't remain between us and
4 the possibility of confirmation.
5 At this time, then, the Chair will call on David
6 Martin, the corporation president, for his report.
7 Mr. Martin.
8 PRESENTATION OF DAVID MARTIN
9 PRESIDENT, LEGAL SERVICES CORPORATION
10 MR. MARTIN: Thank you, Mr. Chairman. I only have a
11 few matters. First of all, as far as confirmation is
12 concerned, you are on a slow track. I don't think you're a
13 blip on the screen at the Labor and Human Resources Committee,
14 but the fact that they sent out questionnaires is a positive
15 sign.
16 However, it's byzantine and rather a unique process.
17 It could happen very fast or it could not happen at all this
18 year. So we just don't know what the indications from the
19 committee or staff are.
20 We had a legal victory last week or the week before
21 in the Multnoma case, which is in your litigation summary
22 report. That was a case out in the State of Washington in

1 which a union sued the Corporation to prevent our monitoring
2 access to personnel files.
3 In fact, a restraining order was issued by the
4 district court judge. We appealed, and my understanding of
5 the opinion is that unless bad faith is shown, we have an
6 access for our purposes of ensuring the integrity of the
7 federal funds. We have access to review those files. That's
8 important, because we're engaged in a similar case in
9 California. So it was a double victory, in my view.
10 MR. DANA: Mr. President?
11 CHAIRMAN WITTGRAF: Mr. Dana.
12 MR. DANA: I haven't read the decision, but from the
13 reports, it indicated that the court concluded 2 to 1 that the
14 Corporation, unlike other the federal government, did not have
15 to be "reasonable" in their requests.
16 MR. MARTIN: Well, I'll defer to Mr. Fortuno. I've
17 read it, but very briefly. As I understand it, it's more than
18 that. It's that unless bad faith is shown by us in pursuing
19 our legitimate monitoring requirements that access should be a
20 perfunctory thing.
21 MR. DANA: Okay. And the matter has been remanded
22 to the district court to determine whether the somewhat lower

1 standard for access that the court adopted has been met? Is
2 that your understanding?
3 MR. MARTIN: I'm going to defer to Mr. Fortuno.
4 Vic, would you come up and maybe share with us if my
5 understanding is accurate.
6 MR. FORTUNO: Our actions do have to be driven by
7 legitimate concerns, but what the court said, what a two-judge
8 panel of the Ninth Circuit said, was that the standard that's
9 applied to federal agencies that their actions be reasonable
10 and necessary in similar circumstances does apply to us; that
11 we are bound by the statutory language and by any contractual
12 language, as in a grant, and if that language doesn't appear
13 in the statute or the grant, they're not about to read it into
14 it.
15 We are required to have legitimate concerns when we
16 do this and not do it for purposes of harassment. In fact,
17 the matter was remanded to the Ninth Circuit for determination
18 of that issue -- I'm sorry, remanded to the district court.
19 MR. DANA: Thank you. That was my understanding.
20 CHAIRMAN WITTGRAF: Mr. President.
21 MR. MARTIN: Finally, this Thursday we'll hold a
22 statewide forum -- not statewide, a local forum in Lancaster,

1 Pennsylvania, about 50 individuals. My staff and I are going
2 to meet with executive directors, board members and bar
3 leaders in and around Lancaster, Pennsylvania, and that will
4 be a full day on Thursday. That is all I have to report,
5 Mr. Chairman.
6 CHAIRMAN WITTGRAF: Thank you, Mr. President. At
7 this time, aside from the matter of reauthorization, I'd be
8 prepared to have you and Mr. Severson report to the board
9 regarding pending legislation, particularly of the status of
10 the Corporation's Fiscal Year 1992 appropriation.
11 MR. MARTIN: Mr. Severson, will you come forward?
12 PRESENTATION OF ALAN SEVERSON
13 MR. SEVERSON: Good morning. Regarding the Fiscal
14 Year '92 appropriations, there has not been any significant
15 activity to speak of since we last reported to you on this.
16 CHAIRMAN WITTGRAF: Mr. Severson, the board has met
17 since April 28th. Hasn't quite a bit happened since April
18 28th.
19 MR. SEVERSON: Well, we're trying to keep our board
20 informed, obviously. Let me bring you up-to-date on those.
21 Some of you have received memorandums on this in your various
22 minutes that have gone out from the Corporation.

1 Just to recap briefly, the House Subcommittee did
2 pass a bill on May 30th that provided $335 million and change
3 for the Corporation for Fiscal Year '92. During the course of
4 House floor consideration on this bill on June 12th, a point
5 of order was raised to strike the provisions for the Legal
6 Services Corporation, and the bill was subsequently passed
7 with no funding included for the Corporation on the House side
8 bill.
9 Those of you with a longer institutional knowledge
10 than myself will note that this is not unusual for this
11 Corporation, and it's been the experience in the past several
12 years that the Corporation does not receive any funding in the
13 House passed version of the bill.
14 It was a point of order, obviously. The Corporation
15 is unauthorized, and is therefore subject to that type of
16 procedural motion on the House floor. In the Senate, the
17 Senate subcommittee chaired by Mr. Hollings will meet in
18 September following the August recess and will at that point
19 take up our bill.
20 I'm not willing to speculate with a lot of
21 specificity as to what the number will be, but we do expect
22 that the proposed Fiscal Year '92 funding for the Corporation

1 will match or exceed slightly the $335 million figure that was
2 the original mark in the House. So that is where the
3 appropriations stands at the moment.
4 On a broader picture, the House and Senate are
5 moving more quickly in this session of Congress than they have
6 for many in the last 20. To have this many of the House
7 passed bills at least enacted on the House side at this point
8 in time on the calendar is a rather fast pace for Congress,
9 and therefore, we expect that it will be fast moving in the
10 Senate following the recess.
11 The recess is scheduled August 2 through September
12 10. So obviously, there will be no action on either our
13 authorization or appropriation bills during that five-week
14 period, which is coming right up.
15 CHAIRMAN WITTGRAF: We'll discuss the matter of the
16 reauthorization legislation, then, hopefully, as we get into
17 the discussion of reauthorization generally this afternoon.
18 Are there questions for Mr. Severson?
19 (No response.)
20 CHAIRMAN WITTGRAF: I might mention that, if you
21 recall the board action of earlier this year, and our
22 recommendation of some $355 million, the House figure is

1 somewhat below that. I think we're hopeful that the Senate
2 figure will be somewhat higher, and to that end, Mr. Dana and
3 I will meet tomorrow with Neal Smith, the Chairman of the
4 House Appropriations Subcommittee, in the hope of, again,
5 pressing our position as to why somewhat more funding is
6 needed, and, in particular, what we would do with more or less
7 $1 million in board initiative money, if that is included in
8 an appropriation.
9 So while 335 was the figure that came out of the
10 House and represented, I don't believe, anything other than,
11 essentially, the so-called cost-of-living increase, we're
12 hopeful that the Senate will go higher and that Mr. Smith and
13 his colleagues in the house can see the need to go somewhat
14 higher than the 335 as well.
15 Further discussion?
16 (No response.)
17 CHAIRMAN WITTGRAF: Thank you, Mr. Severson.
18 Mr. President, anything further?
19 MR. MARTIN: Not on the legislative scene.
20 CHAIRMAN WITTGRAF: Anything further you'd like to
21 comment on at this time?
22 MR. MARTIN: No, Mr. Chairman.

1 CHAIRMAN WITTGRAF: Okay. Thank you. In fact, it
2 was not Domino's, but rather Penny Pullen who called a couple
3 of moments ago, and Ms. Pullen did indicate that she is still
4 in session with the Illinois legislature, will be for an
5 indeterminate amount of time yet, and in light of that, wishes
6 to resign from her position as a member of the Inspector
7 General Oversight Committee of the board.
8 M O T I O N
9 CHAIRMAN WITTGRAF: That being the case, I would ask
10 the board now to consider accepting Ms. Pullen's resignation
11 from membership on that committee and the appointment, then,
12 of Mr. Hall, Ms. Wolbeck, and Mr. Kirk as new members of that
13 committee, increasing the membership, as I indicated earlier,
14 from three to five. I'm prepared to entertain a motion to
15 that effect at this time.
16 MR. DANA: So moved.
17 CHAIRMAN WITTGRAF: Is there a second?
18 MS. LOVE: Second.
19 CHAIRMAN WITTGRAF: It's been moved by Mr. Dana,
20 seconded by Ms. Love. Discussion.
21 (No response.)
22 CHAIRMAN WITTGRAF: Hearing none, those in favor

1 will signify by saying aye.

2 (A chorus of ayes.)

3 CHAIRMAN WITTGRAF: Those opposed, nay.

4 (A chorus of no.)

5 CHAIRMAN WITTGRAF: The ayes appear to have it. The
6 ayes do have it. With that, segue the Chair will turn to
7 Mr. Guinot for his report of the Inspector General Oversight
8 Committee. Mr. Guinot.

9 PRESENTATION OF LUIS GUINOT, JR.

10 MR. GUINOT: Thank you very much, Mr. Chairman. The
11 Inspector General Oversight Committee has met on two previous
12 occasions, in our efforts to obtain a qualified person to be
13 our next inspector general.

14 The process, and I'd like to describe it, although
15 it appears in the minutes of the open sessions of all of those
16 meetings was as follows: We published announcements in
17 several newspapers. We were trying to reach -- wanted our
18 cover to be as broad as possible, so we advertised in the
19 Washington Post, the Chicago Tribune, the Wall Street Journal,
20 the L.A. Times, and the Washington Times.

21 We obtained 250 applications, which we studied
22 rather carefully; they were rather voluminous. From there, we

1 narrowed the field down to 22. These 22 people were asked to
2 submit additional questions in the form of a questionnaire,
3 the questionnaire that was sent to each of them.
4 We met again to discuss the answers to the
5 questionnaires. From there, we further culled the number of
6 applicants to seven, whom we hope to interview tomorrow, and
7 at the end of that process, hopefully, we'll come out with
8 maybe one or two or three for the board's consideration at its
9 next meeting.
10 The process has been very intensive and exhaustive.
11 The applications were all very good. The seven interviewees
12 that we'll have tomorrow are people that have had in the main
13 experience in inspector general work before, and we feel
14 confident that we should be able to recommend to the board
15 good candidates for the job.
16 Mr. Chairman, I'd like to thank Ms. Patricia Batie,
17 our secretary. She certainly did a heck of a good job during
18 the process, not only in the preparation of the questionnaire,
19 which I thought was very good, but also in the rapidity that
20 she responded to our demands, particularly mine, in getting
21 the process moving forward in the time frame that we had.
22 That really is the end of my report, Mr. Chairman.

1 CHAIRMAN WITTGRAF: Thank you, Mr. Guinot. And as
2 we discussed earlier, we anticipate that the board will have
3 the so-called finalists, or the final candidates present to be
4 interviewed by the board on Monday, August 12, and hopefully,
5 a section can be made by the board at that time.
6 Questions, comments for Mr. Guinot?
7 (No response.)
8 CHAIRMAN WITTGRAF: Thank you, Mr. Guinot. At this
9 time, then, I'll turn to Mr. Dana for the report of the Audit
10 and Appropriations Committee. Mr. Dana.
11 PRESENTATION OF HOWARD H. DANA
12 REPORT OF AUDIT AND APPROPRIATIONS COMMITTEE
13 MR. DANA: Thank you, Mr. Chairman. The Committee
14 met when last the reauthorization committee met, primarily to
15 advance the process of selecting an auditor for the current
16 year. Our staff had contacted 11 accounting firms. Seven
17 submitted statements of qualification. Of those seven, five
18 were asked to a bidder's conference, and five actually
19 submitted bids.
20 Of the five that submitted bids, the staff
21 recommended that the committee interview four, which we did, I
22 think, on the 25th of June. The four were all very well

1 qualified. All, I thought, presented themselves very well,
2 answered all of our questions. Any one of the firms would
3 have done a fine job.
4 One of the four firms was substantially less
5 expensive and the committee is unanimously recommending to you
6 that we go with the low bidder, a firm by the name of
7 Grant/Thornton, and David Richardson, if I can't, can answer
8 any questions that you have concerning that firm.
9 They are one of the Big 8, and so is a substantial
10 firm and has a large office here in Washington, and I believe
11 looks after, I believe, our grantee to the south. I would
12 make that in the form of a motion. Jeanine and Blakeley were
13 at the meeting, as was the Chairman -- and Joe Betts, excuse
14 me.
15 M O T I O N
16 CHAIRMAN WITTGRAF: Is there a second?
17 MS. WOLBECK: I'll second it.
18 CHAIRMAN WITTGRAF: There's a motion by Mr. Dana,
19 and it's seconded by Ms. Wolbeck that the firm of
20 Grant/Thornton be selected as the audit firm for the Legal
21 Services Corporation. Is that for the next calendar year?
22 MR. DANA: It's for the one we are currently in.

1 CHAIRMAN WITTGRAF: The fiscal year that we're
2 currently in?
3 MR. DANA: Correct.
4 CHAIRMAN WITTGRAF: Those were three-year bids, as I
5 recall.
6 MR. DANA: Actually, the bids were, I think, one-
7 year bids, and we are endeavoring to get a three-year bid with
8 a buy-out provision, in case either we or they wish to get
9 out, but so the motion should give management the option to
10 enter into a three-year contract at the indicated price
11 subject to inflationary adjustments, and also subject to a
12 buy-out provision available to the board in case it doesn't
13 work out for one reason or another.
14 CHAIRMAN WITTGRAF: With Ms. Batie's assistance, I'm
15 sure that's what the motion will be. Further discussion,
16 questions?
17 (No response.)
18 CHAIRMAN WITTGRAF: Hearing none, those in favor of
19 the motion to accept the recommendation of the Audit and
20 Appropriations Committee that Grant/Thornton be the auditor
21 for the current year will signify by saying aye.
22 (A chorus of ayes.)

1 CHAIRMAN WITTGRAF: Those opposed nay.

2 (No response.)

3 CHAIRMAN WITTGRAF: The ayes appear to have it. The
4 ayes do have it. The motion is adopted. Further report?

5 MR. DANA: Mr. Chairman, I passed out two documents
6 to each of you. One is a familiar matrix with, in the lower
7 right-hand corner, the also somewhat familiar number of
8 10,777.337, which is the allocation of monies that are
9 anticipated to be spent by the administration, the budget for
10 the Corporation administration.

11 After six months, management has proposed a
12 reallocation of those funds as set forth here. You'll note
13 that there is no change in the lower right-hand number, the
14 total, and in fact, there is no change in the bottom lines;
15 namely, the allocation of the 10 million between the various
16 departments, but there are modest changes between the various
17 functional lines like personnel compensation, which goes down,
18 personnel benefits goes down, temporary employees goes up.

19 Those changes are modest but are consistent with
20 management's -- with the way management is running the
21 business, the operation, this year. For your information,
22 management currently anticipates spending all of the

1 10,777,000 except for $387,539, which are currently
2 anticipated to be a carryover from this line.
3 M O T I O N
4 MR. DANA: It is the Committee's unanimous
5 recommendation that we approve the amendment to the COB as set
6 forth on this matrix.
7 MR. GUINOT: Mr. Chairman.
8 CHAIRMAN WITTGRAF: Mr. Guinot.
9 MR. GUINOT: When Mr. Dana is ready, I'd like to ask
10 a question about one of these lines.
11 MR. DANA: All set.
12 CHAIRMAN WITTGRAF: Mr. Dana, Mr. Guinot.
13 MR. GUINOT: Just for education purposes, in the
14 board of directors, on the consulting, we have $102,515. What
15 would that be for?
16 MR. DANA: Since we're not employees, I think we are
17 compensated as consultants.
18 MR. GUINOT: So the travel and transportation is
19 what it says there?
20 MR. DANA: Correct.
21 MR. GUINOT: This goes to the attendance fees?
22 MR. DANA: That's correct.

1 MR. GUINOT: Thank you.

2 CHAIRMAN WITTGRAF: Further discussion. Mr. Guinot.

3 MR. GUINOT: Does that include attorney's fees, if
4 we have to hire an attorney for some purpose? Is that
5 included in there?

6 MR. DANA: There is no provision --

7 CHAIRMAN WITTGRAF: In fact, it's fair to say that
8 we have hired an attorney. We do have independent counsel in
9 the person of Charles Fax.

10 MR. GUINOT: I know. That's really my question.
11 Does that come under that, or does that come under the
12 operating budget of the Corporation?

13 MR. DANA: I'm getting an affirmative nod from the
14 president that it is included. I don't think the committee
15 proposed that that line be used for that purpose. I gather it
16 is being used for that purpose.

17 MR. MARTIN: Yes, it is, Mr. Dana.

18 MR. GUINOT: I would imagine if I were the
19 president, I would also nod my head vigorously, but should he
20 is the question here. It seems to me that if we look at the
21 particular case that the Chairman alluded to, Mr. Fax,
22 inasmuch as there is a lawsuit there, I wonder whether

1 depleting this line for that purpose would not be
2 inappropriate.
3 MR. DANA: Well, it looks to me as though -- well,
4 after seven months, we have spent collective only $30,000 of
5 the 102,000 of those funds.
6 Now, I don't know the extent to which that includes
7 -- how much of Mr. Fax's dollars are included there, but it is
8 anticipated by staff as of the end of six months that there
9 will be a rather substantial surplus in the overall board of
10 directors line, almost, I think, the number of 75,000 rings a
11 bell.
12 So we do not anticipate having any problem living
13 within the original budget. We may have to move between
14 lines, which is really what the management has proposed by
15 these COB amendments.
16 MR. GUINOT: It's heartening to hear that we're not
17 close to spending half of that at this point. That's great.
18 However, having made that point, I really would like
19 some clarification as to whether or not, in a situation such
20 as the one that we were discussing that should not be a
21 logical expense of the Corporation, as opposed to the board,
22 basically, because next year or whenever consider a budget

1 again, if 102 is too much, you can go lower, but if you put in
2 elements such as Mr. Fax's fees, it might not be enough.
3 MR. DANA: That's a point well made.
4 CHAIRMAN WITTGRAF: Thank you, Mr. Guinot. Thank
5 you, Mr. Dana. Mr. Kirk.
6 MR. KIRK: Just one point for Mr. Guinot. I think
7 that one reason it may be down is that there was a lower per
8 diem for the first several months of the year, and people were
9 not being paid for many of the additional things they can be
10 paid for now.
11 MR. GUINOT: That's a very good point of which makes
12 my inquiry a little bit more, shall we say, on point.
13 CHAIRMAN WITTGRAF: Further discussion.
14 Mr. Chairman, do you need board action regarding the changes
15 to the --
16 MR. DANA: Yes. That's in the form of a
17 recommendation that we adopt management's proposed amendment
18 to the COB, as set forth in the matrix before you.
19 CHAIRMAN WITTGRAF: Is it my understanding that
20 these changes are for the last five months of the fiscal year
21 or for the last six months of the fiscal year?
22 MR. DANA: This is a change, Mr. Chairman, in the

1 budget, which is as set forth in this matrix, and that is the
2 budget for the whole 12 months, not just the remaining five
3 months.
4 CHAIRMAN WITTGRAF: Thank you. I didn't state that
5 very well. In making those adjustments or changes, is that
6 based upon a review of the expenditures during the first six
7 or the first seven months of the fiscal year?
8 MR. DANA: I believe it may have been made after
9 five months, but probably six, but, basically, at the end of
10 the first half the year there is a major internal review in
11 which management projects anticipated expenditures for the
12 remaining six months, and based upon that and what we've
13 already spent on the first six, they felt a need to adjust
14 between the lines, as it were, not, as I indicated, between
15 the departments, but between the lines.
16 CHAIRMAN WITTGRAF: Is there a second to the motion?
17 Mr. Guinot?
18 MR. GUINOT: I'd like to ask about other operating
19 expends. You've got $25,000 in there. It seems like a
20 general statement. What does that include? And the second
21 point that I wanted to make was in order to vote on your
22 motion, and I'm inclined to vote favorably, I would like to

1 have a reservation somehow that we consider moving that
2 expense that we talked before from the consulting to the
3 Corporation. Is there any way we can do that?
4 CHAIRMAN WITTGRAF: Let me ask one question. Have
5 we, as a Corporation, received any bill or statement or
6 invoice to date from our independent board counsel, Mr. Fax or
7 his law firm?
8 MR. MARTIN: We have, and as I recall, one or two
9 have been paid, and I think we have one that's pending now.
10 We have a third bill that's pending now, and I instructed
11 Mr. Richardson to draw that bill from the board of directors,
12 seeing as how it was board counsel.
13 CHAIRMAN WITTGRAF: Mr. Dana.
14 MR. DANA: It is possible that that's the line you
15 have it on. You've taken it out of that line. I think
16 Mr. Guinot's point, I think, is that the Corporation should be
17 paying the bill, and the Corporation is paying the bill. The
18 real question is out of what pigeon hole the funds comes.
19 I think it looks at though we're going to have
20 something in the neighborhood of $1,387,000 of unspent
21 carryover funds at the end of this fiscal year, even as
22 anticipated. So there is no real likelihood that we will run

1 out of funds for paying these bills.

2 CHAIRMAN WITTGRAF: Mr. Guinot.

3 MR. GUINOT: But that's not the point I wanted to
4 make. I would imagine that when the board hires a consultant,
5 whether it be an accountant or an attorney, to counsel the
6 board that that should be rightfully a board expense, and
7 perhaps, in this case, up to a certain point it should be.

8 Thereafter, in order to set precedents and to, in
9 the interest of tight management, which is what I'm really
10 looking for, this case involves, I believe, a lawsuit already.
11 The lawsuit is not completely against the board. It's also
12 against the Corporation. I think that it should be moved to
13 whatever line the Corporation uses to pay that kind ever
14 thing.

15 That's my point. Whether or not we run over is
16 really, at this point, I'm very heartened. Never should we
17 run over, but we really want to keep it as lean as possible,
18 and that's the reason for my suggestion. Then, of course, I
19 wonder if you would expand a little bit on the other operating
20 expense that appears down below.

21 MR. DANA: I can indicate that as of this moment or
22 as of the most recent report for the first seven months, we

1 have spent $4,804 of what used to be, I believe, a $10,000
2 budget and which has now been increased to a $25,000 budget
3 for other operating expenses of the board.
4 My recollection -- well, I confess that I thought
5 for a moment that what we were talking about there was meeting
6 rooms and expenses for our meetings, but I may be wrong in
7 that regard.
8 MR. MARTIN: Mr. Richardson, why don't you come up
9 and add some light to this.
10 CHAIRMAN WITTGRAF: Mr. Richardson.
11 MR. RICHARDSON: Thank you. Good morning, members
12 of the board. The $25,000 that you were alluding to in the
13 board of directors is for advertising, and that is advertising
14 for the IG, and it does also include meeting room setup,
15 coffee for the board meeting and some equipment rental.
16 MR. GUINOT: What about the occupancy costs, what
17 does that include there?
18 MR. RICHARDSON: The room rent only. Many times,
19 when we come into a facility, we have to, in addition to
20 renting the room, we have to rent microphone setup, telephone
21 equipment separately.
22 CHAIRMAN WITTGRAF: Further questions for

1 Mr. Richardson?

2 MR. GUINOT: No, aside from the comment that a line
3 that is labeled "Other operating expenses" is something that
4 auditors look at, and commercial lawyers do, too. I think the
5 explanation is well-taken. I think that's fine, although I
6 hope that we did not -- I know we didn't spend that much money
7 on the advertising, and I hope the microphones don't cost that
8 much either.

9 CHAIRMAN WITTGRAF: Mr. Kirk.

10 MR. KIRK: I just have one. Why is occupancy cost a
11 million three for financial administrative service?

12 MR. DANA: That's where all of our occupancy costs
13 are placed or virtually all.

14 CHAIRMAN WITTGRAF: Further questions for
15 Mr. Richardson?

16 (No response.)

17 CHAIRMAN WITTGRAF: I believe there's a motion
18 that's been made by Mr. Dana that the consolidated operating
19 budget as amended and presented in the form of the handout in
20 one page that you have be adopted. Is there a second now to
21 that motion?

22 MS. WOLBECK: I'll second it.

1 CHAIRMAN WITTGRAF: The motion has been seconded by
2 Ms. Wolbeck. Further discussion. Mr. Kirk.
3 MR. KIRK: Just a point of order, and I apologize.
4 This is my first meeting when this was discussed, and is this
5 what we in fact voted on, that this went before the committee?
6 CHAIRMAN WITTGRAF: As I believe Mr. Dana has
7 indicated, the $10,777,337 is the figure that was adopted by
8 the board at its March meeting, yes, sir.
9 MR. KIRK: But every change like this has to be
10 approved by -- every internal change, line item change, has to
11 be approved by the committee, is that what we voted on?
12 CHAIRMAN WITTGRAF: I don't think there was a vote
13 specifically. Mr. Dana.
14 MR. DANA: The committee is currently operating
15 under a set of guidelines that were adopted in the '80s and
16 amended in 1985 in which, in point of fact, many of these
17 kinds of changes can be undertaken sort of in process or while
18 the year is going on.
19 At the end of three or six months, there is a major
20 review, and management proposed that we amend what the board
21 did back at the beginning of the year, and it is that amending
22 process -- and we'll go through the same process at the end of

1 nine months -- and it is that amending of the budget document
2 itself that goes before the committee for recommendation and
3 is adopted by the board. Under our current guidelines, those
4 could be changed, but that's what we're operating under now.
5 CHAIRMAN WITTGRAF: Mr. Kirk.
6 MR. KIRK: I remember studying those "guidelines"
7 and trying to get a historical analysis of them and was not
8 convinced that was exactly what had been done, and I'm just
9 concerned that we're adopting an intrusion into the management
10 that may be unnecessary, but maybe I need some input from
11 someone else that's been here longer and understands the
12 process better than I do. I think Mr. Molinari might have had
13 some thoughts on that.
14 CHAIRMAN WITTGRAF: Mr. Martin.
15 MR. MARTIN: First of all, let me respond to
16 Mr. Dana's. There are some old guidelines that have existed,
17 as he indicated. We've reviewed them, and they're convoluted,
18 they're awkward, and frankly, I don't think they're binding
19 upon this board or this current headquarters administration.
20 But we have adopted sua sponte a cooperative and a
21 very responsive attitude to the budget committee, Audit and
22 Appropriation Committee and, I think, exceeding, probably, the

1 informational flow those guidelines call for, because that's
2 the way I want to operate.
3 I want this board to be fully informed on financial
4 matters. We are cooperating with Mr. Dana in all respects, in
5 terms of his requests for information and other members of
6 that committee as well as board members. I, as you know, from
7 day one, I've said that I like to keep all board members fully
8 informed of all matters whether they're on a specific
9 committee or not.
10 I have proposed an alternative set of guidelines to
11 Mr. Dana, and he is, I think, mulling those over at this
12 point, but we suggested these changes, these revisions to the,
13 just to change money around, Mr. Kirk, from one pot or one
14 slot to another, and that's all we've done, and I think
15 Mr. Dana's committee reviewed those, thought they were
16 responsive and responsible management, and I think that's all
17 he's doing is just confirming what management has suggested
18 that is responsible to the administration.
19 CHAIRMAN WITTGRAF: Mr. Kirk.
20 MR. KIRK: I guess I'm happy to do it, and I will
21 certainly vote in favor of it. It was not my understanding
22 that a change from one line item to another was necessary for

1 the committee to vote on, and I'll be happy to vote on this,
2 but I don't consider this an endorsement of these ancient or
3 old guidelines that I have a real question about whether or
4 not they're applicable and whether they're followed. So
5 that's my statement for the record. I'm happy to vote for it.
6 CHAIRMAN WITTGRAF: Further discussion. Mr. Guinot.
7 MR. GUINOT: Yes. I'm also ready to vote for
8 Mr. Dana's motion. I would like, however, to again clarify
9 one point and that is that a few minutes ago, Mr. Martin
10 stated that he had instructed Mr. Richardson to pay for
11 services of our counsel from the board's consulting line.
12 That's fine. I would like very much that, in the
13 future, these things should be brought up to the Chairman so
14 the Chairman can agree whether or not such an expense should
15 come from our side of the budget.
16 CHAIRMAN WITTGRAF: Further discussion.
17 (No response.)
18 CHAIRMAN WITTGRAF: Hearing none, those in favor of
19 the motion pertaining to the adoption of the revised
20 consolidated operating budget for management and
21 administration for Fiscal Year 1991 will signify by saying
22 aye.

1 (A chorus of ayes.)

2 CHAIRMAN WITTGRAF: Those opposed, nay.

3 (No response.)

4 CHAIRMAN WITTGRAF: It ayes appear to have it. The
5 ayes do have it. The motion is adopted. Further matters for
6 consideration from the Audit and Appropriation's Committee.
7 Mr. Dana.

8 M O T I O N

9 MR. DANA: Yes, Mr. Chairman. You will note on the
10 other handout that I gave, a three-page document entitled
11 "Consolidated Operating Budget for Fiscal Year 1991," on the
12 first page, in the next to last line, it indicates that there
13 is available for law school clinics and recruitment
14 $1,166,000.

15 During this year, we have recovered -- well, you'll
16 have to trust me, because it's not on here -- but we have
17 recovered approximately $62,000 of grant monies that probably
18 had been awarded to law schools in prior years but have been
19 recovered in a process that is ongoing. When people don't
20 fulfill their grants, they give it back.

21 The management would like to award grants this year
22 of $1,183,531 to a series of, I think, 20 law schools. That

1 is going to require a transfer, and we would recommend that we
2 allocate $17,531 of 1991 law school grant recoveries to the
3 law school grant line, bringing the funds available for law
4 school grants up to $1,183,531, as requested by management.
5 CHAIRMAN WITTGRAF: Is that recommendation in the
6 form of a motion?
7 MR. DANA: It was.
8 CHAIRMAN WITTGRAF: Is there second?
9 MR. RATH: Second.
10 CHAIRMAN WITTGRAF: It's been moved by Mr. Dana,
11 seconded by Rath. Mr. Molinari.
12 MR. MOLINARI: Howard, if the recovery was some
13 $60,000-some odd, why then the request to add only 17,000?
14 MR. DANA: Because that was all that the management
15 wanted. Management wants to award grants of $1,183,531 right
16 away for this year, and in order to bring the pot up to that
17 level, we've added the 17,000. We could have put it all in
18 there, and then we would have a carryover in the law school
19 grant category.
20 MR. MOLINARI: There is no request for the overage,
21 in other words?
22 MR. DANA: No immediate request, exactly. There's

1 no immediate request for that.

2 CHAIRMAN WITTGRAF: Further discussion.

3 (No response.)

4 CHAIRMAN WITTGRAF: Hearing none, the Chair is
5 prepared to move to a vote on the amendment to the
6 Corporation's consolidated operating budget for Fiscal Year
7 1991, as stated by Mr. Dana in his motion. Those in favor of
8 the motion will signify by saying eye.

9 (A chorus of ayes.)

10 CHAIRMAN WITTGRAF: Those opposed, nay.

11 (No response.)

12 CHAIRMAN WITTGRAF: The ayes appear to have it. The
13 eyes do have it. The motion is adopted.

14 MR. DANA: Thank you, Mr. Chairman. One final
15 matter.

16 CHAIRMAN WITTGRAF: Mr. Dana.

17 M O T I O N

18 MR. DANA: When Congress gave us a supplemental
19 appropriation of $1 million, my understanding is that they
20 spent the cupboard bare and then some and imposed upon all of
21 the people who receive those funds a need to sequester a total
22 of $4,266.

1 Rather than nitpick that among all the various
2 grants, in view of the fact that we are running a surplus in
3 the board of directors line, your committee has recommended
4 that we accomplish the $4,266 sequester by taking the full
5 amount from the budget of the board of directors, and that is
6 in the form of a motion.
7 CHAIRMAN WITTGRAF: I wish Mr. Guinot was present to
8 hear this, how better to spend unexpended board money. Is
9 there a second?
10 MR. RATH: Second.
11 CHAIRMAN WITTGRAF: There's a second by Mr. Rath.
12 The motion is that the Legal Services Corporation's
13 consolidated operating budget for Fiscal Year 1991 be amended
14 again to take $4,266 from the board of directors' portion of
15 the management and administration budget and to make up the
16 so-called sequestration shortfall for the delivery of legal
17 assistance, specifically in the form of basic field program
18 grants. Is there discussion?
19 (No response.)
20 CHAIRMAN WITTGRAF: Hearing none, those in favor of
21 the motion will signify by saying aye.
22 (A chorus of ayes.)

1 CHAIRMAN WITTGRAF: Those opposed, nay.

2 (No response.)

3 CHAIRMAN WITTGRAF: The ayes appear to have it. The

4 ayes do have it. Mr. Dana.

5 MR. DANA: That concludes our report, Mr. Chairman.

6 CHAIRMAN WITTGRAF: Thank you, Mr. Dana. At this

7 time, the Chair is prepared to move to what has been

8 enumerated previously agenda item No. 8, the report by staff

9 on the competition study authorized by the board of directors

10 at its meeting of March 25, 1991. For that purpose, the Chair

11 recognizes the president, Mr. Martin. Mr. Martin.

12 PRESENTATION OF DAVID MARTIN

13 PRESIDENT, LEGAL SERVICES CORPORATION

14 MR. MARTIN: Thank you, Mr. Chairman. When I first

15 came to the Corporation back in September, I instituted a

16 competition committee task force to study competition. That

17 committee has been meeting regularly or irregularly, probably

18 monthly, and they reviewed a proposed competition regulation

19 that the Corporation published sometime ago in May of 1989.

20 That was met, as I understand, with uniform

21 criticism from executive directors and from our programs that

22 we fund. I asked that they review that and come back to me

1 with any revisions. They have made some revisions, however, I
2 have not yet received a report on that aspect yet, but I
3 expect to have it within this summer for your consideration by
4 September.
5 On June 6th, following -- well, following our
6 hearings in San Francisco and Chicago and the deliberations
7 that we heard there about competition from various experts, I
8 retained Mr. Cox as a part-time temporary employee to
9 undertake a study on competition.
10 Let me back up, now. There's a reason why I did
11 that. We had, in the budget, monies set aside to hire a
12 person full time, but only for a limited period; that is, up
13 through this September, to study competition and to write a
14 report to me and to the board.
15 We had a great amount of difficulty finding a
16 qualified person who would come on for a limited period of
17 time; that is, less than a year, leave whatever position they
18 may have had, he or she may have had, and to come full time
19 with us, but temporary.
20 We couldn't find a qualified person to fit that
21 bill, so as an alternate means, after hearing the testimony in
22 San Francisco -- and we did interview a number of people and

1 sent out, made advertisements for people, and we had some
2 responses, but uniformly, the difficulty was finding a
3 qualified person who would undertake employment for a limited
4 period of time -- so as an alternative to that, I had my
5 competition committee undertake two tasks:
6 One, a survey of all federal programs that do
7 competition, a survey of all states that do competition for
8 IOLTA funds, a survey of any competition for grantsmanship
9 that exists in the United States. That study is now being
10 undertaken by my competition committee, and I expect to have
11 something for you on that by September.
12 In addition -- now, I'm getting around to where I
13 prematurely started -- seeing an inability to hire a person on
14 a temporary basis to do a study for us, I was impressed with
15 Mr. Steven Cox's analysis and his statements about competition
16 and the studies he had done in Bexar, spelled B-e-x-a-r County
17 in Texas, but pronounced Bear County, not Bexar, so I retained
18 him as a temporary employee to undertake a study of
19 competition; that is, a study of how would one-time
20 competition, static competition work, and what would a
21 constant competition, as he described it, how would that work.
22 I asked him to provide a theoretical framework,

1 which he will do, as well as maybe a "how would we implement
2 it? Give us a blueprint of what would we do and how would it
3 function." So he has been retained through the middle part of
4 August. I expect to have something from him the latter part
5 of August on that.
6 We do not now have a demonstration, though, a
7 demonstration pilot project on competition going.
8 Mr. Chairman, that is what we're doing in the competition
9 area, in terms of studies.
10 CHAIRMAN WITTGRAF: Thank you, Mr. President.
11 Before I inquire, let me see if there are any questions,
12 comments, discussion from members of the board. Mr. Rath.
13 MR. RATH: Thank you, Mr. Chairman. I apologize for
14 the fog on the East Coast. I would just inquire of the
15 president, since I believe that I made the motion on the
16 committee, because it's a committee that I'm on, how he
17 envisions board participation in formulating a policy coming
18 out of the staff work?
19 I am struck by the comments on the testimony that
20 was taken, I gather, in the course of the reauthorization
21 process in San Francisco and Chicago, and I realize that it's
22 hard to stop the overlap, in terms of what you hear, but

1 having made the motion that, I guess, began some of the
2 project, since then, I've been out meeting some of the project
3 directors in the New England area, and I know there is very
4 strong feelings about the whole issue of competition.
5 I express some degree of skepticism about it, and
6 would just hope that as we move forward this board would have
7 an opportunity to impact, at least the board committee, impact
8 fully on it. And I guess I want to know how you envision the
9 board playing a role in that as we go forward.
10 CHAIRMAN WITTGRAF: Mr. Martin.
11 MR. MARTIN: Mr. Rath, you may not have been a
12 member of the board -- Yes, I guess you were -- which, I guess
13 it was in March, authorized the staff to undertake a study
14 --
15 CHAIRMAN WITTGRAF: As Mr. Rath indicated,
16 Mr. President, he made the motion in the absence of Mr. Guinot
17 at that meeting, as the chairman of the relevant committee.
18 MR. MARTIN: That's correct. So these actions that
19 I've taken are a part of those directions. I would, when I
20 have finished the survey, have the study, present it to the
21 board for its consideration and deliberation and further
22 instructions to the staff.

1 MR. RATH: May I further comment?

2 CHAIRMAN WITTGRAF: Mr. Rath.

3 MR. RATH: My only concern is as the maker of the
4 motion, I would anticipate that we would remain involved and
5 it would be helpful, as we go forward, to know other than a
6 meeting like this as to how you intend to proceed, and I would
7 assume that through the committee, through our Chair,
8 distinguished Chair, we would receive information about what's
9 going on, and I guess I'm just expressing some degree of
10 surprise that we weren't brought up to speed more quickly than
11 at this meeting.

12 CHAIRMAN WITTGRAF: Mr. President, let me make one
13 comment along that line. My impression, and I would certainly
14 defer to your knowledge or Mr. Fortuno's knowledge, which I
15 anticipate is greater than mine on the applicability of the
16 regulations in this area, but I anticipate the possibility of
17 our needing to amend our existing regulations. I think we can
18 amend existing regulations.

19 I don't think we can adopt new regulations under the
20 present state of the laws that pertains to the Corporation. I
21 do foresee the need, though, to amend our existing regulations
22 in order to be able to implement alternative or competitive

1 funding on whatever basis with whatever amount of money in
2 whatever parts of the country in Fiscal Year 1992.
3 So I would go one step beyond Mr. Rath and say that
4 it is critically important, I think, that someone be visiting
5 with the operations and regulations or procedures and
6 regulations committee of the board, which, at the present time
7 is comprised of Mr. Guinot, Mr. Rath, and Mr. Kirk so that by
8 our September meeting and before the start of the new fiscal
9 year, we can, as necessary, amend our regulations and then
10 can, come the new fiscal year, be in a position to implement
11 alternative or competitive bidding to the extent possible.
12 I remain hopeful, as I indicated earlier when
13 Mr. Severson was reporting this morning that there may be more
14 or less $1 million in our Fiscal Year 1992 appropriation for
15 board initiatives, which I anticipate will be largely in this
16 area, and that we would be prepared, then, to go forward. So
17 I am concerned.
18 I guess, unless, you or Mr. Fortuno or someone else
19 advises me that no changes are necessary, I'm concerned that
20 our committee be prepared to make recommendations to us as a
21 board in September in that regard.
22 I've got some other thoughts on competition

1 generally, but procedurally, I have that concern. Further
2 discussion. Mr. President.
3 MR. MARTIN: Maybe we should answer your question
4 about the ability to amend regulations, as opposed to creating
5 them. Mr. Fortuno.
6 MR. FORTUNO: My understanding is --
7 CHAIRMAN WITTGRAF: Mr. Fortuno, why don't you
8 approach the so-called witness table and speak in or near the
9 microphone, please.
10 MR. FORTUNO: I'm not certain there's a distinction
11 in the current appropriations act between amending and
12 promulgating new regulations.
13 I believe the language is that any new rules or
14 regulations or revisions to existing rules or regulations
15 adopted by the board of the Legal Services Corporation after
16 October 1, 1990, shall not become effective until October 1,
17 1991, which, I suspect, is just a nifty way of Congress
18 reserving to itself the opportunity to review what you're
19 doing, and if they like it allow it, and if they don't,
20 suspend it, because that October 1, 1999, would coincide with
21 our next appropriations for the next Fiscal Year.
22 CHAIRMAN WITTGRAF: Do I understand you to be

1 saying, then, that we could amend existing regulations, and
2 they would go into effect on October 1 of 1991 if the Congress
3 didn't see the need to prevent those amendments from going
4 into effect?
5 MR. FORTUNO: That's correct. That's my reading.
6 CHAIRMAN WITTGRAF: And that's exactly my concern
7 that as we look at the possibility of putting monies into the
8 field under alternative funding or competitive funding or
9 consolidated funding rationales, that to the extent we need to
10 amend or expand upon the existing regulations, that we be
11 prepared to do that by our September board meeting on or about
12 September 9 at the latest so that we're ahead of that deadline
13 and so that we're acting in good faith with the Congress, if
14 the Congress would feel called upon to prevent us from
15 proceeding in that way. Mr. Fortuno.
16 MR. FORTUNO: You'd have to follow the usual
17 procedure of publishing for comment considering the regulation
18 I'm promulgating so it's effective 30 days later. Provided
19 that it's not effective prior to October 1, 1991, I believe
20 you could do that, yes.
21 CHAIRMAN WITTGRAF: So my concern is the timing is
22 becoming quite critical, and I would, as I said earlier, go

1 even beyond what Mr. Rath had said, in terms of the need to be
2 moving here. Further discussion. Mr. Dana.
3 MR. DANA: Mr. Chairman, this is an area that I
4 think we may be getting into later on in the agenda when we
5 deal -- when I think there is a report from management
6 concerning regulations, but I think this is an area that I've
7 been concerned about.
8 I think the way Congress is operating, we,
9 basically, have an opportunity to amend or change regulations
10 once a year, and that is before October 1 to take effect on
11 October 1.
12 If Congress continues with the riders that it
13 intends to continue with, I'm afraid that if we need to make
14 any changes in any of our regulations, if we want them to take
15 effect before a year from October 1, 1991, we have to do it
16 before October 1, 1991; otherwise, we get into next year, and
17 we'll be faced with advanced dates.
18 When we get into the regulations, I've been working
19 on this subject, and I have some proposals for the board's
20 consideration at its next meeting in August, but I share your
21 concern that time is wasting, if we are going to do anything
22 about our regulations that currently exist.

1 CHAIRMAN WITTGRAF: I take that, among other things,
2 to mean that you agree with Mr. Fortuno in his analysis of the
3 state of the law as it pertains specifically to regulations.
4 MR. DANA: I do.
5 CHAIRMAN WITTGRAF: Further discussion pursuant to
6 the report made by the president regarding competition.
7 (No response.)
8 CHAIRMAN WITTGRAF: I have a couple of comments,
9 then, that I'd like to make. First of all, it seems to me
10 that not only will we want the report that you've suggested at
11 the August meeting, August 12 tentatively, but that we'll
12 probably want Mr. Cox to be present with us as well.
13 I certainly wouldn't want to prejudge what Mr. Cox
14 or Professor Cox would be looking at in the way of theoretical
15 framework for dynamic or static competition, as you referred
16 to it. I would hope that he has some thoughts for us by our
17 August meeting, you mentioned late August, I think,
18 Mr. Martin, and hopefully, he can advance that a little bit
19 for the reasons we've been discussing.
20 My concern, in looking toward competition or
21 alternative funding, is first of all that there probably are a
22 handful if not even a couple of dozen existing grantees which

1 need to be challenged with competitive funding.

2 I hope that you'll convey that thought to Mr. Cox,
3 and I would hope that Mr. Cox and the other members of the so-
4 called staff committee will be suggesting that there are
5 several projects which could benefit from or for which the
6 recipients of federally funded legal services for the poor
7 could benefit through competitive bidding and ultimately,
8 perhaps, with the substitution of one provider for another.

9 As one board member, I'm also looking at how we can
10 consolidate existing grantees, be it weak grantees with strong
11 grantees or be it existing strong grantees in geographically
12 small and compatible areas where we can accomplish some
13 economies of scale, and I hope that you'll ask Mr. Cox,
14 Professor Cox, to have that in mind as well.

15 I don't know when reauthorization will come, we'll
16 discuss that, obviously, at length this afternoon. It seems
17 to me that reauthorization won't be effective before Fiscal
18 Year 1993 at the earliest, and I'd like to think that we will
19 be able to do some things in the area of competition during
20 the Fiscal Year 1992, as we've been discussing and with the
21 more or less million dollars that might be available, which,
22 of course, isn't really a great deal, so that we'll be able to

1 provide some guidance to the Congress as to how we see our
2 ability to go forward. I'm concerned with those two areas.
3 As I say, some side-by-side competition, perhaps to
4 supplant weak providers, and with some competition to bring
5 about consolidation and economics of scale. I would encourage
6 any other board members who have some thoughts to make them a
7 matter of record at this time so that Professor Cox and the
8 members of your staff can have them in mind as we prepare to
9 discuss this further in August. Mr. Kirk.
10 MR. KIRK: I really wasn't prepared to express my
11 views, but just a couple that come off the top of my head, I
12 believe our mandate is more than just to supplant weak
13 providers and put competition there. I believe that we ought
14 to look at competition all along the way in every aspect of
15 it.
16 As I've stated at previous committee meetings, my
17 experience in today's marketplace in the outside world is that
18 large users of legal services are using competition on a daily
19 basis, and I know that I compete with other law firms for
20 certain companies' business. I know that insurance companies
21 are setting up their own law firms, giving them an office,
22 paying the rent, paying the lawyers, and I'm competing with

1 those people as well.

2 I believe there's a lot of competition that can be
3 learned from the marketplace. I would like to see an
4 opportunity for the board to serve for a limited period of
5 time much like, perhaps, an insurance comes does, that sets up
6 its own.

7 Maybe we would want to control the competing
8 organization in an area and set up our own, side-by-side,
9 under our control, for a limited period, not to exceed two
10 years or three years or something to see how it goes, as
11 opposed to trying to find a third party provider and ask him
12 to set up and become organized.

13 I think we might be in a better position. I don't
14 think we can do that under the current law, but I would like
15 to give a thought to that, but I think my thought is for a
16 broader participation, ultimately, and I just hope we don't
17 get involved in studying it to death and piecemealing it to
18 death.

19 CHAIRMAN WITTGRAF: I don't take exception to any of
20 your comments necessarily. I only wondered, you began by
21 saying "our mandate," and I didn't know what you were
22 referring to.

1 MR. KIRK: I think Congress wants -- I mean, I think
2 we've seen it in messages that I've gotten from Congress that
3 they do want to see competition, they want to see it enacted.
4 I think the White House wants to see competition in many
5 phases. So I think there's a lot of support for competition,
6 and I'd like to push it and see it.
7 CHAIRMAN WITTGRAF: You weren't referring to
8 anything in particular, just the impression that you've gotten
9 from visiting with different people?
10 MR. KIRK: Yes. I haven't seen a written thing that
11 says --
12 CHAIRMAN WITTGRAF: There is wording in the
13 Appropriations Act for Fiscal Year 1989 or actually Fiscal
14 Year 1990, I believe, which does talk about studying
15 competition.
16 There is that mandate, and I didn't know if you were
17 referring to that or to something else. I'm hoping that we
18 can go a little bit beyond that, and that's why I'm concerned
19 with our getting our regulatory bed in order, as I said
20 earlier. How much money might be available to use for
21 competition remains to be seen. Mr. Dana.
22 MR. DANA: Mr. Chairman, I think what you and

1 Mr. Kirk are talking about is the provision in Public Law
2 101515, which is our authorization covering us today that
3 "After October 1, 1991, but not before, the board of directors
4 of the Legal Services Corporation shall develop and implement
5 a system for the competitive award of grants or contracts
6 including support centers, except that nothing herein shall
7 prohibit the Corporation board, members, or staff, from
8 engaging in in-house reviews of or holding hearings on
9 proposals for a system for the competitive award of all grants
10 and contracts, including support centers, and that nothing
11 herein shall apply to any competitive awards program currently
12 in existence."
13 I take it that Mr. Cox is being hired as an in-house
14 part-time employee, rather than as a consultant so as to come
15 within that provision of the law.
16 MR. MARTIN: That's correct, Mr. Dana.
17 MR. DANA: But it does indicate that Congress is
18 clearly interested in our doing something, but they are not
19 anxious for us to do it before the beginning of next year.
20 But the beginning of next year is fast upon us, so I
21 feel, as I think Mr. Rath does, that waiting around until the
22 last few days of this year before the board gets any input

1 into this competition would be unfortunate, and I hope that we
2 can get about it in at least August so that we have an
3 opportunity to react, in case Congress releases us from this
4 restriction.
5 CHAIRMAN WITTGRAF: Further discussion.
6 (No response.)
7 CHAIRMAN WITTGRAF: Mr. Martin, did have you any
8 questions? Are you feeling a sense of direction, I hope, from
9 this somewhat eclectic discussion?
10 MR. MARTIN: I'm feeling a sense of direction. Let
11 me assure Mr. Rath and Mr. Dana and Mr. Kirk -- well, all
12 members of the board -- that we have not drug our heels on
13 this deliberately or by -- but it was, from March, we
14 advertised immediately.
15 We had difficulty finding someone, and, as I say, I
16 have set about with my committee to survey how it's done among
17 states that compete, IOLTA funds, for instance, and how it's
18 done among other federal agencies.
19 So we will have something for you, and I certainly
20 will inquire of Mr. Cox's availability. I think he'll still
21 be on the payroll on August 12. He will be here, if you meet
22 then. Secondly, I will commit to you, Mr. Rath, to get

1 something to you on competition and to all board members in
2 advance of August 12.
3 CHAIRMAN WITTGRAF: Further discussion.
4 (No response.)
5 CHAIRMAN WITTGRAF: Hearing none, the Chair is
6 prepared to move to the next agenda item, that being what's
7 enumerated as agenda item 9, a report by the staff on the
8 status of pending regulations. It's the Chair's expectation
9 that the Corporation's acting general counsel, Mr. Fortuno
10 probably should come forward to the witness table again at
11 this time.
12 This agenda item follows from the comments and
13 requests made by Mr. Dana at our last board meeting in April
14 of this year. Mr. Martin.
15 MR. MARTIN: Yes. We appreciate your question
16 Mr. Dana. I think it was timely and very perceptive.
17 Pursuant to your request, I asked Mr. Fortuno to do a survey.
18 He has handed me a draft, which I have not
19 circulated to the board yet. I understand it will be in a
20 final form soon, which will we give to you, but in lieu of
21 that, Mr. Fortuno is here to report to you personally on this
22 survey.

1 PRESENTATION OF VICTOR FORTUNO

2 GENERAL COUNSEL, LEGAL SERVICES CORPORATION

3 MR. FORTUNO: We wanted to prepare something short
4 but informative. As you may all know, we have 32 regulations
5 on the books, not all of which are fully in effect. What I
6 would propose to do is just very briefly run through those,
7 and I believe, unless there is some objection to this, we can
8 probably distribute that very same document that we're
9 distributing to the board now to the public. I think it might
10 be helpful to everyone.

11 CHAIRMAN WITTGRAF: The Chair has no objection.
12 Mr. Martin, do you have any objections for any reason?

13 MR. MARTIN: No.

14 MR. FORTUNO: Our regulations appear at Title 45 of
15 the Code of Federal Regulations, and No. 1601 is the
16 regulation that sets out the Corporation's bylaws. That
17 regulation is fully in effect.

18 1602 is the FOYA regulation that governs disclosure
19 of information by LSC as opposed to disclosure by grantees.
20 There's a different regulation addressing that. 1602 is fully
21 in effect.

22 1603 concerns the state advisory counsel. That

1 remains in effect. 1604, governing outside practice of law
2 is, likewise, fully in effect. 1605 remains in effect. 1605,
3 by the way, governs appeals on behalf of clients. 1606 is a
4 regular lays which sets out procedures governing termination
5 of financial assistance to grantees. That, too, is in effect.
6 1607 is not fully in effect. In fact, under the
7 current Appropriations Act, LSC may not impose requirements in
8 addition to or more restrictive than the restrictions that are
9 authorized in the Appropriations Act or in the LSC Act itself.
10 So that one is only partially in effect.
11 1608 remains fully in effect. 1609 remains in
12 effect except that no revision promulgated after October 1 of
13 '88 may be enforced. 1610, which concerns use of
14 noncorporation funds, is in effect except that no revisions
15 promulgated after October 1 '88 may be enforced.
16 1611, which is our regulation which sets out
17 guidelines for financial eligibility for services provided
18 with our funds, is in effect, although no revisions
19 promulgated after October 1 '88 may be enforced, but that
20 would not include the annual update to the regulation, the
21 appendix, where we take the figures that are the poverty
22 guidelines that are issued by the federal government and

1 reflect those in our regulations.

2 So it would increase the dollar amount of income
3 that families may have but yet be eligible for legal
4 assistance provided with our funds. 1612, which is the
5 regulation setting out restrictions on lobbying by recipients
6 is in effect with some exceptions. The restrictions on
7 private funds not authorized by the LSC Act it appears may not
8 be implemented.

9 Thus, LSC recipients may use private funds to engage
10 in self-interest lobbying, to engage in grass roots lobbying
11 on behalf of eligible client and to disseminate information
12 about public policies and political activities.

13 LSC's position has been for some time now that with
14 these exceptions, the regulation conforms to the statutory
15 authority given the Corporation in the LSC Act.

16 Section 1613 governing criminal proceedings, again,
17 is fully in effect as is 14, 1615, 1616, on through down to
18 25. Those are all fully in effect. 1626, which is the
19 regulation setting out restrictions on legal assistance to
20 aliens, is in effect with one exception 1626.4A-1, which is a
21 provision restricted legal assistance to amnesty aliens, is
22 not in effect.

1 That was enjoined by a federal court. The
2 injunction was issued by the U.S. District Court for the
3 Northern District of California. It was appealed to the Ninth
4 Circuit. The Ninth Circuit affirmed the matter. The
5 Corporation sought reconsideration by the court en banc.
6 That case had been decided by a three-judge panel
7 and just last week, we learned that the request for a review
8 by the court en banc has been denied. So that injunction
9 stands.
10 1627 fully in effect, as is 28, 29, 30. Thirty-one,
11 restrictions on expenditure of grant funds, the authority is
12 expired. Thirty-two is not enforceable. Thirty-two was a
13 prohibition on participation in the redistricting litigation.
14 That matter was also enjoined by a federal court.
15 It was enjoined by the U.S. District Court here in
16 the District of Columbia. The Corporation has appealed that
17 matter to the Circuit Court, the U.S. Court of Appeals for the
18 District of Columbia Circuit and that appeal is pending.
19 Unless there are any question, I would at this point
20 ask to be excused.
21 CHAIRMAN WITTGRAF: Thank you very much,
22 Mr. Fortuno. Thank you particularly for giving us the three-

1 page memorandum. I think that's very helpful. Is there
2 discussion? Mr. Dana.
3 MR. DANA: Yes, Mr. Chairman. I think that this, as
4 an outline, is helpful, but I also think that it conceals a
5 lot of detail and complexity. With the assistance of others,
6 I have made my own analysis of the situation, and it is very,
7 very confusing.
8 MR. FORTUNO: It is, and it wasn't easy trying to
9 simplify it.
10 MR. DANA: No. And I think it is particularly
11 difficult for our grantees, who see these regulations and may
12 not appreciate that many of them have been enjoined by
13 Congress.
14 Many of them are in a state of suspended animation
15 but way spring back at my moment, and I think with the
16 appropriations language that comes out every year, a review of
17 that language indicates that Congress has gone a long way to
18 try and put some of our prior efforts into limbo.
19 I have prepared a series of resolutions which set
20 forth my understanding of the pedigree of each of the
21 regulations that is in doubt. What I would like to do is
22 distribute those regular resolutions and have them placed on

1 the agenda for board action in August so that those of you who
2 haven't seen them before today can look them over and double
3 check my work.
4 The thrust of the resolutions, by and large, is to
5 get us back to square one with respect to those regulations
6 that have been placed in limbo by Congress or courts and refer
7 those regulations to the regulations committee with a charge
8 to come back to us.
9 Whether it be this year or next, at least we ought
10 to clean up the record so that we don't have all of these
11 restrictions that none of us can figure out their background.
12 So with that, Mr. Chairman, with your permission, I would
13 distribute a series of resolutions, which I'm not moving at
14 this time but am, in effect, asking that it be placed on the
15 agenda for our August meeting.
16 CHAIRMAN WITTGRAF: You have copies of those
17 proposed resolutions, Mr. Dana?
18 MR. DANA: I do.
19 CHAIRMAN WITTGRAF: Is it fair to assume that the
20 resolutions deal primarily with those regulations that have
21 the narrative explanations next to them in the analysis
22 prepared by Mr. Fortuno?

1 MR. DANA: In most cases, that is fair.

2 CHAIRMAN WITTGRAF: The Chair certainly is prepared
3 to have those resolutions added to the agenda for the board
4 meeting on or about August 12. That agenda is growing now to
5 include interviews with IG candidate finalists, further
6 discussion and consideration of the matter of regulations and
7 funding for competition, and then related to that, obviously,
8 these regulations.

9 Did you wish to elaborate at all, or do you simply
10 want to leave these copies with the members of the board this
11 morning, Mr. Dana?

12 MR. DANA: I think I'd rather just leave it for the
13 board to review, and I'd be happy to talk to any of them about
14 it after they have, but I think the effort, as I indicated, is
15 basically to clean up the record and start fresh and both
16 relieve grantees and Congress of the loose ends that are just
17 floating out there.

18 CHAIRMAN WITTGRAF: And I assume that you're looking
19 at the October 1, 1991, deadline of sorts that we've discussed
20 already as it pertains to the possible amending of regulations
21 having to do with funding?

22 MR. DANA: I don't know that there is much need

1 -- if there is anyone on the board who wants to do something
2 about our regulations between now and October 1, 1992, they
3 better act quickly. Other than cleaning up the record, I have
4 no particular substitute to offer except in the area of
5 competition.
6 We have a regulation that deals with competition.
7 If we're going to amend it, we have to amend it -- I say we
8 have a regulation dealing with defunding -- we may not have a
9 regulation dealing with competition, but we do have a
10 regulation dealing with defunding a program, which is
11 connected, however obliquely, to competition, except in that
12 area, I don't think there is any great urgency.
13 I think there is a need to get about this process
14 generally, and if we are planning on doing anything in the
15 area of competition next year, we ought to be doing it between
16 now and October 1 or talking really seriously to members of
17 the Congress to give us some more flexibility with regulation
18 writing than they have given boards in the past.
19 CHAIRMAN WITTGRAF: Normally, the Chair would
20 suggest that these matters be referred to the appropriate
21 committee, that being the so-called Regulations Committee
22 chaired by Mr. Guinot and including Mr. Rath and Mr. Kirk.

1 In light of the imminence of Mr. Guinot's
2 resignation from the board and from the chairmanship of that
3 committee, however, and in light of the relative urgency of
4 the board's consideration of these matters, the Chair will not
5 send these resolutions to that committee, because the
6 committee is probably not going to be comprised of the same
7 people momentarily initial, but will, as indicated a few
8 moments ago, put those resolutions on the agenda of the August
9 meeting.
10 Mr. Fortuno, I don't know if you've seen these
11 resolutions prior to today or not.
12 MR. FORTUNO: I do have a copy now. I just grabbed
13 it a few minutes ago. I haven't had an opportunity to review
14 them.
15 CHAIRMAN WITTGRAF: So you really don't have any
16 comments you'd like to make at this time.
17 MR. FORTUNO: Not at this time.
18 CHAIRMAN WITTGRAF: Obviously, we would be
19 interested either between now and an August 12 meeting or at
20 an August 12 meeting on your thoughts of the resolutions.
21 Mr. Kirk.
22 MR. KIRK: Do I understand that because Mr. Dana has

1 proposed these for next month's meeting, as opposed to another
2 time, that you're going to bypass the committee consideration
3 recommendation and go straight to the board?
4 CHAIRMAN WITTGRAF: That's my expectation.
5 Obviously, the board can have us do otherwise. We can refer
6 them to a committee today, but while I know that Mr. Guinot is
7 going to resign from the board and is going to resign from the
8 chairmanship of that committee at some time, I anticipate
9 between now and August 12, he hasn't done it, and I don't
10 believe he will do it today.
11 So I don't think we, as a board, can replace him, or
12 that I, as the chairman of the board can, subject to the
13 board's approval -- I suppose there's a possibility, which we
14 can discuss further, if you like, which would be much as with
15 the Inspector General OverSight Committee to begin expanding
16 the size of that committee and give it time to meet between
17 now and August 12 so that there could be committee
18 recommendations to the board on August 12. Mr. Kirk.
19 MR. KIRK: Well, it would seem to me that there is
20 also the option of saying that these shouldn't be taken up at
21 the August meeting. They should be taken up at the September
22 meeting and that, you know, the committee should have an

1 opportunity to examine and review them and make their report
2 and recommendation.
3 This is the first I've heard of it, and I really
4 haven't had a chance to think about it. I'd like to table the
5 matter until later in the meeting and, perhaps, readdress it
6 again later, because I think that -- merely because somebody
7 brings something up and says, "I want it to be heard at the
8 next meeting," as a method of bypassing the committee, would
9 not ordinarily appeal to me.
10 CHAIRMAN WITTGRAF: Mr. Dana.
11 MR. DANA: It doesn't appeal to me, either. I would
12 much prefer to move these at this time and second your motion
13 that they be referred to the committee, with or without its
14 distinguished chairman, to consider them and report back to us
15 hopefully at the August meeting.
16 I agree with you that things of moment are best
17 referred to committees who have responsibility over that and
18 if it is going -- I do think there is a need to move on some
19 of these matters in time to take action by October 1, and
20 that's the reason waiting until September has some lack of
21 appeal only because it means waiting for a year and a month as
22 opposed to acting promptly.

1 CHAIRMAN WITTGRAF: Mr. Kirk.

2 MR. KIRK: Well, my request was that we hold it off
3 until later in the meeting, and I'm not sure that I even have
4 a chance to meet between now and then.

5 CHAIRMAN WITTGRAF: Actually, the Chair was not
6 contemplating the specific action relative to this agenda item
7 at this time, and the Chair has no problem with discussing the
8 matter further during the course of today's meeting.
9 Mr. Molinari.

10 MR. MOLINARI: Yes. Howard, I have a question or
11 two of you, Howard. The 21 June '91 date at the top, is that
12 the date that these were prepared?

13 MR. DANA: That's the date that is -- that's
14 correct. That comes from my office computer.

15 CHAIRMAN WITTGRAF: Mr. Molinari.

16 MR. MOLINARI: The question I would have is why did
17 you wait until today to present these to the members of the
18 board? I'm a little puzzled why we had Mr. Fortuno going
19 through this exercise and then having a separate one, and
20 neither one of you knew what the other was doing.

21 Had this been distributed, I would assume that we
22 missed a better way of handling this today, and I'm just

1 wondering whether there was any reason for that.

2 CHAIRMAN WITTGRAF: Mr. Dana.

3 MR. DANA: Well, this is a subject that I have been
4 bringing up with some frequency, and I, as you know, served on
5 this board before and worry about nitpicking details like
6 regulations and things like that.

7 I'm not on the committee. I didn't know what our
8 staff was going to generate. I felt a need to move to advance
9 the ball, if we are going to do so this year at all.

10 So in anticipation of whatever report they gave us,
11 I generated these motions, and in deference to your concern
12 that I was steamrolling you or others, I have distributed them
13 following the issuance of staff's report and asked that they
14 not be voted on today but take a whole month to deal with it.
15 I'm not sure that I fully understand the tenor of your
16 concerns.

17 CHAIRMAN WITTGRAF: Mr. Molinari.

18 MR. MOLINARI: Let me restate it, then. It just
19 appears to me that had you submitted this to the Corporation
20 and to the members of the board of directors, at least from
21 Mr. Fortuno's standpoint, if he had saw your report or your
22 suggested resolutions here, I think it might have had some

1 reflection on the report that he would have prepared.

2 I think it would have assisted him and assisted us

3 in having a better report today.

4 CHAIRMAN WITTGRAF: Mr. Dana.

5 MR. DANA: Well, my assumption, Congressman, is that

6 they have the whereases in my resolutions. These are well

7 known to Legal Services people, in particular the General

8 Counsel's Office. Their effort, I think, is helpful, is

9 designed, I think, to make -- is more of an index and to make

10 simple a subject which is complex.

11 I don't think these two efforts are redundant at

12 all, and two heads are better than one, and my effort was

13 entirely designed to advance the ball, and I --

14 MR. MOLINARI: I'm not questioning your motives,

15 Howard. I really --

16 CHAIRMAN WITTGRAF: Mr. Molinari.

17 MR. MOLINARI: I'm not questioning your motives.

18 I'm merely wondering why they weren't sent out several weeks

19 ago when they were prepared. I think it would have been a lot

20 easier to figure out where we go from here, not meant to be

21 critical, just a point of observation.

22 MR. RATH: Mr. Chairman.

1 CHAIRMAN WITTGRAF: Mr. Rath.

2 MR. RATH: I'm tempted to observe that Mr. Molinari
3 feels much about this as I do about making a motion in March
4 and hearing nothing about it until we get a full report in
5 July about what's already gone on. So we all ought to take a
6 little lesson in communication at times.

7 I think that somewhere between the piece that
8 Mr. Dana has prepared and the piece that Mr. Fortuno has
9 prepared is the need for another piece that I feel a need for,
10 which is a piece that tells me in rather relatively
11 straightforward English what the practical implications are of
12 these regulations and what we need and what we don't need.

13 Along with the cleaning up, I think there's some
14 someplace in the middle here a piece to communicate to the
15 commmunity with whom we're working what it is we're trying to
16 clean up, and I share Mr. Dana's penchant for neatness, but I
17 think we need to tell people why it's going to be neat.

18 So maybe it ought to come from the staff, but
19 somebody ought to explain in relatively straightforward terms
20 what these regulations do and how we would clean them up and
21 what the impact that that would have on the people who are
22 ultimately going to be bound by them, as this committee, which

1 I gather I remain a member, lurches forward to its august
2 deliberations in August.
3 MR. HALL: Mr. Chairman.
4 CHAIRMAN WITTGRAF: Mr. Hall.
5 MR. HALL: I know we approach the 11:45 mark. If we
6 don't act on these resolutions at all, I guess my question is
7 for Howard, if that happens, what happens to these regulations
8 that were suspended by Congress?
9 CHAIRMAN WITTGRAF: Mr. Dana.
10 MR. DANA: It depends on what Congress does. If
11 Congress continues all of the language that has kept this
12 Corporation in irons, to use a nautical expression, for
13 another year, nothing will happen.
14 We will be frozen in a state of inaction, except for
15 efforts that we can annually make to, in effect, serve up
16 another set for Congress to look at and say, "I don't like
17 that one," or "I like this one."
18 I think what I would like to get us to is a point
19 where Congress doesn't have to micromanage each of our
20 regulations, and therefore, I'm suggesting that we sort of
21 undo everything that the Congress has frozen so that we start
22 from ground zero. It may or may not be the right thing to do,

1 but that's my suggestion.

2 MR. GUINOT: Mr. Chairman.

3 CHAIRMAN WITTGRAF: Mr. Guinot.

4 MR. GUINOT: Point of clarification. A vessel is

5 irons is going against the wind but moving forward. What I

6 think you're suggesting is that we would be dead in the water.

7 CHAIRMAN WITTGRAF: Mr. Dana. Fortunately, Iowa

8 doesn't have a Navy. So I'm not even able to understand what

9 your gentlemen are referring to.

10 MR. GUINOT: If we're moving irons, we're forward,

11 albeit slowly, against the wind, and maybe that's the best way

12 to move.

13 CHAIRMAN WITTGRAF: I thought you had someone in

14 irons and Mr. Guinot has a ship in irons. Perhaps you'll draw

15 the distinction for those of us from land-locked states.

16 MR. DANA: I am going to defer to the Ambassador for

17 that, since I think he knows what he's talking about, and I

18 don't.

19 MR. FORTUNO: Mr. Chairman.

20 CHAIRMAN WITTGRAF: Mr. Fortuno.

21 MR. FORTUNO: One observation was the staff's report

22 is simply an inventory of regulations, and it identifies the

1 status of each of the regulations. Mr. Dana's document I
2 understand to be proposed action in connection with those
3 regulations that are not now fully in effect. I don't think
4 they're contradictory or anything, in fact, they may
5 supplement one another.
6 I guess what I'm looking for now is direction from
7 board, in terms of what is it we need do. Would you like a
8 review of this, and assessment as to what this document, what
9 the implications of this document would be if adopted?
10 CHAIRMAN WITTGRAF: I think, if I heard Mr. Rath
11 correctly, and I anticipate he was speaking for a large number
12 if not a majority or all the members of the board, is one step
13 beyond your current analysis, which is a somewhat more
14 elaborate, in relatively straightforward terms, analysis of
15 the staid regulation so that we can understand them.
16 In turn, that may help us understand what Mr. Dana
17 has proposed in his resolution. So I think the analysis would
18 be the next step. I guess no problem with relating that to
19 the proposals made by Mr. Dana, but I think that kind of
20 analysis is what the board is looking for.
21 MR. FORTUNO: That can be done, and in fact, the
22 document we presented to the board today was presented, it was

1 in response to Mr. Dana's request, I think, of two meetings
2 ago.
3 CHAIRMAN WITTGRAF: I think, actually, just one
4 meeting ago, the last board meeting in late April, that's
5 correct. We didn't have a full board meeting in June. I
6 think eight or nine board members were present, particularly
7 in connection with the hearing where Congressman McCullam
8 appeared, but this is the first board meeting, and your
9 response is timely, since the question was made by Mr. Dana.
10 Is there further discussion?
11 (No response.)
12 CHAIRMAN WITTGRAF: Hearing none, the Chair is
13 prepared to moved beyond agenda item No. 9. The Chair is
14 prepared to move, as indicated earlier, to consideration of
15 what's been enumerated agenda item 5.
16 There will be a 5-minute personal convenience
17 recess. We will then be prepared, after our consideration of
18 that agenda item, to move to executive or closed session. We
19 will continue right through that with lunch being served to
20 the members of the board at approximately 12:30 p.m.
21 (Whereupon, the board adjourned to reconvene in
22 executive session.)

1 CHAIRMAN WITTGRAF: We are now prepared to return to
2 deliberations in open session of our regular board meeting.
3 As indicated before we took our personal convenience
4 recess, we're prepared at this time to move to consideration
5 of the agenda item enumerated No. 5. That is a motion to
6 amend the board's resolution regarding its compensation, which
7 was adopted by the board at its regular meeting on March 25,
8 1991.
9 In that regard, it's my understanding that Mr.
10 Guinot has a motion for the board's consideration. Mr.
11 Guinot?
12 MR. GUINOT: Thank you, Mr. Chairman. I have asked
13 staff to print the motion, which is really a very simple one.
14 I don't know how far along we are on this. I know it's on the
15 machine, but -- Mr. Severson, how far are we from getting at
16 least one print?
17 MR. SEVERSON: Well, I'd have to rely on my
18 technical assistance here. We don't have a printer that's
19 operable.
20 MR. GUINOT: Well, then, we're very far.
21 MR. SEVERSON: We're very far.
22 MR. GUINOT: Yes. In that case, Mr. Chairman, I can

1 read this.

2 CHAIRMAN WITTGRAF: Please, Mr. Guinot.

3 MR. GUINOT: I'll read it slowly.

4 CHAIRMAN WITTGRAF: Thank you very much.

5 M O T I O N

6 MR. GUINOT: The motion reads as follows: "That the
7 board modify its motion adopted on March 25, 1991, in relation
8 to board members' attendance fees, to define board service
9 requiring members' presence in Washington as 'official
10 appearances before the United States Congress, a committee or
11 subcommittee thereof, or at the White House.'"

12 CHAIRMAN WITTGRAF: Is that the end of your
13 resolution, Mr. Guinot?

14 MR. GUINOT: Yes, it is.

15 CHAIRMAN WITTGRAF: As I understand it, for
16 reference of the board members and the persons in attendance
17 at this meeting, if one looks to page 11 of the so-called
18 board book, we have the resolution adopted by the board on
19 March 25 of 1991 regarding board compensation.

20 In turn, you're amending that resolution to define
21 board service requiring a member's presence in Washington,
22 D.C., and then your motion defines such service as "official

1 appearances before the U.S. Congress, a committee or
2 subcommittee thereof, or at the White House." Is there a
3 second to that motion?
4 MR. HALL: Mr. Chairman, I'll second it.
5 CHAIRMAN WITTGRAF: The motion has been made by Mr.
6 Guinot. There's a second by Mr. Hall. Discussion? Mr.
7 Guinot?
8 MR. GUINOT: Well, I don't think any great
9 discussion is needed after the exchange we had last meeting.
10 The intent of the motion is merely to tidy up the definition.
11 We expect that this is a far clearer purpose.
12 CHAIRMAN WITTGRAF: Penny is on. Penny, I'm going
13 to try to put you on the microphone, and tell me if you can
14 hear. Can you hear, Penny?
15 (No response.)
16 CHAIRMAN WITTGRAF: No, okay. It didn't work. Are
17 you there? I guess we're just going to have you by telephone
18 and not microphone.
19 MR. GUINOT: Penny, I'm just going to repeat
20 everything so you can hear it. The motion, as I have --
21 CHAIRMAN WITTGRAF: Mr. Guinot, is this on the
22 record? If it's on the record, speak loudly enough so that

1 the reporter is able to pick it up.

2 MR. GUINOT: It is on the record. I'm reading now

3 the motion to Ms. Pullen who, unfortunately, did not hear it

4 the first time. The motion says that the board modify its

5 adopted motion -- it's motion adopted on March 25, 1991, in

6 relation to board members' attendance fees to define board

7 service requiring members' presence in Washington as "official

8 appearances before the United States Congress, a committee or

9 subcommittee thereof, or at the White House." That's the end

10 of the text.

11 For discussion purposes, I alluded to the fact that

12 this was discussed during our last meeting. I believe that

13 Ms. Pullen was here then. The idea is to tighten up the

14 definition a little further than it appears. The words are

15 reading a little bit too general. I have no other comment,

16 Mr. Chairman, other than that.

17 CHAIRMAN WITTGRAF: Further discussion? Mr. Dana?

18 MR. DANA: Mr. Chairman, Mr. Guinot --

19 MR. GUINOT: Howard, would you let me paraphrase or

20 would you rather pick up this phone as you -- she can't hear

21 you.

22 MR. DANA: No. In fact, I'm going to ask you a

1 question so you can --

2 MR. MARTIN: Penny, I'm going to summarize Howard's

3 question.

4 MR. DANA: My question is, could you give us some

5 amplification about what you mean by "official appearance,

6 both at the White House and before Congress."

7 MR. GUINOT: Official would mean to me where the

8 members of the board are asked to appear before its committees

9 to testify or to assist them in any matter -- information that

10 they require, require your presence rather than writing a

11 letter or talking on the phone.

12 MR. DANA: So, in effect, a board member would have

13 to be summoned for there to be an official visit?

14 MR. GUINOT: Yes.

15 MR. DANA: Is that also true for the White House?

16 MR. GUINOT: Yes.

17 MR. DANA: So, if someone were to come into town to

18 talk to the White House on their own motion, that would not be

19 an official visit to the White House?

20 MR. GUINOT: I'm sure that in a situation like that

21 that person would give the White House a call in order to get

22 yourself on the calendar. To the extent that they didn't

1 approve your visit coming down, it would be, then, an official
2 visit, yes.
3 CHAIRMAN WITTGRAF: Mr. Dana?
4 MR. DANA: Frankly, I think that at some point I
5 would move that this matter be referred back to the Audit and
6 Appropriations Committee. I won't scold you the way Mr.
7 Molinari scolded me for not producing this resolution
8 sufficiently in advance of the time to permit us to reason
9 together, but I do think that generally speaking it would be
10 helpful to have these matters referred to committee.
11 I would, since this resolution originally came from
12 the Audit and Appropriations Committee, I would ask that it be
13 referred back to that committee. I would so move at some
14 point.
15 CHAIRMAN WITTGRAF: Are you making that motion at
16 this time or not?
17 MR. DANA: Since that would cut off discussion, I'm
18 not.
19 CHAIRMAN WITTGRAF: Thank you. Mr. Guinot?
20 MR. GUINOT: I don't feel scolded at all for many
21 reasons. The most important one is the fact that I did say
22 this the last time we were here. We discussed it at great

1 length. Point of fact, I think the votes were there to carry
2 it.
3 As an accommodation to Mr. Uddo, and yourself, and
4 others that may disagree with me, we agreed to postpone it.
5 You knew that it was coming. The text is identical to the one
6 -- except, may I add, that I added the White House at the
7 suggestion of Mr. Uddo at that point or you, one of you two.
8 So, I really don't believe that this is something that is
9 catching anybody unaware. I don't see any purpose being
10 served by having to go back to committee. I would like the
11 board to vote on this.
12 CHAIRMAN WITTGRAF: Further discussion?
13 MR. RATH: Mr. Chairman?
14 CHAIRMAN WITTGRAF: Mr. Rath?
15 MR. RATH: I sympathize with Mr. Guinot's attempt to
16 draw a line. I guess I'd like to go on record saying I'm not
17 aware of any abuses. Since I never get reimbursed anyway, I'm
18 not sure what we're arguing about, given the speed with which
19 the checks don't arrive.
20 What I would ask, if we're going to go forward with
21 this, and I think it's one of those things you are always
22 going to be chasing the horizon as you try to define it -- I'm

1 not aware of what else you would do when you come down here.
2 I think it is clearer if before the word "board service" you
3 insert the word "other board service."
4 The way you are reading this, there is at least a
5 possibility that you are so delimiting activities in
6 Washington, that if the board meets in Washington and it's not
7 a meeting, not an official appearance before the Congress, a
8 committee, subcommittee, or meeting at the White House, that
9 you might not get compensated for it.
10 So I think to make it clearer, if you're going to do
11 that, you better put the word "other" in before "board
12 service."
13 CHAIRMAN WITTGRAF: Mr. Guinot?
14 MR. GUINOT: I have to disagree with Mr. Rath, with
15 all respect. Adding the word "other" will completely
16 emasculate the intent behind the motion.
17 MR. RATH: Could I just join the dialogue for a
18 moment?
19 CHAIRMAN WITTGRAF: Mr. Rath?
20 MR. GUINOT: Could you identify "other"?
21 MR. RATH: All I'm trying to say is other
22 than -- what you want to make sure is you're not saying don't

1 pay for meetings of the board that occur in Washington. You
2 are agreeing that if the board -- I guess I'm saying the way
3 that you have structured it could permit of that other
4 reading.
5 CHAIRMAN WITTGRAF: Mr. Guinot?
6 MR. GUINOT: I don't believe so, Mr. Rath. All I'm
7 doing here is defining what "board service requiring members'
8 presence in Washington, D.C." means in the original
9 resolution. I think that we should limit those appearances as
10 much as we can, and that they should be very clearly
11 delineated. They should be at the option of the inviting
12 party.
13 Now, like Mr. Dana said a few minutes ago, if you
14 come into the White House and you want to come and you put
15 yourself on the calendar, I think that's qualifies you.
16 CHAIRMAN WITTGRAF: Mr. Rath?
17 MR. RATH: That's not my point, Mr. Guinot. My
18 point is, the way your motion reads now -- all I want to make
19 clear is it seems to me that an aspect of board service, which
20 would require a member's presence in Washington, beyond those
21 that you have enumerated, is the meeting of this board in
22 Washington.

1 What I'm saying is, by enumerating three specific
2 areas which would require compensation, you would at least
3 create the argument that the meeting of the board is not one
4 of those three. All I'm saying is it's clear when this board
5 meets in Washington, and its members come, they are entitled
6 to be compensated. I'm just trying to find a way in your
7 language to accommodate that.
8 CHAIRMAN WITTGRAF: Mr. Guinot?
9 MR. GUINOT: Well, I guess what you could do is put
10 board meetings within the definition of official appearances.
11 But if you look at the original resolution, it says that the
12 board members will be paid for attendance at board and
13 committee meetings no matter where.
14 MR. RATH: That's why I'm saying "other" works the
15 same way.
16 MR. GUINOT: It's a belt-and-suspenders suggestion
17 that you're making. It's well taken to the extent that it
18 only necessitates adding the words "board meetings" somewhere
19 in here.
20 CHAIRMAN WITTGRAF: I don't think you want to add
21 the word "board meetings," but let's see where we're at.
22 Mr. Rath, as I understand your concern, it has to do

1 with the word "other" being added between the words "for" and
2 "board" on the fourth line of the original resolution as
3 adopted on March 25. Mr. Guinot has not looked upon that as a
4 favorable or an acceptable amendment to his resolution. Do
5 you wish to offer that as an amendment in and of itself at
6 this time?
7 MR. RATH: Well, I would only offer it if Mr. Guinot
8 agreed to it. This is his motion. I just think it makes it
9 clearer. I understand what he is trying to do, which is limit
10 those meetings in Washington for which you would be
11 compensated. I have no problem with that; I really don't.
12 All I'm saying is I think you ought to make clear that among
13 those other -- when he begins to enumerate specifically what
14 those are, and he doesn't include the board meetings, then I
15 think it could be open to a problem. I think the way to
16 accommodate is simply to insert the word "other."
17 CHAIRMAN WITTGRAF: You do not view that as an
18 acceptable or friendly amendment to your resolution today, do
19 you, Mr. Guinot, then?
20 (No response.)
21 CHAIRMAN WITTGRAF: I think the Chair asked Mr.
22 Guinot a question.

1 MR. GUINOT: I'm sorry, I didn't hear you.

2 CHAIRMAN WITTGRAF: Your position is that the
3 addition of that word "other" as an amendment to the original
4 resolution as a part of your resolution now is not friendly or
5 acceptable to you; is that correct?

6 MR. GUINOT: Let me state it another way. My
7 position is that if there is a doubt in anybody's mind,
8 including Mr. Rath's, that this resolution in any way casts
9 doubt on a reimbursement for meetings of the board held in
10 Washington, I'm amenable to adding the words "meetings of the
11 board in Washington" within the definition. That's where I
12 stand.

13 I believe that the resolution is very clear at the
14 top where it says that board members will be paid for
15 attendance at board and committee meetings. It's very clear,
16 regardless of where they are.

17 CHAIRMAN WITTGRAF: Okay. Mr. Molinari?

18 MR. MOLINARI: I think maybe we could accomplish
19 what Mr. Rath is looking for and at the same time what Luis is
20 looking for if we do add the term "other," as Mr. Rath
21 indicates, and then after the printed portion on page 11--
22 before I say the language, my impression is that Mr. Guinot is

1 trying to limit its restrictive language to limit the
2 additional compensation that we can secure for just those
3 other functions.
4 So if we add "other" and then say the "other board
5 meetings would be limited to" and then pick up the language
6 that Luis has, "official appearances before the United States
7 Congress, a committee or subcommittee thereof, or at the White
8 House." I think Luis has what he's striving to get. At the
9 same time, we accord you the point that you're making.
10 CHAIRMAN WITTGRAF: Let me go to Mr. Molinari a
11 moment. Are you suggesting an amendment, Mr. Molinari, to the
12 resolution before the board?
13 MR. MOLINARI: Yes. I'm suggesting a friendly
14 change in the amendment that's being offered by Mr. Guinot.
15 CHAIRMAN WITTGRAF: Specifically, what are you
16 suggesting as an addition to his resolution?
17 MR. MOLINARI: On page 11, as Mr. Rath has
18 suggested, on the fourth line between the words "for" and
19 "board" you insert the word "other" and then add at the
20 conclusion of that five lines "the other board meetings." I
21 think that would be improved if we say the "other tenants'
22 fees would also include 'official appearances before the

1 United States Congress, a committee or subcommittee thereof,
2 or meetings at the White House.'"
3 CHAIRMAN WITTGRAF: If I'm understanding Mr.
4 Molinari's amendment to the resolution, it's really a complete
5 substitution, therefore adding one word to the existing
6 language, that being the word "other" between "for" and
7 "board" in the fourth line and then a new sentence defining
8 what "other" means.
9 MR. MOLINARI: Yes.
10 CHAIRMAN WITTGRAF: This is testimony to the virtues
11 of the committee process the Chair will observe in this lull.
12 MR. DANA: At this point, I was thinking the same
13 thing. I would move that the matter -- I think this testimony
14 has been very helpful. I think that I would move that it be
15 referred to the Audit and Appropriations Committee for its
16 recommendation at the next meeting.
17 CHAIRMAN WITTGRAF: The Chair's opinion is that that
18 motion is not in order at this time, Mr. Dana. There is a
19 motion, what may be a friendly motion or amendment, pending at
20 this time. Until we resolve that, I think your motion is not
21 in order.
22 MR. GUINOT: Mr. Chairman?

1 CHAIRMAN WITTGRAF: Mr. Guinot?

2 MR. GUINOT: I think that Mr. Molinari's friendly
3 suggestion is well taken. I think that it would serve the
4 purpose.

5 CHAIRMAN WITTGRAF: Okay. The motion was seconded
6 initially by Mr. Molinari, I believe. So I assume he accepts
7 that. Would one of you board members please state the motion
8 as presently constituted for the board and for the record?

9 MR. GUINOT: I think Mr. Molinari should do that at
10 this point.

11 CHAIRMAN WITTGRAF: Mr. Molinari?

12 A M E N D E D M O T I O N

13 MR. MOLINARI: Okay. We'll read the original page
14 11, then, "Be it resolved that the daily rate be raised from
15 $261 to $320, and that board members be paid for attendance at
16 board and committee meeting, whether or not the member is a
17 committee member, and for other board services requiring a
18 member's presence in Washington, D.C. The other attendance
19 fees would be limited to 'official appearances before the
20 United States Congress, a committee or subcommittee thereof,
21 or meetings at the White House.'" You'd have quotes from the
22 word "official" to "White House." Simple enough and I think

1 it accomplishes what Mr. Guinot and Mr. Rath both are trying
2 to get at.
3 CHAIRMAN WITTGRAF: Mr. Molinari, I think probably
4 the best way for that eventually to be reflected in the
5 record, if it's adopted, would be for those two sentences to
6 be substituted for the one sentence adopted by the board on
7 March 25. I'll interpret your resolution or your motion to be
8 to that effect. That is a friendly amendment, the
9 substitution for Mr. Guinot's motion.
10 Mr. Dana?
11 M O T I O N
12 MR. DANA: For the record, I would move that this
13 matter be referred to the Audit and Appropriations Committee.
14 CHAIRMAN WITTGRAF: Is there a second?
15 (No response.)
16 CHAIRMAN WITTGRAF: Hearing none, the motion fails
17 for want of a second.
18 Mr. Kirk?
19 MR. KIRK: I am strongly in support of this motion,
20 and I would like to get on with the vote and go into executive
21 session and get on with other matters this afternoon.
22 CHAIRMAN WITTGRAF: Is there further discussion?

1 (No response.)

2 CHAIRMAN WITTGRAF: It's the Chair's understanding
3 that Mr. Guinot has moved and Mr. Molinari has seconded that
4 the board resolution adopted on March 25, 1991, be amended by
5 striking it and substituting, therefore, the following two
6 sentences: "Be it resolved that the daily rate be raised from
7 $261 to $320 and that board members be paid for attendance at
8 board and committee meetings, whether or not the member is a
9 committee member, and for other board service requiring a
10 member's presence in Washington, D.C. The other attendance
11 fees would be limited to appearances before the U.S. Congress,
12 a committee or subcommittee thereof, or at the White House."

13 MR. HALL: Mr. Chairman?

14 CHAIRMAN WITTGRAF: Mr. Hall?

15 MR. HALL: May I ask a question?

16 CHAIRMAN WITTGRAF: Point of inquiry, Mr. Hall?

17 MR. HALL: If this passes, are there any appearances
18 that any board members have been paid for or submitted to be
19 paid for that wouldn't have fallen within this definition
20 since we changed? I mean, are we knocking somebody out?

21 CHAIRMAN WITTGRAF: I believe, Mr. Hall, that point
22 of inquiry is probably directed best to either the Corporation

1 secretary, Ms. Batie, or to her colleague, Ms. McCollum. Ms.
2 Batie, are you following this inquiry?
3 MS. BATIE: No.
4 CHAIRMAN WITTGRAF: No. Mr. Martin, the president
5 of the Corporation, believes that he is prepared to answer
6 that question. Mr. Martin?
7 MR. MARTIN: Without speaking with total certainty,
8 I don't think there have been any payments that would not have
9 been made under this standard. I don't think there have been,
10 but I'm not certain.
11 MR. HALL: Mr. Chairman?
12 CHAIRMAN WITTGRAF: Mr. Hall?
13 MR. HALL: Mr. Chairman, the other problem I have is
14 on this appearance before the U.S. Congress and having to be
15 invited to be there. I don't know how the process works
16 because I've never been there before, maybe because they've
17 never invited me. I assume that --
18 CHAIRMAN WITTGRAF: But you have greater access to
19 Congress than most of us, Mr. Hall.
20 MR. HALL: Well, possibly. I don't know. You know,
21 if there's something that we need to testify to before
22 Congress that services the Corporation or furthers our goals,

1 I just don't think that you should have to be invited. That's
2 not anywhere in the language. That was in Lou's
3 interpretation. I don't interpret the language that way.
4 CHAIRMAN WITTGRAF: Mr. Hall, let me use my
5 prerogative to amplify on that just one bit. I'm a little
6 concerned, as I've listened to the debate both on April 29 and
7 today, with the possibility that if I or another member of the
8 board felt called upon, as perhaps I do tomorrow to visit with
9 Congressman Smith, the Chairman of the House Appropriations
10 Subcommittee that deals with our appropriations, that would be
11 at my request and, in fact, is at my request rather than at
12 his request.
13 Now I've managed to segue that potential problem by
14 doing it the same day that I'm in Washington for a meeting as
15 a member of the Inspector General Oversight Committee. So
16 it's not a problem. But that could be a specific example of
17 the kind of dilemma with which I would be faced. I guess I'm
18 a little concerned personally because for me to be in
19 Washington sometimes it takes two or three days, even if it's
20 for one day of so-called official business.
21 Mr. Guinot would be in the position I would be in if
22 I felt the need, absent a subcommittee or committee meeting of

1 the board, to visit with Congressman Smith or his counterpart,
2 Senator Hollings, for example.
3 Mr. Guinot?
4 MR. GUINOT: Well, it would seem to me -- first of
5 all, let me address the first question that Blakeley asked so
6 far as payments having been made. If any have been made, we
7 were operating under the previous resolution. So,
8 consequently, I would imagine that they would be within the
9 scope of the previous resolution and shouldn't be concerned
10 about that.
11 On the second one, normally, when somebody comes in
12 here to Washington to talk to any congressman of the White
13 House, one just doesn't show up; one calls. Once you are told
14 that you have an appointment, that would satisfy the
15 requirements.
16 This is just my opinion. I don't believe that -- I
17 want you to understand that this definition is not to thwart
18 any member of the board from doing their own business with the
19 Congress or any of these committees, the White House or
20 whatever. It's just that we don't want to have an open-ended
21 idea that anybody can get on a plane and spend money that's
22 supposed to go to the board in coming to Washington for

1 matters that may not be necessary. That's all.

2 CHAIRMAN WITTGRAF: Thank you, Mr. Guinot.

3 MR. GUINOT: In order to tighten that up, a mere
4 telephone call -- and if the congressman wants to see you,
5 then you're all right.

6 CHAIRMAN WITTGRAF: Thank you, Mr. Guinot. The
7 Chair's position will be, then, that the record of this
8 consideration as constituted in particular by the comments of
9 the mover of the resolution will reflect the intent of him and
10 of the seconder and of the board if this resolution is
11 adopted.

12 Mr. Kirk?

13 MR. KIRK: Nothing. I'm just ready to vote.

14 CHAIRMAN WITTGRAF: Further discussion?

15 (No response.)

16 CHAIRMAN WITTGRAF: Hearing none, those in favor of
17 the resolution to substitute the two sentences I read for the
18 resolution adopted by the board on March 25, 1991, will
19 signify by saying aye.

20 (A chorus of ayes.)

21 CHAIRMAN WITTGRAF: Those opposed, nay.

22 (One vote of nay.)

1 CHAIRMAN WITTGRAF: The ayes appear to have, the
2 ayes to include Ms. Pullen who has been participating in this
3 discussion. The ayes do have it. The motion substituting
4 those two sentences for the one sentence in the earlier
5 resolution is adopted.
6 At this time, the Chair is prepared to receive a
7 motion regarding our moving to executive or closed session for
8 deliberation regarding personnel, privileged, confidential,
9 investigatory, or litigative matters as contemplated by the
10 U.S. code. Is there such a motion?
11 M O T I O N
12 MR. RATH: So moved.
13 MR. MOLINARI: Second.
14 CHAIRMAN WITTGRAF: The motion has been made by Mr.
15 Rath, seconded by Mr. Molinari. Is there discussion?
16 (No response.)
17 CHAIRMAN WITTGRAF: Hearing none, those in favor of
18 the motion will signify by saying aye.
19 (A chorus of ayes.)
20 CHAIRMAN WITTGRAF: Those opposed, nay.
21 (No response.)
22 CHAIRMAN WITTGRAF: The ayes appear to have it. The

1 ayes do have it. We will, at this time, proceed to executive
2 or closed session. The Chair anticipates the session lasting
3 until approximately 1:30 or 1:45 p.m. At this time, the Chair
4 will ask that the meeting room be cleared with the exception
5 of board Counsel Charles Fax and Inspector General David
6 Wilkinson.
7 (Whereupon, at 12:22 p.m., the board moved into
8 Executive Session.)

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

2 (2:45 p.m.)

3 CHAIRMAN WITTGRAF: It is now 2:45 and we're
4 prepared to return to the open session of the regular board
5 meeting scheduled for this date, Monday, July 8, 1991. In
6 resuming our deliberations, we turn to what was enumerated as
7 agenda item No. 7, consideration of the -- first, a
8 legislative report involving reauthorization legislation for
9 the Legal Services Corporation, and after that, a report by
10 the Special Reauthorization Committee.

11 Mr. Uddo, I'll turn to you, and you may want to call
12 upon Mr. Severson, or you may not, in his absence, to have him
13 share with us his knowledge of the reauthorization process.

14 MR. UDDO: Is Mr. Severson here? Mr. Severson, if
15 you would, the first part of my committee's report involves an
16 update on the status of reauthorization. You might be able to
17 enlighten us on that.

18 MR. SEVERSON: Well, I'd be happy to. As many of
19 the board members here should know -- and I know all of you
20 have received a memorandum from David Martin outlining the
21 events of June 25. Several of you were in attendance at that
22 mark up of the House Judiciary Committee.

1 To briefly highlight that, the committee did meet to
2 begin the mark up on the Legal Services Corporation
3 Authorization Act and considered nine amendments, again which
4 have been outlined to you. I believe six were adopted, two
5 were defeated, and I think one was deferred. They are
6 outlined, again, in full. I don't know if it's necessary to
7 go through all of those.
8 The key issue here, as far as the outlook is
9 concerned, is that the House Judiciary Committee is unlikely
10 to continue the markup of the legal services bill until the
11 week of July 22. Therefore, it's coming perilously close to
12 the planned recess of Congress, which begins on August 2nd.
13 It is expected that when they do reconvene that there will be
14 upwards of, I would say, 10 to 15 additional amendments that
15 have not yet been dealt with, which leads to a rather lengthy
16 session.
17 So, in all, we expect about 20 amendments. They
18 have resolved eight or nine, depending on how quickly they
19 proceed. We expect, again, continuation of the authorization
20 process at the end of this month.
21 Is there anything further I can add to that?
22 MR. UDDO: Thank you, Mr. Severson. Mr. Chairman,

1 do you want the report of my committee now?

2 CHAIRMAN WITTGRAF: Yes, Mr. Uddo. It's my
3 understanding that the report of your committee, in the form
4 of some recommended resolutions, 15 in number, is contained in
5 the board book. I'll make the suggestion or comment that I
6 did this morning that the members of the board and other
7 interested parties this afternoon be sure that they have a
8 board book, which includes the resolutions at pages 18 and 21
9 regarding timekeeping and competition, respectively, that were
10 approved by the Special Reauthorization Committee when last it
11 met on June 24. Hopefully, everyone has those so that we're
12 all using the current and the same information.

13 With that, I think we're prepared to go to the
14 resolutions, Mr. Uddo.

15 MR. UDDO: Right. I think in the interest of time,
16 we won't belabor the committee's hearing schedule and the
17 like. I think we've been through that a number of times
18 before.

19 CHAIRMAN WITTGRAF: Perhaps you would summarize for
20 the record what we have had occur with the continued hearings
21 of the Special Reauthorization Committee since our last board
22 meeting, which was way back on April 29.

1 MR. UDDO: All right. Mr. Boehm, can you just come
2 to the table and help me with the dates and the numbers of
3 people here? We've had two meetings since the last board
4 meeting.
5 MR. BOEHM: Yes. We had two meetings. The first
6 meeting was the scheduled meeting. I'm trying to recall the
7 date. It was the one in which Congressman Bill McCollum was
8 the sole testifier. June 3rd was the date, I'm reminded.
9 Following that, I believe it was June 24th, in fact it was
10 June 24th, we had a meeting where we had, I believe it was, 9
11 or 10 people make presentations -- it was an add on at the end
12 -- as well representing a variety of outside groups, business
13 groups, agricultural groups, ideological or think-tank
14 representatives there as well. The total number heard from
15 throughout the whole process was approximately 50, I think, at
16 this point, especially when you count that we've received a
17 number of statements as well.
18 The board should have gotten the bound collections
19 of the statements as well as the testimony. So if you count
20 up the meetings in San Francisco, Chicago, the two in the D.C.
21 area, the number exceeds 50, and the range was pretty broad in
22 terms of the types of viewpoints being represented.

1 MR. UDDO: Thank you, Mr. Boehm. With that being
2 said, I would --
3 CHAIRMAN WITTGRAF: Mr. Uddo, I might ask one more
4 thing of you. It's my understanding that since the hearing on
5 June 24, certain materials have been made available to me, and
6 I believe all board members, responding to allegations made by
7 some of the witnesses when they testified on June 24.
8 As Mr. Boehm indicated, he and Mr. Martin's staff
9 have done a commendable job of putting together three volumes
10 of testimony. I think, properly, that these materials, most
11 of which are dated June 24 to and through July 5, should be
12 made a part of the record as well from the committee's
13 hearing.
14 MR. UDDO: Yes. That's already been done. I've
15 requested that it be made a part of the record through Ms.
16 Batie. I think that was communicated to Mr. Boehm.
17 CHAIRMAN WITTGRAF: Thank you. I didn't realize
18 that. Thank you.
19 MR. UDDO: As I understand it, each member of the
20 board has received, at least today, one packet of information
21 from the Migrant Legal Action Program; is that correct? It's
22 all been made a part of the record.

1 CHAIRMAN WITTGRAF: Thank you.

2 MR. UDDO: Then I would suggest, Mr. Chairman, that
3 we turn to the resolutions. I assume that the board's
4 preference would be to go through the resolutions one at a
5 time. They come to the board as a motion, as far as I'm
6 concerned. If you prefer a different procedure where they
7 have to be removed and seconded, we can do that. But my
8 understanding is that the committee's recommendations come as
9 motions to the board.

10 CHAIRMAN WITTGRAF: The Chair is not particularly
11 consistent in the way he interprets those things. But, for
12 purposes of this discussion, we'll assume that the 15
13 resolutions are before the board at this time and do not
14 require supplemental motions or seconds to those motions.

15 MR. UDDO: Then I would suggest that we entertain
16 discussion on Resolution No. 1, which reads, "The board of
17 Directors of the Legal Services Corporation favors leaving
18 restrictions on solicitation to state ethical rules." I
19 remind the board that the rationale that is included
20 underneath the resolution were included for purposes of
21 explaining the committee's reasoning in getting to the
22 resolution. You're not asked to adopt the rationale, only the

1 resolution. So, it should be clear that all that's being
2 moved is each of the resolutions, not the rationale.
3 CHAIRMAN WITTGRAF: Is there discussion on
4 Resolution No. 1?
5 (No response.)
6 CHAIRMAN WITTGRAF: Hearing none, those in favor of
7 the --
8 MR. KIRK: Mr. Chairman?
9 CHAIRMAN WITTGRAF: Excuse me, Mr. Kirk?
10 A M E N D E D M O T I O N
11 MR. KIRK: I would move to amend No. 1 in accordance
12 with the sheet that I have handed to each of you.
13 CHAIRMAN WITTGRAF: Can you describe the number of
14 the sheet or the heading on the sheet, Mr. Kirk?
15 MR. KIRK: It would have a "I" and the word
16 "solicitation" next to it.
17 CHAIRMAN WITTGRAF: Thank you.
18 MR. KIRK: It would read as follows: "The board of
19 Directors of the Legal Services Corporation favors making
20 Legal Services' attorneys subject to the same ethical rules on
21 solicitation that apply to private, for-profit attorneys
22 through state ethical rules, making allowance, however, for

1 Legal Service attorneys to accept employment that results from
2 educational seminars."
3 CHAIRMAN WITTGRAF: Is there a second?
4 MR. MOLINARI: I'll second it.
5 CHAIRMAN WITTGRAF: Discussion? Mr. Kirk?
6 MR. KIRK: I have added to the one that was adopted
7 by the board. My intent is to allow Congress and give
8 Congress the right and us the right as well to ask for
9 something more than the minimum ethical standard from the
10 attorneys that are representing the United States Government
11 in the field.
12 By this, rather than applying the lowest possible
13 standard, I am asking that the LSC attorneys comply with the
14 higher standard that we would apply to a private, for-profit
15 attorney, giving them the same requirements, with the
16 exception that I wanted to make absolutely certain that the
17 poor could be advised of their rights.
18 Seminars, educational seminars, could occur. If, in
19 an objective situation such as that, someone signed up, they
20 would be allowed to do that. What I'm trying to prevent is
21 the guy going through the lunch line saying, "If you want some
22 extra money, sign up, sign up, sign up."

1 CHAIRMAN WITTGRAF: Further discussion? Mr. Uddo?

2 MR. UDDO: Mr. Chairman, I would oppose the
3 amendment and just agree with Mr. Kirk that it's a question of
4 higher or lower ethical standards, the different ethical
5 standards, as has been recognized by the ABA and most of the
6 states that I'm familiar with. I think the committee
7 recommendation was to continue the practice of following the
8 individual state's ethical standards as that state bar
9 association had adopted them.

10 So I would not see them as low or high standards,
11 just different standards for profit and non-profit
12 organizations, and would urge the board to accept the
13 committee's recommendation.

14 CHAIRMAN WITTGRAF: Further discussion?

15 (No response.)

16 CHAIRMAN WITTGRAF: Mr. Kirk, may I inquire of you?

17 MR. KIRK: Yes, sir.

18 CHAIRMAN WITTGRAF: Or of Mr. Uddo. I'm having a
19 hard time seeing, really, what the differences between the two
20 approaches are. Mr. Kirk?

21 MR. KIRK: I believe that mine prevents direct
22 solicitation.

1 CHAIRMAN WITTGRAF: You don't think that the initial
2 resolution does?
3 MR. KIRK: I did not take it to do that.
4 CHAIRMAN WITTGRAF: Mr. Uddo?
5 MR. UDDO: I think the difference is, and correct me
6 if I'm wrong, but the model roles of professional conduct,
7 which most states have adopted, recognize a different standard
8 for nonprofit organizations with respect to what is generally
9 called solicitation.
10 The committee's recommendation was to just let
11 whatever the prevailing state rules apply. As I understand
12 Mr. Kirk's proposal, it is to apply the same standards that
13 nonissue organizations or not-for-profit organizations -- to
14 apply the same standards that private lawyers are constrained
15 by to legal services grantees.
16 So I think it is a change from what most state rules
17 and what the ABA model rules would be.
18 CHAIRMAN WITTGRAF: Is that consistent with you
19 understanding, Mr. Kirk?
20 MR. KIRK: Yes, but with the specific recognition
21 that the poor should be informed of their legal rights, that
22 educational seminars can occur and could be conducted by Legal

1 Services' attorneys. If you happen to get a client through
2 one of those, I am not opposed to that. But I am opposed to
3 the rank solicitation, which I understand is occurring.
4 CHAIRMAN WITTGRAF: Further discussion?
5 MR. DANA: Mr. Chairman?
6 CHAIRMAN WITTGRAF: Mr. Dana?
7 MR. DANA: I, too, am opposed to the proposed
8 substitute. I think that the ethics of the legal profession
9 have historically been a matter of the various state ethical
10 codes and ethical regulations under the care and supervision
11 of, in most cases, the various Supreme Courts.
12 Although they are worded very similarly, I think
13 what in effect Mr. Kirk's resolution would do would be to
14 federalize the ethical standards for Legal Services' attorneys
15 who are not representing the United States Government but are
16 representing poor people in the various states.
17 I do not think that either Congress or this board
18 should substitute its judgment for the judgment of 50
19 independent courts or that we should even get into this issue.
20 That's the reason that I support the resolution, which
21 basically leaves restrictions on solicitation, however
22 defined, to the various states.

1 CHAIRMAN WITTGRAF: Further discussion? Mr.
2 Molinari?
3 MR. MOLINARI: As I understand the Kirk amendment,
4 we're not federalizing the rules but, in fact, asking the LSC
5 lawyers to abide by not 50 different, perhaps, regulations,
6 but the ones that apply to the for-profit attorneys, the same
7 standards adopted by each state who are the for-profit
8 attorneys. Therefore, I don't think we're establishing
9 standards that apply across the board.
10 CHAIRMAN WITTGRAF: Mr. Dana?
11 MR. DANA: I think, Mr. Molinari, that what you are
12 saying is that if a state permits an attorney to -- because
13 they are not working for money provided by the client to do
14 what would be improper if it was done by a for-profit
15 attorney, what this resolution does is to substitute your
16 judgment and/or the judgment of Congress for those judgments
17 that have been uniformly made among the states.
18 In New York State, committees of your bar, under the
19 supervision of your Supreme Court, have concluded that there
20 is nothing improper, nothing ethically wrong -- in fact, it is
21 ethically proper -- when advising a client, to simultaneously
22 say, "You know, you have a problem. You may have come into me

1 on one subject, but I'm telling you you have a problem on
2 another. Not only that, I will take your case."
3 Normally, that is not an appropriate thing for an
4 attorney-for-profit to do, but what you are doing and what
5 this resolution does and what legislation would do if passed
6 would be to substitute Congress' judgment or this board's
7 judgment for the judgment of the ethical panels and courts
8 throughout the land on this subject.
9 I'm of the view that that is changing the rules.
10 I'm opposed to it.
11 CHAIRMAN WITTGRAF: Mr. Kirk?
12 MR. KIRK: My concern is that Legal Services'
13 attorneys shouldn't abide by the minimum ethical standards.
14 We have a right to ask of our attorneys something more than
15 that, as a U.S. attorney has a right to ask of his attorneys
16 more than whatever the minimum is. He has a right to ask it
17 and to demand it. I think that we, just as I expect more from
18 my attorneys, have a right to expect more from ours.
19 Beyond this, I am concerned about the public
20 perception of Legal Service Corporation lawyers. We heard a
21 lot of testimony about people who view these lawyers not as
22 the people helping the poor but with other agenda. I am

1 concerned about the person that goes and stands in the food
2 line and says, "You want money, sign up, sign up, sign up." I
3 would like to stop that.
4 I have no problem with people going out, being
5 educated, told about what their issues are, and if they feel
6 that they have an issue, going up and signing up. That's what
7 I'm concerned about. That's what I'm trying to solve by this.
8 CHAIRMAN WITTGRAF: Further discussion? Mr. Hall?
9 MR. HALL: I was going to ask a question of Howard,
10 if I could. Those committees in New York on the issue of
11 ethics, how did they answer the question of attorney's fees?
12 It seems to me that if an LSC lawyer solicits, goes out and
13 solicits a case, he does have some -- I mean, he may gain from
14 that by attorney's fees, although they may not be paid
15 directly to his pocket. It's paid to his organization. Do
16 you see the connection?
17 CHAIRMAN WITTGRAF: Mr. Dana?
18 MR. DANA: I see the point you're making, Mr. Hall.
19 I think the difference is that when you or I are in that
20 situation, and we encourage a client to not only pursue their
21 rights but volunteer to do it ourselves, when we expect to be
22 paid, we have, arguably, a conflict of interest, in that we

1 have our own personal pocketbook. The money is coming to us.
2 They are paying our firms.
3 That situation is not present in the situation where
4 a Legal Services' attorney says, "You have been done wrong,
5 and I will take your case," because that person works for
6 free, just as if you want to forego a fee as a private
7 attorney in your state, my understanding is that virtually in
8 every state if you say, "You know, I'm concerned about the
9 situation you have. I will take your case and I will do it
10 for free," that is ethically permitted.
11 It is only when you combine the combination of a
12 personal financial stake with the legal advice where the
13 initial inquiry, what didn't come from the client, that you
14 have an ethical problem. In virtually every state -- and
15 there are a whole series of gradations and all kinds of
16 ethical fine lines that are drawn in this area. They have
17 panels. If you have a question, you ask it.
18 Our profession has developed all kinds of processes
19 for drawing very fine lines. This attacks the situation with
20 a sledge hammer and substitutes one rule, and one rule only,
21 for what is an evolving standard throughout the nation. I
22 think it is the wrong way to go.

1 CHAIRMAN WITTGRAF: Mr. Hall?

2 MR. HALL: Just one last question. By way of
3 illustration, if I have a client that comes into my office for
4 something, anything, personal injury lawsuit, and I find out
5 that they are also divorced, and the husband hasn't paid child
6 support for the last 10 years, well, I know in Texas, what is
7 going to happen is they are going to put him in jail, and they
8 are going to award me a lot of attorney's fees. He's going to
9 have to pay those, or he's going to have to stay in jail.

10 Can I solicit that case and tell that woman that I
11 will not charge her anything to pursue her child support for
12 rearage, knowing that I'm going to be paid?

13 CHAIRMAN WITTGRAF: Is that an inquiry of Mr. Dana?
14 Mr. Dana?

15 MR. DANA: I have no idea. Normally, what you would
16 do if you had a doubt, at least what you would do in Maine if
17 you had a doubt on that subject, is you'd call up and ask a
18 panel appointed by the Supreme Court to give opinions on
19 ethical questions that are troubling to you. They would go to
20 the ethical rules promulgated in your state and come up with a
21 -- there are an awful lot of lawyers that spend an awful lot
22 of time trying to resolve those issues. I don't know the

1 answer.

2 CHAIRMAN WITTGRAF: Mr. Hall?

3 MR. HALL: If it's unethical for me to do that, it
4 seems like that's the same type of thing that goes on when
5 legal service lawyers solicit the case where he knows that
6 more than likely he's going to gain some attorney's fees.
7 Now, it may be ethical for me to do that.

8 If it is -- and I know that no one here can maybe
9 answer that, but if it is, then the resolution as originally
10 proposed would be the one I would go for. I suppose the ethic
11 rules would cover the situation where they go out and solicit.

12 CHAIRMAN WITTGRAF: Mr. Rath?

13 MR. RATH: I guess I come down that the most
14 offensive solicitations I see these days come from the
15 for-profit attorneys. I am sick of turning on the television
16 and seeing these people who say to me, "If you've ever in your
17 entire life been wronged by anyone, you had a situation that
18 didn't turn out the way you wanted it to turn out, come to me
19 and I'll take care of you." I find that offensive. I see
20 much less problems with someone advising someone of rights
21 that they may have.

22 I am very content to leave the ultimate

1 determination of the ethical standards in the hands of the
2 various Supreme Courts around the states. I don't consider
3 those minimum standards. I consider those appropriate
4 standards for the practice of the profession. So I have no
5 problem with the way the original resolution was proposed.
6 CHAIRMAN WITTGRAF: Further discussion?
7 (No response.)
8 CHAIRMAN WITTGRAF: Hearing none, we're prepared to
9 move to vote on the amendment. The amendment is contained in
10 the single piece of paper, Roman numeral No. 1, solicitation.
11 That's a substitute, as I understand it, for Resolution No. 1
12 as presented on page 15 of the board book. Those who are in
13 favor of the amendment to substitute will signify by saying
14 aye.
15 (A chorus of ayes.)
16 CHAIRMAN WITTGRAF: Those who are opposed will say
17 nay.
18 (A chorus of nays.)
19 CHAIRMAN WITTGRAF: The nays appear to have it.
20 MR. KIRK: I call for a vote.
21 CHAIRMAN WITTGRAF: A roll call --
22 MS. PULLEN: Mr. Chairman?

1 CHAIRMAN WITTGRAF: Yes, ma'am.

2 MS. PULLEN: I have rejoined the board a couple of
3 minutes ago. Is it possible for the text to be read to me?

4 CHAIRMAN WITTGRAF: Yes, ma'am. Do you happen, by
5 any chance, to have the board book before you, Ms. Pullen?

6 MS. PULLEN: No, I'm sorry, I certainly don't.

7 CHAIRMAN WITTGRAF: Okay. The present resolution,
8 No. 1, is worded that the "board of Directors of the Legal
9 Services Corporation favors leaving restrictions on
10 solicitation to state ethical rules."

11 The substitute, offered by Mr. Kirk in the form of
12 an amendment, reads thus: "The board of Directors of the
13 Legal Services Corporation favors making Legal Services'
14 attorneys subject to the same ethical rules on solicitation
15 that apply to private, for-profit attorneys through state
16 ethical rules, making allowance, however, for LSC attorneys to
17 accept employment that results from educational seminars."

18 We are now voting on the substitute, the second one
19 I just read. The Chair has ruled, based on the voice vote. A
20 roll call vote has been requested. We're prepared to proceed
21 to a roll call vote.

22 CHAIRMAN WITTGRAF: Mr. Dana?

1 MR. DANA: No.

2 CHAIRMAN WITTGRAF: Mr. Guinot?

3 (No response.)

4 CHAIRMAN WITTGRAF: Mr. Hall?

5 MR. HALL: No.

6 CHAIRMAN WITTGRAF: Mr. Kirk?

7 MR. KIRK: Yes.

8 CHAIRMAN WITTGRAF: Ms. Love?

9 MS. LOVE: Yes.

10 CHAIRMAN WITTGRAF: Mr. Molinari?

11 MR. MOLINARI: Yes.

12 CHAIRMAN WITTGRAF: Ms. Pullen?

13 MS. PULLEN: Yes.

14 CHAIRMAN WITTGRAF: Mr. Rath?

15 MR. RATH: No.

16 CHAIRMAN WITTGRAF: Mr. Uddo?

17 MR. UDDO: No.

18 CHAIRMAN WITTGRAF: Mr. Wittgraf votes no.

19 Ms. Wolbeck?

20 MS. WOLBECK: I have to abstain. I can't make a

21 decision on this one. I don't feel I have enough information.

22 CHAIRMAN WITTGRAF: It's the Chair's opinion that

1 the motion fails 5 to 4, 1 abstention, 1 not present.

2 Mr. Uddo?

3 MR. UDDO: Then I'd move the original resolution,

4 Mr. Chairman.

5 MR. KIRK: It's already been moved.

6 MR. UDDO: We need a vote on it.

7 CHAIRMAN WITTGRAF: Okay. Further discussion on the

8 Resolution No. 1 as presented?

9 (No response.)

10 CHAIRMAN WITTGRAF: Hearing none, those in favor of

11 Resolution No. 1 as presented at page 15 of the board book

12 will signify by saying aye.

13 (A chorus of ayes.)

14 CHAIRMAN WITTGRAF: Those opposed, nay.

15 (One vote of nay.)

16 CHAIRMAN WITTGRAF: The ayes appear to have it. The

17 ayes do have it. The resolution is adopted.

18 Mr. Uddo, Resolution No. 2?

19 MR. UDDO: Resolution No. 2 reads, "The board of

20 Directors of Legal Services Corporation favors imposing only

21 procedural safeguards that are imposed on other litigants.

22 However, local boards should be required to consider and adopt

1 policies governing the refusal to disclose the identity of
2 grantee clients with particular concern for preventing abuse
3 of that process."
4 Again, the committee was attempting to not impose
5 additional burdens and restrictions on Legal Services'
6 attorneys and yet respond to one of the criticisms that we did
7 hear from the public about, and that was allegations. On
8 occasion, LSC grantees would refuse to disclose the identity
9 of grantee clients.
10 We were informed that there is two sides to that
11 argument. So the committee made the suggestion that Legal
12 Services' clients should not be burdened by restrictions on
13 their lawyers that are any greater than those imposed on other
14 attorneys. But because there may be a particular problem with
15 this question of disclosure of the identity of the client, the
16 committee is admonishing that local boards take that into
17 consideration and impose appropriate standards on a local
18 basis for dealing with that problem.
19 So, again, it's an attempt not to try to control the
20 course of litigation from the corporate office, and yet to try
21 to be sensitive to one of the concerns that we did hear about.
22 CHAIRMAN WITTGRAF: Thank you, Mr. Uddo.

1 Discussion? Mr. Kirk?

2 A M E N D E D M O T I O N

3 MR. KIRK: I would like to move to amend the -- just
4 one second -- I would like for Amendment No. 1 --

5 MR. UDDO: Do you want to propose both paragraphs as
6 a substitute, 2A and B?

7 MR. KIRK: I'd like to vote on them one at a time.
8 My first amendment would be to delete the second sentence of
9 the resolution beginning with "however" and substitute my No.
10 2A, which says, "The board of Directors of the Legal Services
11 Corporation favors adoption of a requirement that names of
12 litigants and potential litigants be disclosed unless ordered
13 otherwise by a court of competent jurisdiction."

14 CHAIRMAN WITTGRAF: My understanding is that the
15 second sentence of Resolution No. 1 as it appears on page 16
16 would be stricken, and substituted, therefore, would be that
17 enumerated Roman numeral 2A as just read by Mr. Kirk. Is
18 there a second to that motion?

19 MS. PULLEN: I second it.

20 CHAIRMAN WITTGRAF: The motion by Mr. Kirk is
21 seconded by Ms. Pullen. Discussion?

22 MR. RATH: I have a question, Mr. Chairman.

1 CHAIRMAN WITTGRAF: Mr. Rath?

2 MR. RATH: Mr. Kirk, does this language, as
3 proposed, prohibit the attorney or attorneys who file the
4 matter from making a request of the court for the order
5 contemplated by this language?

6 MR. KIRK: Absolutely not.

7 MR. RATH: What would be the standards, or how would
8 you review that? Could they make it as a matter of course?

9 MR. KIRK: I'm not giving any more rights to the
10 court. If they could convince the court that there is a
11 reason why the name should not be disclosed, then the court
12 can --

13 MR. RATH: Equally, you're not seeking to prohibit
14 the Legal Services' attorneys from making that request?

15 MR. KIRK: No.

16 CHAIRMAN WITTGRAF: Further discussion? Mr. Hall?

17 MR. HALL: From some of the other discussions in
18 committee, one that shone was that a lot of these migrant farm
19 worker actions are started long after the migrants have moved
20 on to other locations. I mean, that's obviously not the case
21 in No. 1, but isn't that the great majority?

22 CHAIRMAN WITTGRAF: Are you inquiring of anyone in

1 particular, Mr. Hall?

2 MR. HALL: Well, I guess you were there. Wasn't

3 that true?

4 CHAIRMAN WITTGRAF: I certainly wouldn't say in the

5 great majority. I'm sure that it has happened, yes. I think

6 of recent cases in the State of Iowa where it's been

7 essentially contemporaneous litigation. But I'm sure some

8 cases have been filed after migrant workers had moved on

9 through the stream.

10 MR. HALL: I think the reason given for not

11 disclosing the name was that the worker would be fired, if I

12 recall correctly, was the major concern.

13 CHAIRMAN WITTGRAF: Yes.

14 MR. DANA: Mr. Chairman?

15 CHAIRMAN WITTGRAF: Mr. Dana?

16 MR. DANA: I think that the consequence of this

17 resolution, if it were to be adopted, means that when a -- I

18 focus on the name of a litigant. We do not have the problem

19 where -- when somebody files a lawsuit, you can't just bring

20 the lawsuit without disclosing that you're bringing it in the

21 name of someone who is not the real party.

22 I can't speak for all 50 states, but it's my

1 understanding that if you're going to bring a John Doe
2 complaint, you have to get permission or disclose in the
3 complaint that the name of the plaintiff is not the real
4 party. So that is not the problem.
5 I think the problem is the potential litigant. What
6 that means is that if there is a -- if this motion were to
7 pass, the following scenario would be presented. Some
8 potential plaintiffs come to a Legal Services' attorney and
9 they say, "We're being wronged. I have tremendous fear that
10 if they know that I'm doing this, I will suffer great physical
11 harm, and my wife and mother will be attacked. All kinds of
12 terrible things will happen. What can you do?"
13 At the present time, the Legal Services' attorney
14 can write a letter to the other side or make a -- not before
15 he files a complaint -- say, "I represent a series of people
16 who are working for you and they don't like it because you are
17 violating A, B, C, and D of the Civil Rights Act. Please cut
18 it out."
19 What this requirement would require that lawyer to
20 do is to first file a lawsuit. If he is representing a
21 potential litigant, and he wants to keep their names secret,
22 he would have to go to a court of competent jurisdiction and

1 prove to that court, through some process, that his clients
2 were under threat before he could even talk to the other side.
3 I think that is, in fact, what Mr. Kirk's
4 congressman is proposing by way of an amendment to the Legal
5 Services Act, but I think that is asking a great deal and may,
6 in fact, cause a sufficient delay and a far greater expense
7 than is warranted under these circumstances.
8 So I oppose this, although I think that's the reason
9 that the committee approached it from the point of view of
10 urging local boards to get on top of this issue and adopt
11 procedures which would monitor this situation. We have no
12 idea, frankly, if this happens a lot or not.
13 But we don't think it's a good idea to change the
14 rules of the game for Legal Services' attorneys when we think
15 that Legal Services' attorneys should play by the same rules
16 that everybody else does.
17 CHAIRMAN WITTGRAF: Mr. Molinari?
18 MR. MOLINARI: There's one area that has really
19 bothered me since I've been on this board. It's the practice,
20 and we've seen so much of it, where a lawyer represents
21 anonymous clients, sends letters, and it's not simply a
22 question of saying that somebody has a complaint. The usual

1 case is not saying this potential client has a problem; we'd
2 like you to correct it.
3 In fact, what it is is somebody alleging that it may
4 be $4,000 due to that unnamed person. But because of the
5 numerous violations of a variety of different laws, you're
6 responsible for $164,000. However, if you give me $45,000, we
7 can settle this nice and quick and everybody can go on their
8 way. I don't know how we ever permit that to occur in this
9 system.
10 I come from New York City; I don't come from
11 farmland. But we've heard from so many little farmers. We
12 still have three farmers on Staten Island, so maybe I'm just
13 talking for those three farmers. But it really distresses me
14 that these kinds of claims can be prosecuted.
15 I've read the testimony. I did read it the other
16 day. It jumped out at me again that yes, there's abuses.
17 There are abuses. There's a question of what is a fair
18 balance here. I rebel very much at a system that suggests
19 that a lawyer can make claims on behalf of unnamed clients,
20 and the farmer, which is usually the case we're presented
21 with, has the practical question of saying, "Do I pay $20,000
22 because it's going to cost me $40,000 to that lawyer, even

1 though I think I can win?"

2 Now you heard testimony where, in fact, some farmers
3 wanted to pay and did pay more in order to win the case. But
4 we reached a point where I think that the guy being sued is
5 entitled to more information than he's been receiving. I
6 think that if they do want to proceed, let's face it, legal
7 services' lawyers, under this Kirk amendment, can go into
8 court and say, "I have good cause why the name shouldn't be
9 produced in this case, and I'm going to ask the court to
10 privet it for these reasons." He cites his reasons. So I
11 think he gave some balance to protect those situations where
12 the name should not be divulged.

13 But this is one of the items that really distressed
14 me from day one and still distresses me today. There's a lot
15 of people out there that I'll never represent but that I think
16 are being treated unfairly. Frankly, it surprises me today
17 that that system is permitted to continue. So I
18 wholeheartedly would support this.

19 CHAIRMAN WITTGRAF: Mr. Uddo?

20 MR. UDDO: Mr. Chairman, I think Mr. Molinari is
21 correct that that is a situation that shouldn't exist, and
22 it's disconcerting that there was some testimony suggesting

1 that that happens. I think that from what we gathered from
2 the testimony is that that particular problem is a localized
3 one, not a nationwide one. It tends to have most of its
4 impact in areas where migrant workers are concentrated.
5 I would suggest to you, though, that the proposed
6 substitute wouldn't solve the problem, because I think we also
7 heard testimony that oftentimes names of clients were
8 disclosed. There was a complaint that sometimes they were
9 names of people that might not have worked for that farmer.
10 If an objection was made to that, other names would be
11 substituted.
12 So I think the particular problem you're talking
13 about is not really going to be solved by the substitute. My
14 view is, and I think I said this at the hearing and on a
15 number of occasions, the situation you're talking about, I
16 think, is unethical for other reasons. I think if someone is
17 bringing a frivolous claim, in effect, to extort a settlement,
18 I think that is subject to discipline under the rules as they
19 exist. I think that that's what is being overlooked.
20 We did ask several of the people who testified if
21 there were attempts to try to bring complaints against Legal
22 Services' lawyers or any lawyers for engaging in that kind of

1 conduct. I am very serious when I say if that conduct goes
2 on, it should be reported and it should be disciplined. I
3 don't think the disclosure of the name is going to solve that
4 problem.
5 On the other hand, we did hear testimony that
6 disclosure of identity can sometimes be dangerous for certain
7 clients. So our reaction was leave it to the local boards
8 where that's a problem to try to establish some guidelines
9 that address themselves to the unique problems of that
10 particular area and not, again, try to set a national standard
11 where it's not a national problem.
12 CHAIRMAN WITTGRAF: Further discussion? Mr. Kirk?
13 MR. KIRK: We heard a lot of testimony on the 24th
14 about people that are really concerned about legal service
15 Corporation attorneys. It's a problem. You could ignore it.
16 You could say let the local boards do it. You can say go see
17 the State Ethics Committee, try for Rule 11. The fact is that
18 that's not what's happening. It continues to go on. Local
19 boards have not responded. We have a problem. This, and
20 especially 2B, I think are going to be the solutions or part
21 of the solutions to those problems.
22 We have a segment of the population of the United

1 States that feels, and apparently justly, that they are being
2 put upon by the Legal Service Corporation attorneys. You
3 heard about farmers who are so afraid of the vindictiveness of
4 the Legal Service Corporation attorneys that they went in one
5 door and out another.
6 I couldn't get lawyers to come and testify because
7 they were concerned about the vindictiveness of the Legal
8 Service Corporation attorneys. Now, we could ignore that. We
9 can forget it. We can say I'm going to let local boards do
10 it. I'm going to let ethic committees do it. But the fact is
11 that we have a problem.
12 The quicker we solve this problem, the better light
13 that Legal Services Corporation attorneys are going to be held
14 in and the more respect we're going to get, the more funding
15 we're going to get, and it's going to go right on down the
16 line. I think this is an important one, second only to the
17 next one I'm going to propose.
18 CHAIRMAN WITTGRAF: Further discussion?
19 MR. HALL: Mr. Chairman?
20 CHAIRMAN WITTGRAF: Mr. Hall?
21 MR. HALL: I had an amendment that I was thinking
22 about throwing in there. It stems from my concern that as

1 many of these cases that can be settled should be settled. It
2 seemed to me that's what the problem was. There may be some
3 times, and I can't think of an example off the top of my head,
4 but there may be times when knowing who that litigant is is
5 essential to the farmer or the defendant evaluating and
6 thinking maybe he ought to settle the case and get it out of
7 the way or either knowing that it's one he should fine. So I
8 would amend Bud's proposal to read as follows, if I may at
9 this time.
10 CHAIRMAN WITTGRAF: Go ahead, Mr. Hall.
11 A M E N D E D M O T I O N
12 MR. HALL: It would read, "The board of Directors of
13 the Legal Services Corporation" -- and I'm reading from his
14 2A. "The board of Directors of the Legal Services Corporation
15 favors adoption of a requirement that names of litigants and
16 potential litigants be disclosed." Here I would insert, and
17 this may be crude language and could be refined, I would
18 include, "if knowing the names of the litigant or proposed
19 litigant is essential to the defendant in evaluating the case
20 for settlement purposes." Then I would conclude as his
21 concludes, "unless ordered otherwise by a court of a competent
22 jurisdiction."

1 MR. KIRK: If you would change essential to helpful,
2 I would agree to the amendment.
3 MR. HALL: I'll change it, although --
4 CHAIRMAN WITTGRAF: If I understand the status of
5 this discussion, Mr. Hall has proposed an amendment to the
6 amendment. That amendment is that after the word "disclosed"
7 in the third line of amendment enumerated Roman numeral 2A, he
8 would insert, "if knowledge of the litigants or proposed
9 litigants is helpful for settlement purposes." Is that an
10 accurate rendition of your amendment to the amendment, Mr.
11 Hall?
12 MR. HALL: That's much better. I was wrestling with
13 the word "essential" and "helpful" because that's where the--
14 I mean, if it's going to be helpful, I mean you could almost
15 argue that in any case and not be helpful. Let me tell you
16 what I have in mind.
17 CHAIRMAN WITTGRAF: Let me stop you just one second.
18 Do you accept that, Mr. Kirk, as a friendly amendment?
19 MR. KIRK: I don't know. I thought he was trying
20 to decide whether to go with helpful or essential.
21 CHAIRMAN WITTGRAF: Mr. Hall?
22 MR. HALL: Isn't there a better word in between

1 there?

2 CHAIRMAN WITTGRAF: Necessary is somewhere between
3 helpful and essential. I think as the hour winds on, we want
4 to keep in mind that these are resolutions of statements of
5 principle or the sense of the board. I'm quite confident that
6 the Congress isn't going to pick up any of our wording word
7 for word. But necessary strikes me as being somewhere between
8 helpful and essential.

9 MR. HALL: Well, then, I'd like to propose
10 necessary.

11 MR. KIRK: How about significant?

12 MR. HALL: Significant is fine.

13 CHAIRMAN WITTGRAF: If it's significant, Mr. Hall,
14 is it friendly, Mr. Kirk?

15 MR. KIRK: Yes.

16 CHAIRMAN WITTGRAF: Ms. Pullen, is that acceptable
17 to you?

18 MS. PULLEN: I would like you to read the entire
19 sentence with Mr. Hall's language in it so that I can
20 determine that.

21 CHAIRMAN WITTGRAF: Yes, ma'am. This is a
22 substitution for the second sentence of Resolution No. 2 on

1 page 16 of the board book. Substituting would be these words,
2 and I'll mention which are Mr. Hall's when I get to them,
3 these words as a whole, "Thus, the board of Directors of the
4 Legal Services Corporation favors adoption of a requirement
5 the names of litigants and potential litigants be disclosed,"
6 -- Hall wording -- "if knowledge of the litigants or proposed
7 litigants is significant for settlement purposes," -- end of
8 Hall wording -- "unless ordered otherwise by a court of
9 competent jurisdiction," end of substituted sentence.
10 Does that wording, the dependent clause "if
11 knowledge of the litigants or proposed litigants is
12 significant for settlement purposes" seem to you, Ms. Pullen,
13 to be friendly wording?
14 MS. PULLEN: I'm troubled by the word "significant"
15 and who it is that is making the judgment as to whether it's
16 significant.
17 CHAIRMAN WITTGRAF: Is it not a friendly amendment,
18 then?
19 MS. PULLEN: Well, it's a friendly amendment, but
20 I'm not sure that it's --
21 CHAIRMAN WITTGRAF: Do you accept it as a friendly
22 amendment?

1 MS. PULLEN: Oh, you're pressing me, okay.

2 CHAIRMAN WITTGRAF: Yes, ma'am.

3 MS. PULLEN: I will bow to Mr. Kirk's judgment.

4 CHAIRMAN WITTGRAF: It's a friendly amendment. It's
5 accepted. Mr. Kirk?

6 MR. HALL: Excuse me, Mr. Chairman?

7 CHAIRMAN WITTGRAF: Mr. Hall?

8 MR. HALL: It should be "knowing the names" not "if
9 knowledge of the litigants." They mean the same thing.

10 CHAIRMAN WITTGRAF: Forgive me, "if knowing the
11 names." Further discussion, Mr. Hall or Mr. Kirk?

12 MR. KIRK: Yes.

13 CHAIRMAN WITTGRAF: Mr. Kirk?

14 A M E N D E D M O T I O N

15 MR. KIRK: I think we've agreed I'd like to suggest
16 one other amendment that would say "if knowing the names of
17 the proposed litigants is significant to the potential
18 defendant." My purpose there is once it gets to litigation,
19 it should be handled entirely by the court. This would only
20 be for the settlement purposes before suit is filed.

21 CHAIRMAN WITTGRAF: So you're striking from that
22 Hall amendment the words "for settlement purposes" and

1 inserting in lieu thereof "to the potential defendants." Is
2 that correct?
3 MR. KIRK: No, no, no. If knowing the names of the
4 proposed litigants --
5 CHAIRMAN WITTGRAF: I understand. You're picking up
6 after the word "significant."
7 MR. KIRK: -- is significant to settlement," or
8 whatever your words were. We'll leave the settlement in,
9 that's fine.
10 CHAIRMAN WITTGRAF: The Hall amendment which you and
11 Ms. Pullen have accepted says, "If knowing the names of the
12 litigants or proposed litigants is significant for settlement
13 purposes." Where do you wish to include "to the potential
14 defendants"?
15 MR. HALL: After the word "significant."
16 MR. KIRK: Significant --
17 CHAIRMAN WITTGRAF: To the potential defendants for
18 settlement purposes.
19 MR. KIRK: For settlement purposes, yes.
20 CHAIRMAN WITTGRAF: Mr. Hall, is that acceptable?
21 MR. HALL: Yes, sir.
22 MR. RATH: Mr. Chairman?

1 CHAIRMAN WITTGRAF: Mr. Kirk, I assume that's
2 acceptable. Ms. Pullen, is that acceptable?
3 MS. PULLEN: Yes.
4 CHAIRMAN WITTGRAF: We now have the amendment as
5 amended as amended. The question has been called.
6 MR. RATH: No. I have a question.
7 CHAIRMAN WITTGRAF: Excuse me, there is a question.
8 Mr. Rath?
9 MR. RATH: In the latest formulation of the
10 amendment as amended and accepted by the maker, the amender
11 and the seconder, am I correct that the judgment as to
12 significance is totally that of the defendant?
13 CHAIRMAN WITTGRAF: Mr. Hall or Mr. Kirk?
14 MR. KIRK: I'm not creating that issue. I'm leaving
15 it as it is. We'll send it to Congress as that is without
16 creating any more disputes.
17 CHAIRMAN WITTGRAF: Mr. Rath?
18 MR. RATH: I guess I have then have a problem with
19 that formulation for the obvious reason. I look not so much
20 at the action of the attorney as to the people who the
21 attorney is attempting to serve. I don't think the fact of
22 economic circumstance should visit upon this group of

1 plaintiffs any different treatment than any other plaintiff,
2 regardless of economic circumstance, might experience in a
3 similar situation.
4 CHAIRMAN WITTGRAF: Further discussion?
5 MR. KIRK: Question.
6 CHAIRMAN WITTGRAF: Are you calling the question or
7 you have a question?
8 MR. KIRK: Yes, sir, calling the question.
9 CHAIRMAN WITTGRAF: Is there further discussion?
10 (No response.)
11 CHAIRMAN WITTGRAF: Hearing none, we're prepared to
12 vote. This is a substitute amendment that's twice amended.
13 The substitute amendment to be substituted for the second
14 sentence of Resolution No. 2 appearing at page 16 of the board
15 book says, "The board of Directors of the Legal Services
16 Corporation favors the adoption of a requirement that names of
17 litigants and potential litigants be disclosed if knowing the
18 names of the litigants or proposed litigants is significant to
19 the potential defendants for settlement purposes, unless
20 ordered otherwise by a court of competent jurisdiction."
21 Those who are in favor of the motion as amended
22 twice will signify by saying aye.

1 (A chorus of ayes.)

2 CHAIRMAN WITTGRAF: Those opposed, nay.

3 (A chorus of nays.)

4 CHAIRMAN WITTGRAF: The nays appear to have it.

5 MR. RATH: Roll call.

6 CHAIRMAN WITTGRAF: A roll call vote has been
7 requested. This is the amendment to the second half of
8 Resolution No. 2 as read by the Chair a moment ago. As to the
9 amendment, Mr. Dana?

10 MR. DANA: No.

11 CHAIRMAN WITTGRAF: Mr. Guinot?

12 (No response.)

13 CHAIRMAN WITTGRAF: Mr. Hall?

14 MR. HALL: Yes.

15 CHAIRMAN WITTGRAF: Mr. Kirk?

16 MR. KIRK: Yes.

17 CHAIRMAN WITTGRAF: Ms. Love?

18 MS. LOVE: Mr. Kirk's amendment is the one that you
19 find out who your enemy is and you can just go out. You want
20 to know; right?

21 MR. KIRK: Yes.

22 MS. LOVE: Well, I want to know who my enemy is, so

1 I go along with Mr. Kirk.

2 CHAIRMAN WITTGRAF: Ms. Love votes yes. Mr.

3 Molinari?

4 MR. MOLINARI: Yes.

5 CHAIRMAN WITTGRAF: Ms. Pullen?

6 MS. PULLEN: Yes.

7 CHAIRMAN WITTGRAF: Mr. Rath?

8 MR. RATH: No.

9 CHAIRMAN WITTGRAF: Mr. Uddo?

10 MR. UDDO: No.

11 CHAIRMAN WITTGRAF: Mr. Wittgraf votes no.

12 Ms. Wolbeck?

13 MS. WOLBECK: Yes.

14 CHAIRMAN WITTGRAF: The amendment is adopted on a

15 vote of 6 to 4. Further discussion on Resolution No. 2 as

16 amended?

17 M O T I O N

18 MR. KIRK: I move to amend by adding paragraph 2B

19 that I have submitted.

20 CHAIRMAN WITTGRAF: This would be additional wording

21 for Resolution No. 2, a new paragraph with two new sentences,

22 Mr. Kirk?

1 MR. KIRK: Yes.

2 CHAIRMAN WITTGRAF: Everybody has the amendment in
3 the form enumerated Roman numeral 2B before them; do they?
4 Mr. Kirk, would you like -- let me ask first for a second. Is
5 there a second to the amendment?

6 MR. MOLINARI: I second.

7 CHAIRMAN WITTGRAF: The motion in the form of the
8 amendment has been made by Mr. Kirk. It's been seconded by
9 Mr. Molinari. Mr. Kirk?

10 MR. DANA: Point of clarification.

11 CHAIRMAN WITTGRAF: Mr. Dana?

12 MR. DANA: The proposed amendment is to be added to
13 the first two sentences, too, or is it in lieu of the first
14 sentence? How does it work?

15 CHAIRMAN WITTGRAF: Mr. Kirk?

16 MR. KIRK: It is in addition to what we have already
17 adopted.

18 MR. DANA: What we have already adopted, I
19 understood -- maybe I'm not sure what -- we have amended this
20 by taking out the second sentence and putting in 2A.

21 MR. KIRK: Yes.

22 CHAIRMAN WITTGRAF: As amended twice, yes.

1 MR. DANA: All right. So what you're proposing here
2 is to add this to that?
3 MR. KIRK: Yes.
4 CHAIRMAN WITTGRAF: Let's say a second paragraph to
5 Resolution 2 including the two sentences enumerated on sheet
6 2B. Mr. Kirk?
7 MR. KIRK: I think of all the motions this is the
8 one that really goes most to prevent the abuses that we heard
9 on June 24th. Again, I do not believe that we've got
10 widespread abuse. I think that most of the offices are
11 operating very well. This is something that is of great
12 concern. I think we heard a lot of testimony on it.
13 To me the mere fact of asking someone to sign a
14 piece of paper that says these are the facts that I believe
15 in, and basing your complaint on those facts, is just a
16 natural thing that any lawyer really ought to do. I can
17 assure you that it's done in my firm. It is no more
18 information than would have to be disclosed when the first set
19 of interrogatories were sent out after the suit was filed.
20 There was a concern that this would create a disadvantage to
21 the poor person who had to sign it because it wouldn't be--
22 it would be a different standard than was being applied to

1 other people. What I have put in here is that this is not
2 admissable into evidence in any hearing on the merits itself.
3
4 So, therefore, there is no disadvantage to the poor
5 person who signs this as a basis for the attorney filing the
6 suit. I have provided that it's discoverable and it can be
7 admitted into any ethical proceeding or any disciplinary
8 proceeding.
9 So I think that what this is is a reminder to the
10 lawyers in the field, "Hey, be careful. Be sure. Talk to the
11 person and make sure they understand what you're doing for
12 them before you go doing it on their behalf. We don't have,
13 as we heard testimony, scores of people being in two different
14 places at the same time picking blueberries and corn.
15 CHAIRMAN WITTGRAF: Further discussion?
16 MR. UDDO: Mr. Chairman?
17 CHAIRMAN WITTGRAF: Mr. Uddo?
18 MS. PULLEN: Mr. Chairman, could the language be
19 read to me, please?
20 CHAIRMAN WITTGRAF: Yes. Ms. Pullen, this would be
21 additional language under Resolution No. 2, two new sentences
22 that read as follows: "The board of Directors of the Legal

1 Services Corporation favors adoption of a required retainer
2 agreement signed under oath setting forth the facts underlying
3 any claim or complaint pursued by a Legal Services' attorney.
4 This affidavit shall be discoverable in all proceedings,
5 admissable into evidence in disciplinary proceedings but not
6 admissable in any proceeding under merits."
7 Mr. Uddo?
8 MR. UDDO: Mr. Chairman, first I've got to ask Mr.
9 Kirk this. Do your clients sign a fact statement under oath,
10 Mr. Kirk?
11 MR. KIRK: I don't always get it under oath, but we
12 always get a --
13 MR. UDDO: But you never get it under oath; do you?
14 MR. KIRK: If I have them sign the complaint, which
15 I often do --
16 MR. UDDO: But that's a different issue. This is a
17 fact statement and a retainer agreement under oath. Let me
18 tell you why I think it's a significant question, because,
19 first of all, as you said, you don't think that this is
20 widespread, but that there are instances where this might be
21 helpful.
22 So, first of all, if we adopt this, we know that

1 we're imposing additional time-consuming steps in the process
2 of representation on a lot of people where there are not
3 abuses, where there really doesn't seem to be any need for it.
4 But my other concern is, and we heard an awful lot
5 of testimony -- there was more testimony than just the last
6 day -- a lot of the testimony indicated that language barriers
7 are a problem for this, and that we're going to have the
8 additional difficulty of making sure that there's proper
9 translation for someone whose first language is not English.
10 They are going to sign something that's been translated, maybe
11 hurriedly, under oath that may not have been translated as
12 accurately as it should have, though no ones fault or intent,
13 but that there are language problems and language barriers
14 that may be some part of it ends up not being perfectly
15 accurate in the translation, and they've signed it under oath.
16 I think that we're setting up poor folks to be
17 attacked for having committed perjury or something like
18 perjury when nothing like that was intended, nothing like that
19 was contemplated, and it could be nothing more than a slip up
20 in translation.
21 I think it's very uncommon to have clients sign
22 retainer agreements and fact statements under oath. I don't

1 see any reason why, in face of what's not a widespread abuse,
2 to impose that on all clients of legal services' grantees.
3 CHAIRMAN WITTGRAF: Mr. Kirk?
4 MR. KIRK: Would you agree to it if I took out the
5 words "under oath"?
6 MR. DANA: I'd feel better about it if we took out
7 the words "under oath" because I don't think it's fair to ask
8 people to sign something like this under oath. I'd still have
9 to be convinced that there is enough reason for it to justify
10 requiring this in every case for every legal services' client.
11 I didn't hear that testimony.
12 Maybe I missed it, but again, it seemed to be a
13 localized matter, a matter that is probably a problem in a few
14 states where migrant workers are in concentration. We're
15 talking about imposing something in all 50 states for every
16 client that every legal services grantee represents. We
17 really didn't hear it from anybody other than the migrant
18 area. So I'm hesitant about imposing that on all legal
19 services' grantees for all clients.
20 CHAIRMAN WITTGRAF: Mr. Kirk?
21 MR. KIRK: board members, I think that what Mr. Uddo
22 just said is the greatest reason why this needs to be adopted.

1 We need to get through all the translation problems. Can you
2 imagine any lawyer taking a suit and filing it without making
3 sure that the facts given to him were properly translated?
4 To think that anybody would take a suit and not get
5 a proper translation, on that basis file it against someone
6 and just -- then you're response is, when you try to make some
7 ethical claim, is, "Oh, I didn't understand what he said." I
8 think the burden has to be placed on the attorney to make sure
9 he knows what is said, what the significance is, and what the
10 basis of the lawsuit is. Surely, to get that information is
11 not a burden on anybody.
12 If there is strong feeling, I would be happy to take
13 the words "under oath" out, if that is going to draw more
14 support.
15 CHAIRMAN WITTGRAF: I think you want three words, if
16 I can presume to know what's in your mind, Mr. Kirk, "signed
17 under oath," those three words?
18 MR. KIRK: No, sir, "under oath."
19 CHAIRMAN WITTGRAF: Okay, if you want the word
20 "signed" in there --
21 MR. KIRK: A signed retainer.
22 CHAIRMAN WITTGRAF: You require a signed retainer

1 agreement. Signed would come between required and retainer.
2 MR. KIRK: Yes.
3 MR. HALL: Mr. Chairman?
4 CHAIRMAN WITTGRAF: Just a moment. Mr. Kirk?
5 MR. KIRK: I'll agree to that.
6 CHAIRMAN WITTGRAF: Mr. Kirk has eliminated the
7 words "signed under oath" from the end of the second line of
8 his amendment but put the word "signed" between the words
9 "required" and "retainer" earlier in the second line of his
10 amendment.
11 Ms. Pullen, you seconded that. Do you have any
12 objections?
13 MR. UDDO: No, Mr. Molinari did.
14 CHAIRMAN WITTGRAF: Excuse me, Mr. Molinari did.
15 He's not with us at this time. The Chair presumes his
16 acquiescence in his absence.
17 Mr. Hall?
18 MR. HALL: I was just going to say that I kind of
19 liked this proposal. I looked over the rationale that was
20 submitted by the committee that said requiring client
21 statements which are made explicitly discoverable as an
22 unacceptable invasion. I thought what if you made them

1 explicitly not admissable.

2 It seemed like the complaint, other than the
3 complaints about being overly burdensome, was that you sure
4 could trip a guy up on cross examination saying, "Look what
5 you signed a year and a half ago. The facts have turned out
6 to be this." You could really make him look bad. That is a
7 little bit unfair. So I really wouldn't make it admissable
8 into evidence.

9 But for some type of fact statement, I don't really
10 care if it's even signed or not, but for the attorney to set
11 forth what his claim is, and whether it's by a letter or
12 whether it's by retainer agreement or anything, is really what
13 I'm after here. So the person that receives the claim can
14 evaluate the case again for settlement and make his decision
15 on that. That's probably done in 99 percent of the cases,
16 anyway.

17 This thing rises out of the migrant farm worker
18 problem where some of the testimony, to me at least, indicated
19 that maybe they weren't clear on what all their claims were.
20 But they had claims. I'd just like for them to say, "This is
21 what our claim is. We think you have a torn screen on this
22 house over here. Go look at it. That's a violation. Here's

1 the law. You owe us so much," you know, rather than being
2 vague.
3 You know, if that can be -- that's really what I
4 thought it would serve a good purpose in requiring some type
5 of statement to be provided.
6 CHAIRMAN WITTGRAF: Further discussion? Ms. Pullen?
7 MS. PULLEN: I believe that this proposal would have
8 a salutary effect or would have had salutary effect in a
9 situation that occurred some years ago in a celebrated case
10 called Doe v. Bolton, which was a case that went all the way
11 to the United States Supreme Court and dealt with the
12 definition of health in the matter of whether or not a woman
13 was able to procure an abortion.
14 I have heard the plaintiff in that case speak in
15 recent times about her own disgust and extreme emotional
16 duress produced by the carrying forward of that case by legal
17 service attorneys with whom misrepresented the facts of the
18 matter, misrepresented what she was seeking, and carried to
19 the United States Supreme Court, making her an accessory to
20 the Roe v. Wade case, a matter that actually did not even
21 represent the facts in her case.
22 She was not aware at the time of what they were

1 representing or of the actions they were taking, supposedly in
2 her behalf, and has been deeply distressed ever since then
3 that legal service attorneys could take a case like this and
4 run with it on their own terms rather than on the terms of
5 their client. I would be supportive of Mr. Kirk's proposal in
6 the hopes that it might prevent such future abuses.
7 This does go beyond farm workers, although certainly
8 that's reason enough in terms of the testimony that has been
9 presented. It does go to other cases as well that are deeply
10 regrettable. I would hope they would never happen again.
11 CHAIRMAN WITTGRAF: Mr. Dana?
12 MR. DANA: Mr. Chairman, I'm not surprisingly
13 opposing this for a variety of reasons. I do not think that
14 we should be making the poor of this land the benefits of a
15 second-class justice system, the beneficiaries of a second-
16 class justice system.
17 To require every Legal Services' attorney to take,
18 in effect, the deposition of their client, knowing that what
19 that person first tells them is to be explicitly discoverable,
20 turns the attorney into something less than an advocate for
21 the client.
22 It's an absolute departure from everything I've ever

1 been taught about the ethics of a lawyer. I just think it is
2 unacceptable. I would be shocked if any of the attorneys at
3 this table did that -- produced in every case a document that
4 -- well, the very first thing they did was, in effect, take
5 the deposition of their client. It's entirely unacceptable in
6 a society that promises equal justice under law.
7 CHAIRMAN WITTGRAF: Further discussion?
8 (No response.)
9 CHAIRMAN WITTGRAF: Hearing none, we're prepared to
10 vote on the amendment as amended.
11 MR. UDDO: Just a technical --
12 CHAIRMAN WITTGRAF: Mr. Uddo.
13 MR. UDDO: You've left the word "affidavit" in here
14 despite the taking out of the "under oath." Do you intend to
15 do that?
16 CHAIRMAN WITTGRAF: Do you want to change that word,
17 Mr. Kirk, from "affidavit" to "agreement"?
18 MR. KIRK: Yes.
19 MR. UDDO: Statement, I would think.
20 CHAIRMAN WITTGRAF: Well, it depends.
21 MR. UDDO: What are you referring to? Is it two
22 different things or one thing?

1 CHAIRMAN WITTGRAF: It refers to the retainer
2 agreement, I believe.
3 MR. KIRK: Yes.
4 MR. UDDO: The retainer agreement?
5 CHAIRMAN WITTGRAF: The Chair's understanding is
6 that we're voting at this time on a second paragraph, two
7 sentences, for Resolution No. 2. As amended twice, that
8 resolution says as follows: "The board of Directors of the
9 Legal Services Corporation favors adoption of a required
10 signed retainer agreement setting forth the facts and relying
11 any claimer complaint pursued by Legal Services' attorneys.
12 This agreement shall be discoverable in all proceedings,
13 admissable into evidence and disciplinary proceedings but not
14 admissable in any proceeding on the merits."
15 Mr. Hall?
16 MR. HALL: I begin to have a bit of a problem with
17 it. I'm sorry to drag it out. But my problem arises, first
18 off, because I kind of wanted to whittle this down to the
19 place where the problem is perceived, and that is the migrant
20 farm worker field, and not to expand it all across the land in
21 every lawsuit that's filed. But that gives me a problem.
22 I understand that that has been mentioned, but

1 someone said that would be unconstitutional to do that, to
2 whittle it down to just where the problem is. Basile, I know,
3 teaches some constitutional law. I don't know if he had heard
4 that argument or not, but that gives me a problem.
5 Then there's lots of little minor things in it like
6 what happens if the guy who is signing it can't read? I don't
7 know, that may not be any big deal. Maybe it can be read to
8 him. I don't think it's really necessary for him to sign it.
9 I don't think it has to be a retainer agreement. I just want
10 some type of general statement from the attorney on why they
11 are making the claim, what it is based on, so it can be
12 evaluated.
13 I think that this is being interpreted two ways.
14 One, by me at least, as a general type of thing, saying this
15 is what's happened and by others is that it will require an
16 explicit detailed statement on every allegation. I mean, in
17 my mind, the thing could be amended once new causes of action
18 were found. It could be changed if the attorney found out
19 that his claim wasn't going to hold water, you know, if all
20 those things were in good faith.
21 All those changes and amendments and things could be
22 -- well, I won't get into that, but I have problems with it

1 because of those items. I don't know if Basile would care to
2 respond to that.
3 CHAIRMAN WITTGRAF: Mr. Uddo?
4 MR. UDDO: I think you're right. It does have those
5 problems. They are problems that are not solved by the
6 current wording. What if a client comes in and there's a
7 statute of limitations problem and action has to be taken
8 quickly? Is there a violation and what's the effect of the
9 violation if a suit is filed to meet a statute of limitations
10 deadline without this thing being signed because it needed to
11 be translated?
12 You know, I think that there's a -- I guess the
13 other question is what are the consequences of not doing this?
14 I mean, I don't think any state bar association is going to
15 use this as a standard for discipline. I mean, is this a
16 basis for defunding a program because a lawyer does this?
17 I think there's a lot of problems with it, and I
18 think it's heaping something on that doesn't need to be there
19 for the contained area, as you say, Blakeley, where the
20 problem is.
21 CHAIRMAN WITTGRAF: Mr. Hall?
22 MR. HALL: Just very quickly, what I said I wasn't

1 going to get into, I'll get into. The place where I would
2 punish would be at the hearing on attorney's fees if the
3 procedure had a second different phase, a second phase of the
4 trail, where they took into account the attorney's fees. I
5 could see where someone would say, "Hey, your Honor, had I
6 known that, had he put that in his affidavit in June instead
7 of in December, we wouldn't have been in litigation all those
8 months. I would have paid. But he knew it and he didn't do
9 it then. They would cut down the award of fees."
10 Like I said, that's opening Pandora's box and a
11 whole bunch more language. I'm not opposed to this in
12 principle, and it is just a resolution. But I think it could
13 use some refinement.
14 CHAIRMAN WITTGRAF: Mr. Molinari?
15 MR. MOLINARI: Mr. Chairman, I think everybody
16 agrees that there's a problem out there and it should be
17 addressed. The problem is we can't agree on how to address
18 it. This is probably not a perfect amendment, but it goes a
19 long way towards addressing the problem that everybody says is
20 there.
21 Mr. Kirk has specifically said it's not admissable
22 in any proceeding on the merits. So the person who is making

1 the claim, the plaintiff, if you will, is protected. It's
2 only discoverable where there might be disciplinary
3 proceedings -- I'm sorry, admissable in disciplinary
4 proceedings. That's the point that they're trying to address.
5 Legal fees is one thing, but it may be that the
6 lawyer has done somewhat more. To suggest one of the reasons
7 why you might want to vote against this is that the statute of
8 limitations might be expiring so you don't have time to
9 prepare this retainer agreement.
10 My God, how long does it take to prepare a retainer
11 agreement? If you want to vote against it, I mean, you can
12 vote against it. But I don't hear these reasons as being
13 logical reasons for a negative vote.
14 CHAIRMAN WITTGRAF: Mr. Kirk?
15 MR. KIRK: All this says is, "Lawyer, before you
16 take a case, make sure you understand what your client claims
17 the basis is. Get a piece of paper, put it in writing, and
18 have him sign it or put his X on it." You know, we deal with
19 illiterates all the time. Illiterates sign deeds. I mean,
20 this all happens with no problem in every day operation of our
21 legal system.
22 To say that a lawyer -- it's too much of a burden

1 for a lawyer to have to take a piece of paper and say, "Let me
2 make sure that this is what you're telling me" and write it
3 down and say sign this -- you know, if you all want to change
4 the retainer agreement to piece of paper or statement, I don't
5 care what, but there is no ground -- there are no grounds
6 whatsoever for any lawyer to say it's too much trouble. It
7 takes too much time for me to find out what the basis of my
8 client's claim is.
9 CHAIRMAN WITTGRAF: Mr. Rath?
10 MR. RATH: I'm getting more confused as the
11 discussion goes on, which is not uncommon with me. I don't
12 mean to reflect on Mr. Kirk at all. First of all, as I read
13 the words "retainer agreement," I understood it to be one
14 thing. I frequently, with my clients, the few that are left
15 viable in New England these days, have them sign engagement
16 letters, which basically outline the terms of the engagement.
17 When I read retainer, I have visions of financial
18 arrangements dancing in my head. Then when I go forth to
19 "setting forth the facts underlying any claim or complaint,"
20 when do you prepare this? This doesn't say when it is to be
21 prepared? It doesn't say whether there's a continuing
22 obligation to update it as you investigate the case and find

1 out more about whether there is a case worth pursuing or not.
2 Third, or fourth I guess, I have a real problem
3 because it seems to me to put a burden on an attorney to sit
4 across the table from his would-be client and ask that client
5 -- the client tells that person something. The attorney
6 generates a document which, to me, is the essence of work
7 product, and it seems to me you're treading very close to the
8 privilege.
9 Now, the way in which that privilege is finally
10 revealed is a complaint which comes out of it or in the demand
11 letter, which I think serves much the same purposes as this
12 does. Where does it bring in the issue of how an attorney
13 evaluates a case, and where does he draw the line in terms of
14 hearing what the client is telling the attorney and then
15 embroidering on it or somehow interpolating on it of necessity
16 some version that the attorney says as he tries to understand
17 what the complaint is and work through a series of causes of
18 action?
19 Finally, I guess, who reviews whether there has been
20 compliance with this and whether the compliance has been
21 sufficient so as to put the other side on notice?
22 I don't have any problem with the engagement letter

1 concept, which is where I thought you were going. Even though
2 I probably, in principles, would vote against it, I think that
3 there may be a basis so that there is an understanding of what
4 the financial arrangement is between the two.
5 But when you get into the nature of the case, it
6 seems to me to penetrate the very essence of the relationship
7 between lawyer and client, and I have a problem with that.
8 CHAIRMAN WITTGRAF: Mr. Kirk?
9 MR. KIRK: Very simple; the facts on which you base
10 your claim. That's all it says. These are the facts, and
11 those facts shouldn't change. Those facts should be there.
12 Later on, whatever happens in the lawsuit, that's what
13 happens. But we know at this point what facts the lawyer had
14 to file the lawsuit.
15 What it is is nothing more than what any lawyer in
16 here does with every single client. Let me get down the
17 facts. Let me make sure I understand them. I will assure you
18 that once this is passed, there won't be any more problems
19 with migrant workers coming up and appearing at two different
20 places at the same time. This is what it's all about.
21 CHAIRMAN WITTGRAF: Mr. Rath?
22 MR. RATH: I will concede to you that it is very

1 similar to what every lawyer does. The difference is that now
2 I am being compelled to give it to my adversary.
3 CHAIRMAN WITTGRAF: Mr. Molinari?
4 MR. MOLINARI: Years ago when I actively practiced
5 law, there was an area of condemnation. I don't know, Howard,
6 what it is in your states and the others, but we had to send
7 in a copy of a retainer agreement to the appellate division,
8 the group that oversaw the actions of the attorneys. You had
9 to put in there the nature of the case, the retainer
10 agreement, how you got the client, and what the arrangement
11 was between the attorney and client, and when you filed.
12 The basic reason why they did that in New York State
13 was because there were people out there soliciting improperly.
14 At the same time, you had to let the appellate division know
15 what your agreement was.
16 CHAIRMAN WITTGRAF: Mr. Dana?
17 MR. DANA: I think, Congressman, that that law or
18 rule of practice applied to rich clients and poor clients;
19 correct?
20 MR. MOLINARI: Oh, sure.
21 MR. DANA: Well, this doesn't. This is one rule for
22 poor people and everybody else lives by another rule. That's

1 the reason that, at the bottom line, I think it goes a long
2 way to destroying the attorney-client privilege for the poor.
3 I think that it has -- there are other problems with it that
4 have been alluded to, but the fact that this is an agreement,
5 a statement that is setting forth all the facts on which the
6 lawyer is supposedly bringing a complaint, and probably a few
7 other extraneous facts because how many clients come into you
8 and know all the facts?
9 My clients maybe don't come in in a packaged way,
10 but they lay out lots of problems. Only some of them find
11 their way into a complaint. But you write it all down. If
12 you come upon something else in your investigation, do you
13 have to go back and update this thing that is constantly
14 discoverable? I mean, it is a nightmare which is not a
15 problem for the rich. It's not a problem for the middle
16 class. If this passes, it would only be a problem for the
17 people we're supposed to be helping.
18 CHAIRMAN WITTGRAF: Mr. Molinari?
19 MR. MOLINARI: Let me quickly respond to that. This
20 rich-poor argument, the rich person or the rich farmer, if you
21 will, doesn't have a problem. It's the poor farmer. We must
22 understand there are an awful lot of poor farmers in this

1 country. They are falling by the wayside every day. Their
2 future is indeed in question.
3 So they are the ones that I'm concerned about, the
4 ones that don't have the money to go out and hire a battery of
5 lawyers. Somebody holding perhaps a gun to their head and
6 what do they do? They can't go out and hire expensive Madison
7 Avenue lawyers or these expensive lawyers from Maine and
8 Massachusetts.
9 But, really, a person with money doesn't have a
10 problem. It's the farmer that doesn't have the money that's
11 most effected by it. I think that's who is going to benefit
12 most from this amendment.
13 CHAIRMAN WITTGRAF: The Chair is prepared to move
14 to a vote. I've read the amendment. Does anybody want me to
15 read it again?
16 (No response.)
17 CHAIRMAN WITTGRAF: Those who are in favor of the
18 amendment as amended will signify by saying aye.
19 (A chorus of ayes.)
20 CHAIRMAN WITTGRAF: Those opposed, nay.
21 (A chorus of nays.)
22 CHAIRMAN WITTGRAF: The Chair is in doubt. Mr.

1 Dana?

2 MR. DANA: No.

3 CHAIRMAN WITTGRAF: Mr. Guinot?

4 (No response.)

5 CHAIRMAN WITTGRAF: Mr. Hall?

6 MR. HALL: No.

7 CHAIRMAN WITTGRAF: Mr. Kirk?

8 MR. KIRK: Yes.

9 CHAIRMAN WITTGRAF: Ms. Love?

10 MS. LOVE: Pass.

11 CHAIRMAN WITTGRAF: Mr. Molinari?

12 MR. MOLINARI: Yes.

13 CHAIRMAN WITTGRAF: Ms. Pullen?

14 MS. PULLEN: Yes.

15 CHAIRMAN WITTGRAF: Mr. Rath?

16 MR. RATH: No.

17 CHAIRMAN WITTGRAF: Mr. Uddo?

18 MR. UDDO: No.

19 CHAIRMAN WITTGRAF: Mr. Wittgraf votes no.

20 Ms. Wolbeck?

21 MS. WOLBECK: Yes.

22 CHAIRMAN WITTGRAF: The Chair's understanding is

1 that the vote is 5 and 5. The amendment fails for want of a
2 majority.
3 MR. UDDO: No. It's 5 and 4 and 1.
4 CHAIRMAN WITTGRAF: Excuse me. There was an
5 abstention. The Chair stands corrected. The amendment fails
6 for want of a majority, 4 to 5 rather than 5 to 5, 1
7 abstention, 1 not present.
8 MR. UDDO: Mr. Chairman, I would like to know what
9 the Chair's intention is with the rest of these resolutions.
10 I know Mr. Rath is going to be departing soon. I don't know
11 if anyone else is under time constraints this afternoon. Are
12 we going to --
13 CHAIRMAN WITTGRAF: The Chair was hoping to keep
14 going through them. As has been indicated this afternoon, as
15 I think we all knew anyway, sometime in the next week or two
16 the mark-up process will continue forward in the House
17 Judiciary Committee. I think whatever statements of principle
18 or otherwise we're going to make probably should be made as
19 soon as possible.
20 I feel badly about Mr. Rath having to leave in a
21 little bit, but the Chair is prepared to move through the
22 resolutions.

1 MR. UDDO: Do we know what date the committee
2 intends to meet again?
3 CHAIRMAN WITTGRAF: The board is scheduled
4 tentatively to meet on Monday, August 12, next.
5 MR. UDDO: No, not the board, the House Committee.
6 CHAIRMAN WITTGRAF: There are differing opinions.
7 Some suggest during the week of July 22; others suggest during
8 the week of July 15. In either case, it would be during the
9 next two weeks.
10 MR. MARTIN: Or September.
11 MR. UDDO: Or September?
12 MR. MARTIN: Yes. I've heard that it's --
13 MR. UDDO: Well, you know, I'm --
14 CHAIRMAN WITTGRAF: The mark up is a more or less a
15 halfway completed process. I think it's likely that the mark
16 up will be completed between now and the August recess on or
17 about August 2.
18 MR. UDDO: I'd kind of like to have everybody here
19 when we finish these. I think we're already one short and
20 will be another one short soon. I don't know if anyone else
21 is preparing to leave. Is there any chance that the board
22 could meet again within the next two to three weeks to

1 complete these?

2 CHAIRMAN WITTGRAF: Mr. Kirk?

3 MR. KIRK: I would oppose that. You know, we
4 started late today to accommodate your schedule. That's kind
5 of why we're in this jam. I mean, I'd love to have Mr. Guinot
6 here. I think that it may have changed the outcome of some of
7 them. But I'd like to get through, and I don't think my
8 schedule is going to permit me much room in the next few
9 weeks.

10 MR. RATH: Can I ask a question?

11 CHAIRMAN WITTGRAF: Mr. Rath?

12 MR. RATH: I apologize to my colleagues. I'm in a
13 difficult personal circumstance, as I've explained to the
14 board chairman, even being here today at all. So I enter my
15 apologies. It occurs to me that there are a lot of genuine
16 issues that I am pleased for the first time in my service on
17 the board we're actually discussing, and I think it's helpful.
18 I'm pleased with the level of the colloquy.

19 I'm not certain, and I guess I would defer to those
20 of you more experienced than I in the ways of Washington, what
21 a lot of 5-4, 6-5 votes one way or the other on any of these
22 issues are going to mean.

1 CHAIRMAN WITTGRAF: Seeing we're not the Supreme
2 Court.
3 MR. RATH: Yes. I don't want to cut the exercise
4 short, but I think that we are demonstrating some genuine
5 division, which is healthy, not at all to be critical of it.
6 But I'm not sure what winning or losing on a particular issue
7 is going to mean in terms of how the Congress is going to view
8 it.
9 I don't know whether there's an alternative to
10 suggest a report which reflects the genuine divisions of this
11 board and says up or down it's hard for this board to sign off
12 on these. I think there are going to be issues here -- I know
13 the next issue is one I care a great deal about to come before
14 us. It's going to be very hard for this board to speak with a
15 very strong voice to the Congress about it.
16 I'm willing to go through this exercise at another
17 date, but I don't know that any of us are going to convince
18 the others. I guess I wonder where we think we're going and
19 how effective we're going to be in this kind of a situation
20 where the votes are clearly so closely divided.
21 CHAIRMAN WITTGRAF: I think you're probably right as
22 it pertains to approximately half of the resolutions. On the

1 other hand, there are certain of the resolution, looking at
2 the resolutions regarding timekeeping, competition,
3 copayments, for example, where I think there's unanimity. In
4 some small way, perhaps, our voice will be heard.
5 MR. RATH: I certainly think, Mr. Chairman, if I
6 might, that maybe we could identify those. If there's a set
7 of resolutions that don't have amendments attached to them,
8 maybe we could get those adopted and leave the others to
9 further discussions, which we can do today. If there's going
10 to be unanimous vote on any of them, I'd kind of like to get
11 to it.
12 CHAIRMAN WITTGRAF: I would assume we have an
13 unanimous or near unanimous vote on those for which amendments
14 are not pending.
15 MR. KIRK: Well, just because I didn't prepare one
16 doesn't mean --
17 CHAIRMAN WITTGRAF: I said near unanimous, Mr. Kirk,
18 I didn't say unanimous.
19 MR. KIRK: Could I respond to that?
20 CHAIRMAN WITTGRAF: Mr. Kirk?
21 MR. KIRK: I really spent a lot of time working on
22 this, Mr. Rath. My feeling is that timekeeping will not have

1 much dispute. Local board control, I have a very minor
2 amendment to that that should not create too much difficulty.
3 Non-LSC funds, I have to lines I want to take out of that, and
4 I think we can get a unanimous vote.
5 Competition, although I'm worried about the wording
6 of it and we might argue about the wording, I think
7 conceptually we're probably in the same ballpark. But whether
8 my wording is going to be acceptable or not, I don't know.
9 Copayments I expect unanimity on; attorney's fees, I do not.
10 Class actions, I have what I do not consider a radical
11 amendment to that, but that might be a problem. Attorney-
12 client privilege, I'm willing to join everybody on that one.
13 Alternative dispute resolution, I'll join on that one. Waste,
14 fraud and abuse, I'll join on that one. Monitoring, I'll join
15 on that one. Fifteen, which I never understood, I won't join
16 on. So I think that there are some.
17 CHAIRMAN WITTGRAF: Mr. Rath?
18 MR. RATH: All right. I certainly would be willing
19 to -- if the other members are agreeable, to take a vote on
20 those that we can agree on. If that would be helpful to the
21 Congress in its deliberations, Lord knows we ought to give the
22 Congress as much help as we can.

1 CHAIRMAN WITTGRAF: Let us move, if I understand the
2 sense of the board, to those resolutions where there is not
3 presently any significant difference of opinion among the
4 members of the board, consider those and then consider the
5 others when next we meet as a board.
6 MR. KIRK: I think we can get to them after. Let's
7 get the ones out of the way, though, while everybody is here.
8 MS. PULLEN: Mr. Chairman?
9 CHAIRMAN WITTGRAF: Just a minute, Ms. Pullen. As I
10 was understanding the discussion, that would be somewhat
11 backwards. If there were ones without any disagreement
12 anyway, we can do those with five or six of us here. It's the
13 ones where there's disagreement, I guess, that there seems to
14 be some concern about the give and take.
15 Ms. Pullen?
16 MS. PULLEN: May I point out, Mr. Chairman, that
17 although Resolution No. 2 has been amended, it has not been
18 adopted?
19 CHAIRMAN WITTGRAF: Thank you, Ms. Pullen. In light
20 of Ms. Pullen's admonition, let the Chair call for a vote on
21 Resolution No. 2 so we at least have that matter reconciled.
22 Those who are in favor of Resolution No. 2 -- discussion, Mr.

1 Hall?

2 MR. HALL: Well, I was really embarrassed to bring
3 it up, but as we had this last discussion, I wrote up what I
4 would like to have seen as an amendment that concerns the
5 statement. If you all are too tired to hear it, I can wait
6 until the end of the other discussion, but I'm ready to read
7 it.

8 It would be offered in place of the last one that we
9 defeated.

10 CHAIRMAN WITTGRAF: Yes, Mr. Hall. That will be in
11 order. The Chair will take a five-minute recess at this time.

12 (A brief recess was taken.)

13 CHAIRMAN WITTGRAF: At this time, Mr. Hall, if
14 you're prepared in some form to offer another amendment to
15 Resolution 2 as amended once previously, that amendment is in
16 order. Mr. Hall? We will call this Amendment 2C for sake of
17 a better name. Mr. Hall?

18 M O T I O N

19 MR. HALL: All right, 2C. It would read, "The board
20 of Directors of the Legal Services Corporation favors the
21 adoption of requiring Legal Services' lawyers to provide
22 potential defendants in migrant farm worker cases with a

1 written statement signed by either the Legal Services'
2 attorney or client, which sets forth the nature of the case
3 and the facts underlying the claim, and said statement to be
4 sent to the proposed defendant." That may be a little
5 repetitious there.
6 CHAIRMAN WITTGRAF: Why don't you read that again,
7 if you will, please?
8 MR. HALL: Yes, let me start over. "The board of
9 Directors of the Legal Services Corporation favors adoption of
10 requiring Legal Services' lawyers to provide" --
11 CHAIRMAN WITTGRAF: How about favors the requirement
12 that?
13 MR. HALL: Okay, "the requirement that Legal
14 Services' lawyers to provide potential defendants with a
15 written statement setting forth the nature of the case and the
16 facts underlying the claim in migrant farm worker cases only.
17 This statement is not admissable into evidence in the
18 proceeding on the merits and is admissable only in
19 disciplinary proceedings and hearings on attorney's fee
20 awards."
21 MR. KIRK: I second.
22 MR. HALL: I don't know if I could read it again.

1 CHAIRMAN WITTGRAF: I wish you would try. The board
2 of Directors favors the requirement that Legal Services'
3 attorneys provide potential defendants with statements of
4 facts?
5 MR. HALL: Well, with a written statement signed by
6 either the attorney or the client.
7 CHAIRMAN WITTGRAF: Okay, with a written statement
8 signed either by an attorney or a client.
9 MR. HALL: Right, which sets forth the nature of the
10 case and the facts underlying the claim being made.
11 CHAIRMAN WITTGRAF: Which sets forth the facts
12 underlying the claim being made.
13 MR. DANA: In the nature of the case and --
14 MR. HALL: Setting forth the nature of the case and
15 the facts underlying the claim.
16 CHAIRMAN WITTGRAF: And the facts underlying.
17 MR. HALL: In migrant farm worker cases only.
18 CHAIRMAN WITTGRAF: Okay.
19 MS. PULLEN: Mr. Chairman?
20 CHAIRMAN WITTGRAF: Just a minute, Ms. Pullen.
21 MR. HALL: Take out the word "only." It's a little
22 bit burdensome, awkward.

1 CHAIRMAN WITTGRAF: Okay. Was there another
2 sentence then?
3 MR. HALL: Yes. This statement is not admissable
4 into evidence on the proceeding on the merits.
5 CHAIRMAN WITTGRAF: Such written statements should
6 not be --
7 MR. HALL: Are not admissable but are admissable in
8 disciplinary proceedings and hearings on attorney's fee
9 awards.
10 CHAIRMAN WITTGRAF: Ms. Pullen?
11 MS. PULLEN: I'm wondering whether the gentleman
12 would accept an amendment to add "client" after "the
13 defendant."
14 MR. HALL: I couldn't understand that, Penny.
15 CHAIRMAN WITTGRAF: Would you say that again,
16 please, Ms. Pullen?
17 MS. PULLEN: I believe the first sentence is
18 something to the effect of the attorney shall furnish to the
19 defendant a statement, et cetera. Would he accept adding the
20 phrase "and the client" after "defendant"?
21 MR. HALL: Sure. It should be a written statement.
22 MS. PULLEN: So the client has a document setting

1 forth the attorney's understanding of the facts.

2 MR. HALL: Well, okay.

3 CHAIRMAN WITTGRAF: Good.

4 MR. HALL: I would accept that.

5 MR. KIRK: I will accept it for the amendment

6 purposes, my second purposes.

7 CHAIRMAN WITTGRAF: The motion has been made by Mr.

8 Hall and seconded by Mr. Kirk. Let me see once more if I'm

9 close to what you have for purposes of the record here. Mr.

10 Hall, I understand it to be as follows: "The board of

11 Directors of the Legal Services Corporation favors the

12 requirement that Legal Services' attorneys provide potential

13 defendants and the clients with written statements signed by

14 the attorneys or by the clients, which statements set forth

15 the nature of the case and the facts underlying the complaints

16 being made in migrant farm worker cases."

17 MR. HALL: Yes.

18 CHAIRMAN WITTGRAF: The second sentence, "Such

19 written statements are not admissable in cases on the merits

20 but only in attorney disciplinary cases and as to attorney fee

21 awards --

22 MR. HALL: And in attorney fee award hearings or on

1 the issue of attorney's fees, because sometimes it -- I don't
2 know. I just assume that maybe all in one hearing fees may be
3 testified to. I don't know how that works.
4 One problem with that would be that under the first
5 amendment that we adopted that said that courts could allow
6 the name to be left off, I guess mine would be consistent with
7 that because in that case it could be signed by the attorney
8 and not by the claimant. So scratch that. There's no problem
9 there. But I'd like to speak in favor of it briefly.
10 CHAIRMAN WITTGRAF: Mr. Hall?
11 MR. HALL: We did have a lot of testimony from
12 farmers that they felt was a problem that they didn't really
13 know what the case was about and that they, a lot of times,
14 settled out of fear, that they would like to know what they
15 were being sued for, that it would be -- so that they could
16 make an evaluation of it, perhaps settle it early on and save
17 everybody a lot of time and money.
18 With this requirement, it narrows it down just to
19 where the problem is, which was in the migrant farm worker
20 field. If that's unconstitutional, then the whole thing will
21 fall. I don't know if it is or not. But it narrows it down
22 to that one problem. It's not across the board.

1 If the LSC lawyers want to -- I mean, it's up to
2 them to provide as much of the information as they feel
3 justified. Come time on the attorney fee awards, if the
4 farmer or the other folks feel like they haven't been given
5 everything or should have been given more, they could have
6 settled earlier on had they been given more, then that's when
7 they can use the statement to their benefit.
8 I think that's some -- it gives the Legal Services'
9 lawyer some desire, knowing that will be brought up at that
10 stage of the hearing to set forth all these facts already on.
11 If he doesn't, he may be punished on attorney's fees.
12 CHAIRMAN WITTGRAF: Further discussion? Mr. Kirk?
13 MR. KIRK: I was just going to say I strongly think
14 that it should apply to everything, all actions, but I'm
15 willing to take this piece of the apple. Question.
16 CHAIRMAN WITTGRAF: Mr. Hall, I guess my concern
17 here would be while you're trying to take out what seems to be
18 the most disagreeable area as far as legal representation
19 claims have been made or to speak to the problem area, I guess
20 I've got the concern that I had a year ago when we began to
21 make special requirements for Legal Services' attorneys under
22 the Agricultural Workers Protection Act of indicating that

1 they had to go through special kinds of procedures and had to
2 obtain special kinds of documentation in such cases before
3 they could proceed under AWPA. Legal Services' attorneys, I
4 think the record indicates, are about the only attorneys, with
5 the exception of perhaps a few pro bono attorneys who do
6 migrant worker cases.
7 I'm concerned with our making Legal Services'
8 attorneys, or migrant workers as their clients, a sort of
9 second-class citizen under the legal procedures that we use.
10 So I commend you, I guess, for trying to focus on the problem
11 that's been discussed before us most often, but I'm troubled
12 by the narrow focus. I think it's an unfair focus. I guess
13 for that reason, I will oppose it.
14 Further discussion?
15 (No response.)
16 CHAIRMAN WITTGRAF: Hearing none, the Chair will
17 attempt once more to read the resolution and will stand
18 corrected, as necessary, by Mr. Hall, so as to do justice to
19 the resolution. "The board of Directors of the Legal Services
20 Corporation favors the requirement that Legal Services'
21 attorneys provide potential defendants and clients with
22 written statements signed either by the attorneys or by the

1 clients, which set forth the nature of the cases and the facts
2 underlying the complaints being made in migrant farm worker
3 cases. Such written statements shall not be admissable in
4 cases on the merits but shall be admissable only in attorney
5 disciplinary proceedings and in attorney fee award
6 proceedings."
7 MR. KIRK: Question.
8 MR. HALL: That's close enough. I mean, I could
9 have drafted it a little bit better. I know that I didn't do
10 a good job there, but that's it. So that's okay.
11 CHAIRMAN WITTGRAF: Those who are in favor of the
12 amendment to the resolution will signify by saying aye.
13 (A chorus of ayes.)
14 CHAIRMAN WITTGRAF: Those who are opposed, nay.
15 (Two votes of nay.)
16 CHAIRMAN WITTGRAF: The ayes appear to have it. The
17 ayes do have it. The amendment is adopted.
18 We now move to the resolution, Resolution No. 2, as
19 amended twice. Is there discussion on the Resolution No. 2 as
20 amended twice?
21 MS. PULLEN: I call the question.
22 MR. UDDO: You better read the resolution. Is the

1 first sentence from the board book still a part of the
2 resolution?
3 CHAIRMAN WITTGRAF: Yes. Yes. The resolution at
4 this point is in two paragraphs. The first paragraph includes
5 two sentences. The first is the sentence that's on page 16 of
6 the board book, the first sentence of the paragraph, there.
7 The second sentence is the twice amended resolution enumerated
8 Roman Numeral IIA as adopted. Then there's a new paragraph,
9 which is the two sentences just adopted based upon the motion
10 of Mr. Hall as seconded by Mr. Kirk. I hesitate to read it
11 all again, because every time I do, I get a different version.
12 MR. UDDO: I just want to make sure the first
13 sentence was the same.
14 CHAIRMAN WITTGRAF: Further questions? Further
15 discussion. Mr. Kirk.
16 MR. KIRK: I only have two comments. I think, for
17 clarification purposes, to start II-A with a "however" and
18 Mr. Hall's with a "however" is going to make it blend more
19 easily with the first sentence. I don't think that's going to
20 change the meaning at all.
21 CHAIRMAN WITTGRAF: The Chair asks unanimous consent
22 for those two stylistic changes. Hearing no objections, those

1 two stylistic changes, as noted by Mr. Kirk, are made for the
2 record. We now have before us the resolution, as you just
3 described it, as amended. Is there discussion on the
4 resolution? (No response.)
5 CHAIRMAN WITTGRAF: Those who are in favor of
6 resolution will signify by saying aye.
7 (Chorus of ayes.)
8 CHAIRMAN WITTGRAF: Those who are opposed will
9 signify by saying nay.
10 (A chorus of no.)
11 CHAIRMAN WITTGRAF: The nays appear to have it, but
12 I think a roll call vote probably is in order on resolution as
13 amended. The vote is on the resolution as amended.
14 Mr. Dana?
15 MR. DANA: Nay.
16 CHAIRMAN WITTGRAF: Mr. Guinot?
17 MR. GUINOT: (No response.)
18 CHAIRMAN WITTGRAF: Mr. Hall?
19 MR. HALL: Yes.
20 CHAIRMAN WITTGRAF: Mr. Kirk?
21 MR. KIRK: Yes.
22 CHAIRMAN WITTGRAF: Ms. Love?

1 MS. LOVE: Yeah.

2 CHAIRMAN WITTGRAF: Mr. Molinari?

3 MR. MOLINARI: Yes.

4 CHAIRMAN WITTGRAF: Ms. Pullen?

5 MS. PULLEN: Yes.

6 CHAIRMAN WITTGRAF: Mr. Rath?

7 MR. RATH: (No Response.)

8 CHAIRMAN WITTGRAF: Mr. Uddo?

9 MR. UDDO: No.

10 CHAIRMAN WITTGRAF: Mr. Wittgraf votes no. Ms.
11 Wolbeck?

12 MS. WOLBECK: Yes.

13 CHAIRMAN WITTGRAF: The ayes appear to have it 6 to
14 3. The ayes do have it 6 to 3. The resolution as amended is
15 adopted. Mr. Uddo.

16 MR. UDDO: Resolution No. 3, as proceeded by the
17 Committee is the board of directors of the Legal Services
18 Corporation favors the existing provisions permitting
19 representation of clients before administrative agencies,
20 legislative bodies and in responding to agency and elected
21 officials.

22 M O T I O N

1 MR. KIRK: I move to amend.

2 CHAIRMAN WITTGRAF: Mr. Kirk.

3 MR. KIRK: I move to amendment by substituting in
4 place of No. 3 by the committee, No. 3 that I have submitted
5 which states, "Lobbying: The board of directors of the Legal
6 Services Corporation favors prohibiting the use of any funds
7 made available by the corporation to influence a discussion by
8 any federal, state, or local agency or legislative body,
9 except when: A) legal assistance is being provided to an
10 eligible client on a particular claim, case, or other matter
11 which directly involves the client's rights or legal
12 responsibilities, or B, when information or testimony is
13 requested from a Legal Services' attorney by an elected or
14 other government official.

15 "Nor should Corporation funds be used to favor or
16 oppose any act, bill, resolution or legislative initiative in
17 any elective body." What I did, in this effort, was to
18 provide that where you had a client, and Ms. Wolbeck gave me a
19 list of instances where Legal Services Corporation attorneys
20 did need to appear before legislative bodies and plead their
21 clients, and in each case, they had a client, a specific
22 client, and paragraph A is intended to allow for that type of

1 thing, trying to avoid the grass roots lobbying and the things
2 of that sort, and that's what the purpose of this is.
3 I was moved by the necessity of having Legal
4 Services Corporation attorneys at zoning hearings, things like
5 this, where they do have multiple people whose interest are at
6 stake, and I think it's an efficient use of their time and
7 money. So I've tried to word this in such a way that it would
8 allow for that.
9 It's not artfully done, and I'll be happy to accept
10 any suggestions for improvement, but I believe that it's one
11 of those that really solves both of the concerns.
12 CHAIRMAN WITTGRAF: Is there a second?
13 MR. MOLINARI: I'll second it.
14 CHAIRMAN WITTGRAF: The motion is seconded.
15 Ms. Wolbeck.
16 MS. WOLBECK: Would Mr. Kirk explain to me the
17 difference between his and the one proposed by the committee,
18 or is there a difference?
19 CHAIRMAN WITTGRAF: Good question. I have the same
20 question. I'm not sure what the difference is between your
21 statement, Mr. Kirk, as contained in that amendment and the
22 existing provisions of the law.

1 MR. KIRK: If there is no difference, then I would
2 suggest that all of you join me in adopting mine. I think
3 it's much clearer and tells on its face exactly what's allowed
4 and what isn't, and if that in fact reflects current law, then
5 I would invite you all to join me with one that does in fact
6 clearly reflect --
7 MS. PULLEN: Mr. Chairman.
8 CHAIRMAN WITTGRAF: Ms. Pullen.
9 MS. PULLEN: I would urge Mr. Kirk to draft a
10 paragraph B, because it renders the rest of what he is trying
11 to do absolutely ineffective. They have very close
12 relationships between those grantees that engage in lobbying
13 and politically elected legislators and other public
14 officials, as was illustrated by our discussion earlier about
15 what the definition of board is, in connection with this other
16 service in Washington, it is very easy to obtain an invitation
17 or a summons to testify from a public official.
18 I strongly believe in what I believe Mr. Kirk is
19 attempting to do, because I think that there has been gross
20 abuse of the needs of indigent Americans by use of Legal
21 Services' funds for lobbying public policy questions that do
22 not relate to individual needs of individual clients, but I

1 believe that paragraph B removes the effectiveness of what it
2 is you were attempting to do.
3 CHAIRMAN WITTGRAF: Mr. Kirk, that certainly would
4 make a difference, then, between your amendment and the
5 resolution as presented. What is your view on the friendly
6 suggestion or amendment proposed by Ms. Pullen.
7 MR. KIRK: I am concerned that it may not receive
8 the universal support that I think my statement would, but I
9 would rather treat hers as an amendment, and I will second
10 that and put it up for discussion.
11 CHAIRMAN WITTGRAF: Are you moving the striking of
12 paragraph B from Amendment No. 3, Ms. Pullen?
13 MS. PULLEN: I do not have it before me, but as I
14 understood the reading of it, that's what I would ask Mr. Kirk
15 to accept.
16 CHAIRMAN WITTGRAF: Okay. He says he thinks it's
17 appropriate not to view it as a friendly amendment, but if you
18 wanted to make it a formal amendment, he will second your
19 amendment.
20 MS. PULLEN: Well, I would then, move to amend his
21 substitute.
22 CHAIRMAN WITTGRAF: Okay. An amendment has been

1 made to amend the amendment by striking paragraph B from the
2 second paragraph thereof. Ms. Wolbeck.
3 MS. WOLBECK: The last sentence, does that not say
4 something to what Penny is objecting to, or if it doesn't,
5 what does it say? Doesn't that prohibit what she's saying is
6 a problem? No?
7 CHAIRMAN WITTGRAF: I think it probably does, yes.
8 Ms. Pullen, the final sentence of the resolution says, "Nor
9 should corporation fund be used to favor or oppose any act,
10 bill, resolution, or legislative initiative in any elective
11 body." That's the end of that quote.
12 Ms. Wolbeck's question to you, I guess, is in light
13 of that part of the amendment, why do you believe it's
14 necessary, then, to strike paragraph B from the middle
15 paragraph of the amendment?
16 MS. PULLEN: Well, I think paragraph B is
17 inconsistent with the intent of that last sentence in that the
18 resolution would be more internally consistent without
19 paragraph B.
20 CHAIRMAN WITTGRAF: Mr. Kirk.
21 MR. KIRK: I believe her observation is probably
22 correct. I took the wording of the current one and tried to

1 just work within that wording, and perhaps her observation is
2 correct. MR. WITTGRAF: Further discussion on the amendment
3 to the amendment. Mr. Dana.
4 MR. DANA: I think 5 to 4 what is being proposed is
5 just barely constitutional, and that is to muzzle a Legal
6 Services lawyer so that if called upon to answer a question by
7 an elected official, they cannot respond, if I understand the
8 thrust of the amendment, and I oppose it, even though it may
9 be constitutional 5 to 4, I think that it would be entirely
10 unfortunate to have this board go on record as saying that our
11 lawyers should not be able to respond to a request for
12 information or testimony from a member of Congress or a state
13 or local legislative or administrative body.
14 MR. WITTGRAF: Further discussion on the amendment
15 to the amendment. Mr. Hall.
16 MR. HALL: I would think that Congress would want
17 that left in, and they certainty would want that access to
18 lawyers who have specialized knowledge in special fields, and
19 I would oppose taking that out.
20 MR. WITTGRAF: Further discussion on the amendment
21 to the amendment.
22 MS. WOLBECK: Mr. Chairman.

1 MR. WITTGRAF: Ms. Wolbeck.

2 MS. WOLBECK: B has to stay in to accept it for me
3 also, because I think it's taking away rights that they have
4 to have, and to me that last sentence takes care of some of
5 that.

6 MR. WITTGRAF: Further discussion.

7 (No response.)

8 MR. WITTGRAF: Hearing none, those who are in favor
9 of striking paragraph B of the mid-paragraph of amendment to
10 the resolution will signify by saying aye.

11 (Chorus of ayes.)

12 MR. WITTGRAF: Those who are opposed will signify by
13 saying nay.

14 (A chorus of no.)

15 MR. WITTGRAF: The nays appear to have it. The nays
16 do have it. The motion is defeated. We're back on the
17 amendment as offered in written form by Mr. Kirk. Is there
18 discussion.

19 M O T I O N

20 MR. DANA: Mr. Chairman.

21 MR. WITTGRAF: Mr. Dana.

22 MR. DANA: If this were identical to resolution 3, I

1 would support it. If the author could tell me that it was
2 identical to resolution 3, I would probably support it. I
3 don't think it is. I don't know in what respect he wishes to
4 change current law.
5 Resolution 3 says "The board of directors favors the
6 existing provisions permitting representation of clients
7 before administrative agencies, legislative bodies, and in
8 responding to agency and elected officials." It is
9 essentially an endorsement of the compromises that have been
10 worked out by Congress over the last 15 years.
11 I don't understand what his alternative does. I am
12 particularly troubled by the last sentence in that I think
13 -- I don't know whether that is to be -- obviously, A and B
14 violate the last sentence, on its face, unless what we're
15 talking about are the Corporation itself legislating Congress,
16 and I don't think that's what is intended, but I'm not sure
17 what's intended. So I guess that's the long way of saying
18 Bud, what are you trying to do with this?
19 CHAIRMAN WITTGRAF: Mr. Kirk.
20 MR. KIRK: I want to make it clear that you have to
21 have a client before you start standing on a soap box and
22 utilizing the federal government's money that's been given to

1 the Legal Services Corporation. I want to make it clear that
2 when you do have that client, however, that you may appear.
3 I want to make it clear that unless you're
4 specifically requested for a specific item by an elected or
5 other governmental official that you're not going to engage in
6 testimony before a body. It is my thought that any other
7 lobbying is going to be prohibited except for the testimony
8 before a body or the rendering of information.
9 CHAIRMAN WITTGRAF: Mr. Dana.
10 MR. DANA: I believe that present law does
11 everything that you have just indicated you wanted done, but
12 it goes on for pages, and in what respect are you trying to
13 change the present law?
14 MR. KIRK: I have nothing further to say.
15 MR. DANA: Then, Mr. Chairman, I endorse what Mr.
16 Kirk is trying to do. I think that all of that is done under
17 current law, and that's the reason I will vote against his
18 proposed substitute and endorse current law as proposed by the
19 committee.
20 MR. UDDO: Mr. Chairman.
21 CHAIRMAN WITTGRAF: Mr. Uddo.
22 MR. UDDO: I have a question. I don't think Mr.

1 Kirk responded to Mr. Dana's observation that the last
2 sentence may in fact contradict at least A if not A and B. I
3 mean, if you have an eligible client, and you are representing
4 an eligible client, and in the process of doing that you're
5 favoring or opposing something before a legislative body, does
6 that not contradict the last sentence?
7 MR. KIRK: Mr. Molinari, would you join -- excuse
8 me.
9 CHAIRMAN WITTGRAF: Mr. Kirk.
10 MR. KIRK: Mr. Molinari, would you join me in
11 amending that by adding "except as provided under A and B" to
12 the very end of the --
13 MR. MOLINARI: Absolutely.
14 CHAIRMAN WITTGRAF: Why don't you strike it, that
15 last sentence?
16 MR. KIRK: Because I think it goes beyond that. I
17 can see the use of funds in some other way other than just
18 having someone appear before the bodies.
19 CHAIRMAN WITTGRAF: You're seeking to amend your
20 amendment. Do you want to clarify for the record the way in
21 which you're doing so, please?
22 MR. KIRK: After "elective body," changing the

1 period to a comma and adding "except as allowed by paragraphs
2 A and B above."
3 CHAIRMAN WITTGRAF: And Mr. Molinari, you join in
4 that amendment to your amendment?
5 MR. MOLINARI: Yes, sir.
6 CHAIRMAN WITTGRAF: The amendment, except as
7 provided for in paragraphs A and B above, added in the last
8 sentence of the amendment is accepted. Is there further
9 discussion on the amendment as amended then?
10 (No response.)
11 CHAIRMAN WITTGRAF: Hearing none, those who are in
12 favor of the amendment as amended will signify by saying eye.
13 (Chorus of ayes.)
14 CHAIRMAN WITTGRAF: Those who are opposed will
15 signify by saying nay.
16 (A chorus of no.)
17 CHAIRMAN WITTGRAF: The Chair is in doubt. We will
18 proceed to a roll call vote. The amendment is the one before
19 us with the wording "except as provided for in paragraphs A
20 and B above," added to it. That's a substitute for resolution
21 No. 3, which appears on page 17 of the board book.
22 As to the amendment as amended, Mr. Dana?

1 MR. DANA: No.

2 CHAIRMAN WITTGRAF: Mr. Guinot?

3 MR. GUINOT: (No response.)

4 CHAIRMAN WITTGRAF: Mr. Hall?

5 MR. HALL: Yes.

6 CHAIRMAN WITTGRAF: Mr. Kirk?

7 MR. KIRK: Yes.

8 CHAIRMAN WITTGRAF: Ms. Love?

9 MS. LOVE: Yes.

10 CHAIRMAN WITTGRAF: Mr. Molinari?

11 MR. MOLINARI: Yes.

12 CHAIRMAN WITTGRAF: Ms. Pullen?

13 MR. MOLINARI: Penny, where are you when you're

14 needed? CHAIRMAN WITTGRAF: Take your time.

15 MS. PULLEN: I'm trying to figure out what this

16 does.

17 CHAIRMAN WITTGRAF: Don't feel bad. I'm not sure

18 that we know either.

19 MS. PULLEN: There wasn't completely an indication

20 of confusion.

21 CHAIRMAN WITTGRAF: Oh. Let me say that I was

22 speaking for myself, then, and not wanting to paint you with

1 the same brush. Forgive me.

2 MS. PULLEN: I will vote aye with reservations.

3 CHAIRMAN WITTGRAF: You were the reason that I

4 wanted the roll call vote. You threw me off when you said,

5 "no." Okay. Mr. Rath.

6 MR. RATH: (No response.)

7 CHAIRMAN WITTGRAF: Mr. Uddo?

8 MR. UDDO: I'm going to vote yes with reservations,

9 with different ones, I think.

10 CHAIRMAN WITTGRAF: Mr. Wittgraf votes no.

11 Ms. Wolbeck?

12 MS. WOLBECK: Yes.

13 CHAIRMAN WITTGRAF: Ms. Wolbeck votes yes. The

14 resolution passes 7 to 2 with 2 reservations noted. Mr. Uddo.

15 M O T I O N

16 MR. UDDO: Resolution No. 4, page 18 of the board

17 book. "The board of Legal Services Corporation favors

18 implementation and maintenance of timekeeping and record-

19 keeping systems by its grantees with such systems determined

20 by each grantee in a manner consistent with guidelines

21 promulgated by the Corporation and with those guidelines based

22 upon the cost and benefits analysis currently being completed

1 by the Corporation consistent with the 1988 GAO report."

2 CHAIRMAN WITTGRAF: Discussion. Mr. Kirk.

3 MR. KIRK: Excuse me. This does not have a national

4 system of timekeeping, as you proposed it?

5 CHAIRMAN WITTGRAF: This is the resolution that was

6 adopted by the committee with your concurrence, I believe, on

7 June 24, two weeks ago at this time.

8 MR. KIRK: And I must tell you that I was not aware

9 that we were going to let each grantee determine it, and I

10 guess I didn't have it in writing in front of me at the time.

11 So I would move to amend it by deleting the words "determined

12 by each grantee."

13 CHAIRMAN WITTGRAF: Just those four words?

14 MR. KIRK: Yes.

15 CHAIRMAN WITTGRAF: Read it then, if you will, and

16 see it makes sense to you, Mr. Kirk.

17 MR. KIRK: "The board of directors of the Legal

18 Services Corporation --"

19 CHAIRMAN WITTGRAF: To yourself. That's all right.

20 Would you want to take out the words "with such system" as

21 well, do you think?

22 MR. KIRK: Yeah.

1 CHAIRMAN WITTGRAF: Mr. Kirk's amendment is to
2 strike the words from the third and fourth lines of the
3 resolution at page 18 of the board book beginning with the
4 word "with" through the word "grantee"; those words being
5 "with such system determine by each grantee." Is there a
6 second?
7 MR. MOLINARI: I'll second that. I don't see a
8 problem with that.
9 CHAIRMAN WITTGRAF: The amendment has been made.
10 The motion making the amendment has been seconded.
11 Discussion.
12 MR. KIRK: I think that, on the way it was written,
13 the Legal Services Corporation could have provided such
14 specific guidelines that it could have required absolute
15 compliance, you know, instituted a nationwide timekeeping
16 system.
17 I'm not saying that we should do that. I'm merely
18 saying that for practical purposes with data processing
19 occurring as it is with the ease of nationwide data processing
20 that the option should be for the Legal Services Corporation
21 to perhaps adopt a nationwide system, as opposed to doing
22 guidelines, and I just don't want to preclude the Legal

1 Services Corporation, this board of directors, from having the
2 ability to do that.
3 CHAIRMAN WITTGRAF: Mr. Kirk, may I inquire?
4 MR. KIRK: Yes, sir.
5 CHAIRMAN WITTGRAF: I'm not sure I understand
6 completely. I think my understanding in supporting this
7 amendment or this resolution two weeks ago was that there
8 would be national or general guidelines provided by the Legal
9 Services Corporation and that those guidelines would take into
10 account the time- and record-keeping systems that exist
11 already with many of the 325 grantees across the country.
12 Those systems necessarily being different and many
13 of them being, as you suggested, keyed to hardware and
14 software that's been developed already by those grantees, but
15 keeping in mind that very small grantees may have different
16 needs and a different system, and very large grantees or the
17 grantees that are responsible to only one or two funding
18 sources, may have very different systems from those grantees
19 that are responsible to four, six, or eight or more funding
20 sources.
21 We were trying to avoid throwing out some babies
22 with this bath water, but rather trying to establish enough

1 commonality so that we could get, according to what needs we
2 feel we have, we could get information we need.
3 Again, the Congress isn't going to slave over every
4 word that we give them. As I know, and as I've stated
5 already, I'm a little bit concerned, though, whether or not
6 you agree, as a matter of our record this afternoon, with what
7 I just said as being a need for flexibility, or whether you
8 see kind of a nationally mandated system?
9 MR. KIRK: I absolutely agree, and if you were
10 voting today, I would not vote on a nationwide system. My
11 point is that I feel confident that within the next few years
12 it may be so easy to establish a single system that can be
13 pumped into a computer here that that option ought to be
14 available.
15 But if I were to vote today, I would not vote on a
16 nationwide system. I just think that the option ought to be
17 there for the board if there are compelling economic and
18 efficiency reasons for us to do it, and I am not recommending
19 that it be done on a nationwide basis. That does not preclude
20 exactly what I'm saying, but I will go ahead and vote on it.
21 It's just that restriction that bothered me.
22 MR. MOLINARI: Mr. Chairman.

1 CHAIRMAN WITTGRAF: Mr. Molinari.

2 MR. MOLINARI: As I read this, deleting those words
3 doesn't prevent the Corporation from establishing guidelines
4 to suit the special needs of the various grantees. So they
5 would still have that protection, depending upon the
6 guidelines that are eventually adopted.

7 So I don't see deletion of this as precluding what
8 you've stated as a need for some of the smaller grantees out
9 there. That can still be provided for in those guidelines
10 that are adopted by the corporation.

11 CHAIRMAN WITTGRAF: Ms. Pullen.

12 MS. PULLEN: I absolutely agree with what Mr.
13 Molinari just said. What Mr. Kirk is proposing is something
14 that would give us more flexibility, not less flexibility. We
15 could decide on a system whereby current time-keeping systems
16 are grandfathered in; that is, those that would already have
17 them would continue to employ such systems as they already
18 employ.

19 Well, there might be a standard enunciated for
20 others. It could be that we would adopt a format for large
21 grantees, the different ones for medium-sizes grantees, a
22 different one for small grantees. We have not tangled with

1 this question of how this should be done in any kind of
2 detail, and we should not be seeking to tie our hands at this
3 point when we have not really dealt with this question.
4 I think Mr. Kirk is quite correct in suggesting that
5 some form of standardization might turn out to be desirable
6 when we do get to this question. To say now that there are
7 going to be as many systems out there as there are grantees
8 just doesn't seem to be either practical or wise, and I think
9 the gentleman is pursuing a very good amendment.
10 CHAIRMAN WITTGRAF: Further discussion.
11 (No response.)
12 CHAIRMAN WITTGRAF: We're on the amendment to the
13 resolution. That amendment would strike the words from the
14 third and fourth lines "with such system determined by each
15 grantee" from those lines of that resolution as presented on
16 page 18 of the board book. Those who are in favor of the
17 amendment will signify by saying aye.
18 (Chorus of ayes.)
19 CHAIRMAN WITTGRAF: Those who are opposed, nay.
20 (A chorus of no.)
21 CHAIRMAN WITTGRAF: The ayes appear to have it.
22 MR. DANA: Roll call.

1 CHAIRMAN WITTGRAF: A roll call vote has been
2 requested. As to the amendment to delete those seven words,
3 Mr. Dana?
4 MR. DANA: No.
5 CHAIRMAN WITTGRAF: Mr. Guinot?
6 MR. GUINOT: (No response.)
7 CHAIRMAN WITTGRAF: Mr. Hall?
8 MR. HALL: Yes.
9 CHAIRMAN WITTGRAF: Mr. Kirk?
10 MR. KIRK: Yes.
11 CHAIRMAN WITTGRAF: Ms. Love?
12 MS. LOVE: Yes.
13 CHAIRMAN WITTGRAF: Mr. Molinari?
14 MR. MOLINARI: Yes.
15 CHAIRMAN WITTGRAF: Ms. Pullen?
16 MS. PULLEN: Yes.
17 CHAIRMAN WITTGRAF: Mr. Rath?
18 MR. RATH: (No response.)
19 CHAIRMAN WITTGRAF: Mr. Uddo?
20 MR. UDDO: No.
21 CHAIRMAN WITTGRAF: Mr. Wittgraf votes yes.
22 Ms. Wolbeck?

1 MS. WOLBECK: Yes.

2 CHAIRMAN WITTGRAF: There appear to be seven votes
3 in favor of the amendment, two opposed. The ayes appear to
4 have it. The ayes do have it. The amendment is adopted. We
5 are on the resolution No. 4, as amended.

6 M O T I O N

7 CHAIRMAN WITTGRAF: Is there discussion?

8 (No response.)

9 CHAIRMAN WITTGRAF: Those who are in favor of the
10 resolution as amended will signify by saying aye.

11 (Chorus of ayes.)

12 CHAIRMAN WITTGRAF: Those who are opposed, nay.

13 (A chorus of no.)

14 CHAIRMAN WITTGRAF: The ayes appear to have it. The
15 ayes do have it. The resolution is adopted. Mr. Uddo.

16 M O T I O N

17 MR. UDDO: Resolution No. 5. "The board of
18 directors of the Legal Services Corporation favors the
19 principle of local control of priority setting."

20 MR. KIRK: I would move to amend that.

21 CHAIRMAN WITTGRAF: Mr. Kirk.

22 MR. KIRK: By adding after setting, changing the

1 period to a comma, adding the word --

2 MS. PULLEN: What was he moving?

3 CHAIRMAN WITTGRAF: Just one moment, Ms. Pullen.

4 MR. KIRK: " -- but supports promulgating a list of

5 suggested priorities."

6 CHAIRMAN WITTGRAF: Thank you, Mr. Kirk. Would you

7 like to read that once again, please.

8 MR. KIRK: "The board of directors of the Legal

9 Services Corporation favors the principle of local control of

10 priority setting but supports promulgating a list of suggested

11 priorities," and the intent there is that the Legal Services

12 Corporation's board, if it find that there are areas that need

13 to be addressed, such as spouse abuse is not being addressed,

14 well, could make a suggestion that this is the type of thing

15 to be looked at.

16 CHAIRMAN WITTGRAF: Your amendment is in the form of

17 a substitution for the resolution now appearing at page 19?

18 MR. KIRK: All right.

19 CHAIRMAN WITTGRAF: Is it not?

20 MR. KIRK: Yes. I had actually done it as making

21 the period a comma and adding --

22 CHAIRMAN WITTGRAF: I'm looking at what has been

1 handed out and enumerated as Roman Numeral V, local board
2 control, which I saw to incorporate all of that wording and
3 then the additional wording, and I viewed it as a substitute,
4 absent the word "national," is that correct?
5 MR. KIRK: That's fine.
6 CHAIRMAN WITTGRAF: Is there a second?
7 MR. MOLINARI: I'll second it.
8 CHAIRMAN WITTGRAF: Discussion. Mr. Hall.
9 MR. HALL: With or without that amendment in there,
10 we could do that anyway, couldn't we? I mean, even with the
11 amendment in there, it doesn't say that the recipients, the
12 providers, have to actually go by our list. Correct me if I'm
13 wrong, by it seems like the objection that's been made is like
14 that's the first step in us, the Corporation, setting the
15 priorities for them, and that's why they object to it.
16 I guess the long and the short of it is either way
17 would be okay with me. I don't think that because we supply a
18 list it matters one way or the other, because it doesn't say
19 that they have to follow our list.
20 CHAIRMAN WITTGRAF: Further discussion. Mr. Dana.
21 MR. DANA: Mr. Chairman, my concern is really set
22 forth in the rationale. I think even a nonbinding list of

1 priorities is going to carry substantially more weight than
2 even we think it deserves, especially in the area of
3 competition.
4 I just have a feeling that the list that six or
5 seven of us may want to put together from time to time will
6 become sort of the standard by which other programs will
7 measure their priorities, and I think the concept of an
8 elaborate process that exists at the local level for
9 determining local priorities, it may not also work the way it
10 should, but is something that we should endorse and support
11 and not permit this foot in the door, which might be fun as a
12 matter of debate but I think establishes an unfortunate
13 precedent, which I oppose.
14 CHAIRMAN WITTGRAF: Further discussion.
15 (No response.)
16 CHAIRMAN WITTGRAF: Hearing none, we'll proceed to a
17 vote. Those who are in favor of the amendment that's
18 presented in written form absent the word "national" will
19 signify by saying eye.
20 (A chorus of ayes.)
21 CHAIRMAN WITTGRAF: Those who oppose, nay.
22 (A chorus of no.)

1 CHAIRMAN WITTGRAF: The ayes appear to have it. The
2 ayes do have it. The amendment is adopted. While it is a
3 substitute resolution, I think we need to vote on the
4 resolution itself as amended.
5 M O T I O N
6 CHAIRMAN WITTGRAF: Is there discussion on the
7 resolution as amended?
8 (No response.)
9 CHAIRMAN WITTGRAF: Hearing none, those who are in
10 favor of the resolution as amended by substitution will
11 signify by saying aye.
12 (A chorus of ayes.)
13 CHAIRMAN WITTGRAF: Those who are opposed, nay.
14 (A chorus of no.)
15 CHAIRMAN WITTGRAF: The ayes appear to have it. The
16 ayes do have it. The resolution as amended is adopted.
17 Mr. Uddo.
18 M O T I O N
19 MR. UDDO: Resolution No. 6 is too long to read, so
20 I'm just going to suggest that everyone read it in their board
21 book, and I know Mr. Kirk has a substitute, I guess. If maybe
22 he could just point out the differences, it would be easier

1 than trying to read them both.

2 CHAIRMAN WITTGRAF: Mr. Kirk.

3 MR. KIRK: I would just move that as an amendment,

4 the first two lines be deleted.

5 CHAIRMAN WITTGRAF: Is that the only difference?

6 MR. KIRK: Yes.

7 CHAIRMAN WITTGRAF: Resolution No. 6 is presented on

8 board book page 20 before us. There is an amendment by Mr.

9 Kirk, which again the Chair interprets as a substitute. The

10 substitute, I believe, would simply substitute the last four

11 paragraphs for all five paragraphs, thereby eliminating the

12 first sentence of paragraph. Is there a second to the

13 amendment?

14 MS. PULLEN: Second.

15 CHAIRMAN WITTGRAF: There is a second. Discussion.

16

17 Mr. Kirk.

18 MR. KIRK: The reason I've done this is that I do

19 not favor the total deregulation of all non-LSC funds. I

20 think that there are going to be instances in the future when

21 Congress may decide that there are further things that need to

22 be regulated besides this, and I support and strongly feel

1 that the Congress does have a right to determine what their
2 funds are used for.
3 However, I able that everyone agrees with the rest
4 of it, and this is one of those that we can come in with 100
5 percent support for, as far as the use of prohibitions on non-
6 LSC funds.
7 MS. PULLEN: Mr. Chairman.
8 CHAIRMAN WITTGRAF: Ms. Pullen.
9 MS. PULLEN: First, I'm wondering with the gentleman
10 would accept a friendly amendment to remove the word "however"
11 from what will be paragraph 1 if this amendment is adopted.
12 CHAIRMAN WITTGRAF: Ms. Pullen, he actually has done
13 that in the written form that has been circulated. So it's
14 such a friendly amendment that he anticipated your
15 friendliness. No problem.
16 MR. KIRK: Thank you, Ms. Pullen.
17 MS. PULLEN: Make I speak to the amendment?
18 CHAIRMAN WITTGRAF: Ms. Pullen.
19 MS. PULLEN: The term "deregulation" actually means
20 rolling back existing regulation. It is ludicrous to say that
21 we favor rolling back existing regulations and then state as
22 exceptions that we support existing regulations. The

1 exceptions that would be in the "however" paragraph, if you
2 will, of the original motion are regulations -- are the
3 regulations and restrictions that are now in law.
4 You can't favor rolling those back and still say you
5 believe in them, and I believe that only by Mr. Kirk's
6 amendment is this resolution internally consistent.
7 CHAIRMAN WITTGRAF: Further discussion.
8 (No response.)
9 CHAIRMAN WITTGRAF: Hearing none, those who are in
10 favor of the amendment --
11 MR. DANA: Mr. Chairman.
12 CHAIRMAN WITTGRAF: Mr. Dana.
13 MR. DANA: I think it is fair to say that the only
14 thing in this whole resolution that has any redeeming
15 qualities, from my point of view, Bud wants to take out, so I
16 will oppose this.
17 CHAIRMAN WITTGRAF: Further discussion.
18 MR. UDDO: Are you doing this as an amendment or as
19 a substitute.
20 CHAIRMAN WITTGRAF: It's an amendment in the form of
21 a substitute.
22 MR. UDDO: Then you're going to vote on the

1 resolution? In other words, you are going to vote to take out
2 the first sentence first and then vote on the resolution?
3 CHAIRMAN WITTGRAF: Two votes. In voting first, we
4 will be voting on the substitution of the four paragraphs in
5 the paper circulated by Mr. Kirk enumerated Roman Numeral VI,
6 non-LSC funds for the existing five paragraphs of the
7 resolution as presented on page 20 of the board briefing book.
8 Those who are in favor of the amendment, that being the
9 substitution, will signify by saying aye.
10 (A chorus of ayes.)
11 CHAIRMAN WITTGRAF: Those who are opposed, nay.
12 (A chorus of no.)
13 MR. DANA: I'm sorry, I wasn't listening and didn't
14 vote.
15 CHAIRMAN WITTGRAF: The Chair thinks that a voice
16 vote probably is appropriate here. The vote is on your
17 amendment, which is the substitute of four paragraphs for the
18 existing five paragraphs.
19 MR. KIRK: Can I get him in here?
20 CHAIRMAN WITTGRAF: Those who are in favor of the
21 amendment when their name is called will signify by saying
22 aye. Mr. Dana?

1 MR. DANA: No.

2 CHAIRMAN WITTGRAF: Mr. Guinot?

3 MR. GUINOT: (No response.)

4 CHAIRMAN WITTGRAF: Mr. Hall?

5 MR. HALL: Yes.

6 CHAIRMAN WITTGRAF: Mr. Kirk?

7 MR. KIRK: Yes.

8 CHAIRMAN WITTGRAF: Ms. Love?

9 MS. LOVE: Yes.

10 CHAIRMAN WITTGRAF: Mr. Molinari?

11 MR. MOLINARI: (No response.)

12 CHAIRMAN WITTGRAF: Ms. Pullen?

13 MS. PULLEN: Yes.

14 CHAIRMAN WITTGRAF: Mr. Rath?

15 MR. RATH: (No response.)

16 CHAIRMAN WITTGRAF: Mr. Uddo?

17 MR. UDDO: No.

18 CHAIRMAN WITTGRAF: Mr. Wittgraf votes no.

19 Ms. Wolbeck?

20 MS. WOLBECK: Yes.

21 CHAIRMAN WITTGRAF: The ayes appear to have it by a

22 vote of 5 to 3. The ayes do have it. The amendment is

1 adopted. We're now on the resolution as amended, resolution
2 No. 6.
3 M O T I O N
4 CHAIRMAN WITTGRAF: Is there discussion?
5 (No response.)
6 CHAIRMAN WITTGRAF: Hearing none, those who are in
7 favor of the resolution as amended will signify by saying aye.
8
9 (A chorus of ayes.)
10 CHAIRMAN WITTGRAF: Those who are opposed, nay.
11 (A chorus of no.)
12 CHAIRMAN WITTGRAF: The ayes appear to have it. The
13 ayes do have it. The resolution as amended is adopted. At
14 this time, we will take another 5-minute personal convenience
15 recess. We will resume our deliberations at 5:30.
16 (A brief recess was taken.)
17 CHAIRMAN WITTGRAF: Our 5-minute recess is over. We
18 will return to our deliberations at this time. We have before
19 us from our special reauthorization committee resolution No.
20 7, which, hopefully, is self-explanatory. Is there
21 discussion?
22 MR. KIRK: Mr. Chairman, I have an amendment.

1 CHAIRMAN WITTGRAF: Mr. Kirk.

2 MR. KIRK: I thought I'd wait until Mr. Uddo and--

3 is

4 Mr. Hall coming in?

5 CHAIRMAN WITTGRAF: I would have sworn you told me

6 earlier seven or eight amendments. I can't count.

7 MR. KIRK: Those are the written ones. These are

8 interlineations.

9 CHAIRMAN WITTGRAF: Did you learn this from the

10 congressman from central Florida, or did he learn it from you?

11 M O T I O N

12 MR. KIRK: I don't know enough about it to comment

13 which is which. My amendment would be, taking the board's--

14 I mean the Committee's recommendation and deleting the words

15 "authorization by" and "appropriations from the Congress for

16 the limited," inserting at that point the word "initial" and

17 then, in the last line following the word "with", delete the

18 remainder of that sentence and insert "phase in over three

19 years."

20 So that it will read, "The board of directors of the

21 Legal Services Corporation favors the initial implementation

22 of dynamic constant competition for the provision of Legal

1 Services and favors the study of, including the use of
2 demonstration projects, static competition in the awarding of
3 grants, with a phase-in over three years."
4 CHAIRMAN WITTGRAF: If I might inquire, what does
5 "phase-in" refer to?
6 MR. KIRK: First a phase-in of competition
7 throughout the -- well, it's a phase-in of the study,
8 essentially, and to the extent that there needs to be more
9 phasing-in of the constant dynamic competition, that's
10 available as well.
11 CHAIRMAN WITTGRAF: Your amendment, then, is to
12 strike from the second and third lines of the resolution that
13 appears on page 21, the words from "authorization" to
14 "limited," and insert in lieu of those words the words "the
15 initial," and to strike from the last line of the resolution
16 appearing at page 21, the words from "a report" to the end of
17 that sentence and substituting for them "phase-in over three
18 years"; is that correct?
19 MR. KIRK: Yes.
20 CHAIRMAN WITTGRAF: Is there a second to the
21 amendment? MR. MOLINARI: I'll second it.
22 MR. KIRK: If I may address it, sir.

1 CHAIRMAN WITTGRAF: Mr. Kirk.

2 MR. KIRK: I think the only significant change in
3 this is that studying this issue to death for three years I
4 don't think is necessary, and I think that we can have an
5 ability to make decisions and begin the implementation of the
6 static competition earlier than that.

7 As far as the deletion of the terms "authorization
8 by" and "appropriation to Congress for the limited," I favor
9 implementation as soon as we can of competition, and this does
10 not preclude the study, it does not preclude the phasing-in,
11 but it says that we don't have to wait around for specific
12 appropriation from Congress.

13 I'm aware that under current regulations or current
14 restrictions on regulations, we may not be able to take money
15 from one program and establish another competing program in
16 that area, but I would be hopeful that that right would be
17 given by Congress at some time in the near future.

18 CHAIRMAN WITTGRAF: Further discussion.

19 MR. HALL: Mr. Chairman.

20 CHAIRMAN WITTGRAF: Mr. Hall.

21 MR. HALL: I need to ask a question of Mr. Kirk. I
22 may not have been listening to his last statement closely

1 enough, but under the revision he's made, is that a proposal
2 that we immediately implement competition without any studies?
3
4 MR. KIRK: Well no. It says that we would do an
5 initial implementation of dynamic constant competition, and
6 the study of static competition with a phase-in over three
7 years -- and it really doesn't say that the phase-in has to
8 start immediately. It just says that we're going to try to
9 phase it in over a three-year period.
10 MR. HALL: And what did you not like about their
11 authorization by an appropriation from Congress for the
12 limited? What was wrong with that?
13 MR. KIRK: Because unless Congress specifically sets
14 aside money and an amount of money for competition, it says
15 that we wouldn't begin doing it, and I don't think it's
16 necessary -- I mean, I would like for us to want to go ahead
17 and begin initial implementations without a specific
18 authorization and appropriation from Congress, and to the
19 extent that I would defer to Congressman Molinari to correct
20 me if my interpretation is proper.
21 CHAIRMAN WITTGRAF: May I inquire, Mr. Kirk?
22 MR. KIRK: Sure.

1 CHAIRMAN WITTGRAF: It seems to me we're mixing two
2 different efforts here a little bit. Following up on Mr.
3 Hall's inquiry, it seems to me that these resolutions are
4 directed toward reauthorization.
5 Now, the discussion we had this morning regarding
6 regulations and the possibility of more or less $1 million of
7 funds for board initiatives for Fiscal Year 1992 is really
8 separate, and probably, if it occurs, will occur before
9 reauthorization occurs.
10 Here, we're talking about what we think is
11 appropriate as part of the reauthorization process. So what
12 movement we make as a corporation or as a board is really
13 independent of what happens with the reauthorization of the
14 Legal Services Corporation.
15 So I guess it seems to me that those words, when we
16 discussed them two weeks ago at this time were significant,
17 because we were looking to what the Congress was going to give
18 us by way of authority for the future. What we do as a board
19 in the meantime isn't necessarily related to what's done in
20 reauthorization.
21 So perhaps it's redundant, but again, I would ask,
22 as I guess Mr. Hall did, what your objection is, really, to

1 saying that we favor authorization from the Congress for
2 competition. I can see where you might object to the word
3 "limited," but I don't understand the problem with
4 authorization and appropriation.
5 In fact, I think we'd be looking for appropriation
6 well beyond $1 million, and hopefully something more like $5
7 million or $10 million. Mr. Hall.
8 MR. HALL: I don't think I was present when this was
9 passed, but somewhere I've heard that the history of this
10 resolution is that that language is inserted to mean that
11 unless there is a special authorization that we wouldn't do
12 competition. I may be way off base. I mean, that's not what
13 it says, but that's reading into it, and if I understood it,
14 that's why that language was put in there. That's either
15 right or wrong. I don't know.
16 CHAIRMAN WITTGRAF: Having authored -- again, to
17 turn a noun into a verb, having authored that language two
18 weeks ago, my thought was simply to say, "Hey, give us
19 authority to try competition," and I don't know what spin
20 you're putting on it or where that spin came from, but as the
21 author two weeks ago, all I was saying was "Hey, give us
22 authority to do it."

1 In fact, then, as a board, going back to our
2 discussion of this morning, if we can, and if our regulations
3 are appropriate, and if the money is available, hopefully for
4 Fiscal Year 1992, which will be ahead of reauthorization, I'm
5 sure, we'll be in a position to try some forms of competition,
6 both dynamic and static, perhaps, and I hope that Mr. Dana and
7 Professor Cox are able to continue to educate us as to what
8 exactly dynamic and static mean. That was all I had in mind
9 two weeks ago at this time.
10 MR. HALL: Limited means?
11 CHAIRMAN WITTGRAF: Limited for me, as the author,
12 meant that I didn't foresee us putting all 325 basic field
13 grants up for competition at the same time, and I really don't
14 think the Congress sees that, and I, for one, as the author,
15 was looking for some wording between the wording that's now in
16 H.R. 2039, which is just to study, and to that extent I
17 certainly agree with Mr. Kirk that let's move, but I was
18 looking for something short of what I think is the unrealistic
19 approach of putting all 325 basic field grants up for
20 competition at once, when there is reauthorization, let's say,
21 for Fiscal Year 1993. Mr. Kirk.
22 MR. KIRK: Mr. Molinari, I'd like to defer to you

1 and get your advice.

2 MR. MOLINARI: Well, I was going to suggest, I think
3 Mr. Wittgraf makes some good points, but I think perhaps if we
4 were just to delete the latter portion of that with a report
5 to Congress after three years, I think your concern is a
6 legitimate concern that you like to see some implementation as
7 early as possible, and it may well be that some of this could
8 be instituted within three years.

9 So I think the most objectionable feature here would
10 be that latter portion, if George doesn't have a problem, but
11 I think he raised a good point, the initial language, I think
12 you're better off leaving that in, frankly, but we limit
13 ourselves when we say we'll report to Congress after three
14 years, and I think the inference there, and I think your
15 concern is that that means that there won't be anything done
16 within three years.

17 So I think if you simply delete that time reference,
18 you've got more flexibility.

19 MR. KIRK: All right. Well, I would just ask, then
20 -- withdraw my amendment.

21 CHAIRMAN WITTGRAF: And strike "all" after the word
22 "grants" in the last line?

1 MR. KIRK: Yeah.

2 CHAIRMAN WITTGRAF: If I understand the amendment by
3 Mr. Kirk at the moment, joined in by Mr. Molinari, would be
4 simply to strike the last eight words from the resolution as
5 presented on page 21 of the board briefing book; is that
6 correct? MR. MOLINARI: That's correct.

7 CHAIRMAN WITTGRAF: Discussion.

8 (No response.)

9 CHAIRMAN WITTGRAF: Hearing none, those who are in
10 favor of the amendment to the resolution, that amendment to
11 strike the last eight words of the resolution as presented,
12 will signify by saying aye.

13 (A chorus of ayes.)

14 CHAIRMAN WITTGRAF: Those opposed, nay.

15 (No response.)

16 CHAIRMAN WITTGRAF: The ayes appear to have it. The
17 ayes do have it. Is there discussion on the resolution as
18 amended?

19 (No response.)

20 M O T I O N

21 CHAIRMAN WITTGRAF: Hearing none, those who are in
22 favor of the resolution as amended will signify by saying aye.

1

2 (A chorus of ayes.)

3 CHAIRMAN WITTGRAF: Those opposed, nay.

4 (No response.)

5 CHAIRMAN WITTGRAF: The ayes appear to have it. The

6 ayes do have it. The resolution as amended is adopted. We

7 now have before us resolution No. 8.

8 M O T I O N

9 CHAIRMAN WITTGRAF: Mr. Kirk, discussion.

10 MR. KIRK: No.

11 CHAIRMAN WITTGRAF: The resolution -- hard to speak

12 of a resolution without saying amendment -- the amendment

13 isn't here. The resolution as presented, discussion.

14 (No response.)

15 CHAIRMAN WITTGRAF: Hearing none, those in favor of

16 the resolution as presented on page 22 of the board book

17 pertaining to co-payments, that being resolution No. 8, will

18 signify by saying aye.

19 (A chorus of ayes.)

20 CHAIRMAN WITTGRAF: Those opposed, nay.

21 (No response.)

22 CHAIRMAN WITTGRAF: The ayes appear to have it. The

1 ayes do have it. The resolution as presented is adopted.
2 Resolution No. 9, pertaining to the recovery of attorney's
3 fees by Legal Services projects and programs. Mr. Kirk, I see
4 that you do have an amendment, and I take that to be an
5 amendment by substitution, is it?
6 MR. KIRK: That's correct.
7 M O T I O N
8 CHAIRMAN WITTGRAF: Okay. Does everyone have a copy
9 of Mr. Kirk's amendment, Roman Numeral IX, attorney's fees,
10 the amendment being a substitute for the resolution presented
11 at page 23 of the board briefing book. That amendment
12 provides, and I quote, "The board of directors of the Legal
13 Services Corporation favors retention of existing state and
14 federal laws as they apply to the recover of attorney's fees
15 by programs representing indigent clients, but favors
16 prohibiting local programs from recovering attorney's fees
17 from private parties."
18 The "but favors prohibiting local programs from
19 recovering attorney's fees from private parties," is an
20 addition to the wording as presented at page 23 of the board's
21 briefing book. Does that help, Ms. Pullen?
22 MS. PULLEN: Thank you.

1 CHAIRMAN WITTGRAF: Is there a second to the
2 amendment by substitution?
3 MR. MOLINARI: I'll second it, Mr. Chairman. I
4 haven't had a chance to really digest it yet, and we can get
5 on with the discussion. I'll second it.
6 CHAIRMAN WITTGRAF: The amendment has been moved and
7 now seconded, discussion. Mr. Kirk.
8 MR. KIRK: Very briefly, this is, again, addressing
9 the issues that were brought forth on the 24th. I have
10 limited this to private parties, because my understanding is
11 there is a concern among the legal service grantees that
12 substantial funds would be -- they would be deprived of
13 substantial funds if they were unable to collect attorney's
14 fees if they are the prevailing party in actions against
15 governmental bodies. So I have only had this apply to private
16 parties.
17 My feeling is that in the regular marketplace, an
18 attorney is limited by his client as to how much time he's
19 going to spend on something, and he's also limited by his
20 obligation to his client, because if he pursues an issue in
21 bad faith or something he's going to lose on, his client is
22 going to have to pay for him; whereas, in Legal Services'

1 situation, it's not that way at all. He has no reason not to
2 pursue it all the way to the end.
3 I do not think they ordinarily collect attorney's
4 fees. This is something that's used as a bargaining tool, as
5 was testified in San Francisco and as was testified to on the
6 24th. It has been very effective, but I think it's one of
7 those items that has created some very bad feelings among,
8 certainly the agriculture areas and landlord/tenant area,
9 where it's used as a stick and a wedge to in fact extort some
10 settlements where they would not be able to otherwise, and for
11 that reason, I would support this.
12 CHAIRMAN WITTGRAF: Further discussion. Mr. Dana.
13 MR. DANA: Mr. Chairman, this proposal would distort
14 the balance set by all kinds of state and federal legislators
15 that have provided for counsel fees for successful plaintiffs
16 as a means of inducing prompt settlements, a meaning of
17 encouraging plaintiffs to bring lawsuits that vindicate some
18 public policy, and what this does is this changes that, but
19 only if a person is represented by a Legal Services attorney.
20 So I suppose this will have the effect of
21 discouraging settlements and encouraging litigation and
22 stretching an otherwise small Legal Services dollars even

1 farther. I oppose it.

2 CHAIRMAN WITTGRAF: Mr. Hall.

3 MR. HALL: I have to agree with Howard on this one,
4 because I really don't think there's anything wrong with
5 saying, "You guys have done this. It's wrong. You know it
6 is. You should pay for it now or quit whatever you're doing
7 that's wrong, or right the situation. If you don't, you're
8 going to make us do a lot of work and spend a lot of time and
9 expense on your case, and you guys are going to be the ones to
10 pay for it in the end," and I think that's pretty well going
11 to induce the settlement early on, and to take that away, I
12 think, is a mistake.

13 CHAIRMAN WITTGRAF: Further discussion. Mr. Kirk.

14 MR. KIRK: Just one comment. I think that as
15 opposed to creating an unlevel playing field, this actually
16 levels the playing field, because with a Legal Services
17 attorney, number one, there is no restriction on how much he
18 can spend on a case, whereas, with a regular lawyer who is
19 being paid, it's only as much as his client is willing to pay.
20

21 The second thing that is uneven is the fact that he
22 never has to worry about his clients ever paying. So there is

1 not a level playing field now, because of what we've created
2 with the Legal Services Corporation attorneys, and this is a
3 means of leveling it out.
4 CHAIRMAN WITTGRAF: Mr. Dana.
5 MR. DANA: Question. On that rationale, shouldn't
6 this also apply to pro bono attorneys working in a program
7 funded by the corporation?
8 MR. KIRK: I would think so.
9 MR. DANA: So do I understand this to say that if
10 there is a program funded by a Legal Services Corporation and
11 one of us volunteers as a pro bono attorney under that, and we
12 are successful, since we are working for free, we should not
13 get counsel fees in that particular case.
14 MR. KIRK: Well, that's not what I understood you to
15 ask initially. If you're asking initially if someone is
16 fulfilling a pro bono obligation such as my county has, and I
17 recover attorney's fees, but that's my obligation, I think I
18 turn them over to the Legal Aid Society, and in that instance,
19 instead of turning them over, I would forego them, but in the
20 instance where someone is taking on a case and he's not being
21 -- he has no unlimited ability to pursue the case as much as
22 he wants, he's limited by the fact that he's not being paid.

1 The Legal Services attorney is always being paid.
2 He's always got his salary coming, and that's why I would draw
3 a distinction between a private attorney taking under those
4 conditions and the Legal Services attorney.
5 MR. DANA: Then I guess I misunderstood your answer
6 the first time. Your position is that this restriction on
7 taking counsel fees would not apply to a pro bono attorney
8 working in a program funded by the Legal Services Corporation?
9 In other words, assuming we have a local --
10 MR. KIRK: Yes, it would apply to that.
11 MR. DANA: So that a pro bono attorney would not get
12 counsel fees if they were working in a case, working in a
13 program funded by the Legal Services Corporation, is that your
14 point?
15 MR. KIRK: That's my point.
16 CHAIRMAN WITTGRAF: Mr. Dana.
17 MR. DANA: That enhances my opposition to your
18 proposal.
19 MR. KIRK: Thank you.
20 CHAIRMAN WITTGRAF: Mr. Kirk, I've got to disagree
21 with your characterizations and with your rationale. Your
22 initial characterization of Legal Services attorneys extorting

1 monies from defendants I find both inaccurate and pejorative
2 based upon the record that I've seen and as completed with
3 some of the materials that were added to the record today.
4 I don't think that that's a fair characterization by
5 any stretch of the imagination of the activities of Legal
6 Services attorneys.
7 Second, I think it's a mischaracterization to say
8 that Legal Services attorneys or local Legal Services grantees
9 have unlimited funds available to them to pursue what at least
10 I infer from your comments are sometimes frivolous claims or
11 complaints. I think the record, particularly the record made
12 in San Francisco and Chicago is that the funds available to
13 Legal Services attorneys in fact very much are limited, that
14 there are many, many cases, in fact Congressman McCollum,
15 among others, has used the statistic that Legal Services
16 attorneys are able to serve only 20 percent of those people
17 among the poor who need legal services.
18 There are not unlimited legal services monies
19 available, and I guess you might go a different direction and
20 say that perhaps funds are not being spent where they should.
21 I think that's a matter that has to be determined by local
22 boards when they set their priorities, and I think properly is

1 set by local boards when they set their priorities.

2 So I don't think it's extortion. I don't think that
3 it's the abuse or the use of unlimited resources. It is true
4 that there are client who are not paying, in the sense that my
5 private client or your private client has to pay, to that
6 extent I agree with you, but it seems to me that if we put
7 such a prohibition or encourage the Congress to put such a
8 prohibition on recovery of attorney's fees from private
9 parties, we again, similar objection I raised in connection
10 with Mr. Hall's amendment to resolution No. 2, we, again, make
11 Legal Services attorneys second-class attorneys, and make
12 their client second-class clients.

13 If there is a private party against whom attorneys
14 fees can be recovered, they should be recovered. If they mean
15 that a local grantee has that many more dollars available to
16 it with which to provide legal services to the poor, so much
17 the better, so many more poor Americans have been served with
18 those funds.

19 I don't think there has been an abuse shown. I
20 don't think it's improper for there to be recovery from
21 private parties, and for those reasons, I feel compelled to
22 object or rather to vote no when the time comes to your

1 substitute resolution. Mr. Kirk.

2 MR. KIRK: The term "extortion" was pejorative and
3 should not have been used, but what I'm referring to is the
4 testimony we receive and the one-on-one testimony I've gotten
5 myself where a Legal Services Corporation says, "Look, give me
6 $50,000, or I'm going to sue you, and if I sue you, you're
7 going to have to pay my attorney's fees and your attorney's
8 fees, and it's going to be over $100,000, but if I lose, I'll
9 never have to pay your attorney's fees," and that is not
10 extortion per say, but it does create a bad reputation, I
11 think, to the Legal Services Corporation attorneys.

12 I do not believe that this is a massive problem. I
13 know that it is used as a tool. It's been testified it was
14 used as a tool by the attorney in San Francisco, and you heard
15 on the 24th how was being used against certain agriculture
16 interests. I do not see how, in any way, this makes a poor
17 person a second-class client. He never gets any of the money
18 that's going to be involved, so it should not affect him in
19 any way whatsoever.

20 I feel strongly about this, and I'm good to support
21 it, and I respect your vote against it.

22 CHAIRMAN WITTGRAF: Thank you, Mr. Kirk. I guess

1 when I said makes client second-class citizens, I would apply
2 that broadly rather than specifically, because it means that
3 in their kinds of lawsuits, private attorney's fees can't be
4 recovered, and the additional of their or other poor
5 American's legal needs can't be met in a given area because
6 those funds can't be recovered.
7 Beyond that, I would say that the example you gave
8 hypothetically strikes me as not necessarily inappropriate,
9 but perhaps typical of the kind of negotiation that occurs
10 over many contested claims or complaints, just as, I guess, I
11 wouldn't find it offensive as between private attorneys and
12 between private clients, assuming there was some basis to the
13 claim or the complaint, I wouldn't necessarily find that sort
14 of discussion as inappropriate between a Legal Services
15 attorney and the private client's attorney. That didn't
16 strike me as reprehensible as I guess it did you.
17 MR. KIRK: And it wouldn't me if the federal
18 government weren't paying the fees of that attorney that was
19 using the very fees that he was being paid by the federal
20 government as a tool over a private party, nor would it be--
21 it's not reprehensible where the party himself is capable of
22 having to pay the attorney's fees on the other side if he

1 loses. It's only because the level playing field is created
2 by this very act that I feel is significant.
3 CHAIRMAN WITTGRAF: Why shouldn't federally funded
4 Legal Services attorneys be able to use the same negotiating
5 tactics with their clients that private attorneys can use in
6 negotiating on behalf of their clients?
7 MR. KIRK: Because the federal government has given
8 them an unfair advantage in that there is no limit on what
9 they can spend. There's nobody sitting there saying, "Don't
10 spend this. Don't spend that," and because their clients
11 never have to pay attorney's fees.
12 CHAIRMAN WITTGRAF: Obviously, we disagree, and I
13 would disagree that there are no limits -- there are real
14 limits, as I tried to suggest earlier, and there are also
15 policy limits, and there are also board priority limits.
16 Further discussion.
17 Mr. Molinari.
18 MR. MOLINARI: I think we'll probably all agree that
19 the vast majority of Legal Services lawyers are not guilty of
20 the kind of acts that we're talking about here, and I think
21 Mr. Kirk has made that clear.
22 However, in a few cases are it does occur, certainly

1 it's different than it is for the private practice, and
2 especially when you get back to the situation we talked about
3 before, the case of migrant workers, which is the one that we
4 hear the most complaints.
5 Frankly, in those few instances, I don't find the
6 term "extortion" offensive. I think it really amounts to
7 extortion when you say to a farmer, "You're going to have to
8 pay. You owe $4,000," but with all these violations of
9 federal law plus what I'm going to get in the way of
10 attorney's fees, you're going to wind up getting whacked to
11 $100,000, therefore, I suggest that you pay $20,000 or
12 whatever the figure may be.
13 Call it what you like. I call it extortion, and it
14 is, in my judgment, an unfair negotiating tool, and part of
15 the problem that somehow we're going to have to address
16 someday. I think that's what Mr. Kirk is attempting to do
17 here, and I think that warrants certainly my support.
18 CHAIRMAN WITTGRAF: Further discussion. Mr. Kirk.
19 MR. KIRK: Just one last comment. My understanding
20 is this would not take great sums of money away from the local
21 programs, that not that much is recovered against private
22 parties generally, and again, I want to make it clear that in

1 no way do I consider this an indictment of all Legal Services
2 Corporation lawyers, and I am absolutely convinced that by far
3 the vast majority are doing outstanding work, and I'm just
4 concerned about the reputation of the Legal Services
5 Corporation and its attorneys, and I'd like to do what I can
6 to clean it up.
7 CHAIRMAN WITTGRAF: Mr. Hall.
8 MR. HALL: If there are lawyers, Legal Services
9 lawyers who use that as an extortionary tool, and they were
10 banned from getting their fees, I suppose those same lawyers
11 could still write say "We're making a demand for xx dollars,"
12 and it may not be a claim where the damages are always
13 liquidated.
14 So it would be subject to whatever they felt it
15 would be, and their thrust would be "If you don't pay us now,
16 we'll litigate this things for three years, and we're going to
17 be here getting this same salary for three years anyway, and
18 you're going to be paying your lawyer a ton of money."
19 So if there's a type of attorney out there that's
20 going to use improper methods and tools, I don't know that
21 taking away fees would stop him. I think he would just turn
22 to a different weapon, or could, and you sure take away a lot

1 of attorney's fees. I know we don't have any figures on that
2 actually, but you take away a lot of attorney's fees that
3 probably some defendants ought to be paying as punitive or
4 exemplary damages.
5 CHAIRMAN WITTGRAF: Further discussion.
6 (No response.)
7 CHAIRMAN WITTGRAF: Hearing none, we'll move to a
8 vote. The vote is on the substitute resolution in the form of
9 the amendment made by Mr. Kirk, seconded by Mr. Molinari, to
10 substitute the wording contained in the sheet circulated by
11 Mr. Kirk for the wording contained in the resolution presented
12 at page 23 of the board briefing book.
13 Those who are in favor of the amendment will signify
14 by saying aye.
15 (A chorus of ayes.)
16 CHAIRMAN WITTGRAF: Those who are opposed, nay.
17 (A chorus of no.)
18 CHAIRMAN WITTGRAF: The ayes appear to have it.
19 MR. DANA: Roll call.
20 CHAIRMAN WITTGRAF: A roll call vote has been
21 requested. The Chair will call the roll. Mr. Dana?
22 MR. DANA: No.

1 CHAIRMAN WITTGRAF: Mr. Guinot?
2 MR. GUINOT: (No response.)
3 CHAIRMAN WITTGRAF: Mr. Hall?
4 MR. HALL: No.
5 CHAIRMAN WITTGRAF: Mr. Kirk?
6 MR. KIRK: Yes.
7 CHAIRMAN WITTGRAF: Ms. Love?
8 MS. LOVE: Yes.
9 CHAIRMAN WITTGRAF: Mr. Molinari?
10 MR. MOLINARI: Yes.
11 CHAIRMAN WITTGRAF: Ms. Pullen?
12 MS. PULLEN: Yes.
13 CHAIRMAN WITTGRAF: Mr. Rath?
14 MR. RATH: (No response.)
15 CHAIRMAN WITTGRAF: Mr. Uddo?
16 MR. UDDO: (No response.)
17 CHAIRMAN WITTGRAF: Mr. Wittgraf votes no.
18 Ms. Wolbeck?
19 MS. WOLBECK: Yes.
20 CHAIRMAN WITTGRAF: The ayes appear to have it 5 to
21 3. The ayes do have it. The amendment is adopted. We're now
22 prepared to move to consideration of the resolution as

1 amended.

2 M O T I O N

3 CHAIRMAN WITTGRAF: Is there discussion?

4 (No response.)

5 CHAIRMAN WITTGRAF: Hearing none, those who are in
6 favor the resolution No. 9 as amended will signify by saying
7 aye. (A chorus of ayes.)

8 CHAIRMAN WITTGRAF: Those who are opposed, nay.

9 (A chorus of no.)

10 CHAIRMAN WITTGRAF: The ayes appear to have it. The
11 ayes do have it. The resolution as amended is adopted. We're
12 now prepared to consider resolution No. 10.

13 M O T I O N

14 CHAIRMAN WITTGRAF: The Chair has before it a copy
15 of a paper enumerated Roman Numeral X, Class Actions,
16 circulated by or on behalf of Mr. Kirk. This appears to the
17 Chair to be a substitute resolution, substituting certain
18 wording regarding class actions for -- in fact, it's contained
19 in resolution No. 10 presented on page 24 of the board
20 briefing book. Is it fair to say that this is a substitute in
21 the form of an amendment,
22 Mr. Kirk?

1 MR. KIRK: Yes, sir.

2 CHAIRMAN WITTGRAF: Is there a second to the
3 amendment? MR. MOLINARI: I've been seconding them all day. I
4 better second them now.

5 CHAIRMAN WITTGRAF: The amendment has been moved by
6 Mr. Kirk, seconded by Mr. Molinari. Discussion. Mr. Kirk.

7 MR. KIRK: Speaks for itself. I have no discussion.

8

9 MS. PULLEN: Mr. Chairman, would you please read it?

10

11 CHAIRMAN WITTGRAF: The amendment in the form of a
12 substitute resolution is as follows: "The board of directors
13 of the Legal Services Corporation believes that since class
14 actions involve considerable expenditures of recipient staff
15 time and resources, local boards should, as part of their
16 fiduciary responsibility be required to promulgate stringent
17 guidelines for the acceptance of class actions against
18 federal, state, or local governments, and ensure that relief
19 sought primarily benefits eligible clients."

20 Further discussion.

21 MR. HALL: Mr. Chairman.

22 CHAIRMAN WITTGRAF: Mr. Hall.

1 MR. HALL: Is this the one in the book. Are you the
2 maker of that resolution, the one that the committee proposed?
3
4 CHAIRMAN WITTGRAF: I'm not sure that I'm able to
5 wear the badge of authorship in this case necessarily. I
6 happen to support the wording in the resolution contained on
7 page 24. I think many of the limitations contemplated by Mr.
8 Kirk are included in the law already, as suggested by the
9 resolution.
10 I do think to Mr. Kirk's credit, he's probably
11 pulled back from some thoughts that he had initially about
12 limitations of the initiation of class actions. I still think
13 that it's something that has to be pursued principally by
14 local boards with guidelines they've set for their executive
15 directors and for their staff attorneys.
16 I'm not sure, perhaps, what the significance is,
17 particularly of delineating federal, state, or local
18 governments here, as opposed to private parties against whom
19 class actions might be initiated, and perhaps Mr. Kirk would
20 speak to that. But for one, I think that the limitations that
21 have been enacted into law through the 1980s have proved
22 adequate, and I don't think that any examples of abuses were

1 brought before the board in any of our hearings in April or
2 again in June, and for that reason, I see no need to go beyond
3 the resolution that was presented earlier.
4 Having said all of that, no, I'm not the author.
5 Mr. Kirk.
6 MR. KIRK: I would like to agree with you that there
7 was no testimony about abuses of class actions, and I just
8 felt that this more clearly gave a word to local boards that
9 we wanted them to be concerned about class actions. I
10 restricted it to federal, state, and local governments,
11 because I thought it would be more acceptable to members here,
12 and I was honestly seeking as much unanimity as I could get.
13 CHAIRMAN WITTGRAF: Further discussion. Mr. Dana.
14 Ms. Pullen, go ahead.
15 MS. PULLEN: I do not believe when we are taking
16 action to present public policy statements that we should use
17 phrases that are understood only by insiders, and I believe
18 that that is the main distinction the resolution as presented
19 by the committee and the resolution that Mr. Kirk offers.
20 Mr. Kirk's substitute actually says what it means,
21 and the one offered by the committee does not mean anything to
22 anyone who has not spent a great deal of time studying the act

1 and riders on class actions. I think that Mr. Kirk's is much
2 more explicit and therefore be preferred.
3 CHAIRMAN WITTGRAF: I would just comment, Ms.
4 Pullen, that I hope that the members of the House Judiciary
5 Committee are insiders when it comes to their consideration of
6 these matters. Ms. Pullen.
7 MS. PULLEN: If all we were communicating with were
8 members of the House Committees, we could do that by simply
9 having a letter read, and thereby adopting resolutions on our
10 public record.
11 CHAIRMAN WITTGRAF: Mr. Dana.
12 MR. DANA: I guess I'm not sure what is meant by
13 stringent guidelines. I understand that there are guidelines
14 that, if you took out the word "stringent," and you expanded
15 the -- and you deleted the phrase, "Federal, state, and local
16 government," I think you would be describing current law.
17 But since I don't know what stringent guidelines
18 Mr. Kirk has in his head, nor do I think it's necessary to, if
19 -- I hesitate to use the word "liberalize" federal law by
20 restricting the guidelines just to class actions against
21 government. I think I'll oppose the motion.
22 CHAIRMAN WITTGRAF: Mr. Kirk.

1 MR. KIRK: I'd like to amend my substitution by
2 deleting, as a part of their fiduciary responsibility, delete
3 "stringent," delete "federal, state, or local governments,"
4 -- "against federal state, and local governments."
5 CHAIRMAN WITTGRAF: I agree. So your amendment
6 would read, and I quote, "The board of directors of the Legal
7 Services Corporation believes that since class actions involve
8 considerable expenditures of recipient staff time and
9 resources, local boards should be required to promulgate
10 guidelines for the acceptance of class actions to ensure that
11 relief sought primarily benefits their eligible clients. "
12 MR. KIRK: Yes, sir.
13 CHAIRMAN WITTGRAF: I think "to" is a more
14 appropriate word there, in lieu of "and," and I trust Mr. Kirk
15 agrees. Further discussion on the amendment as amended.
16 (No response.)
17 CHAIRMAN WITTGRAF: Hearing none, those who are in
18 favor of the amendment to No. 10, as amended will signify by
19 saying aye.
20 (A chorus of ayes.)
21 CHAIRMAN WITTGRAF: Those opposed nay.
22 (No response.)

1 CHAIRMAN WITTGRAF: The ayes appear to have it. The
2 ayes do have it. The amendment as amended is adopted. We're
3 now on the resolution.
4 M O T I O N
5 CHAIRMAN WITTGRAF: Is there further discussion?
6 (No response.)
7 CHAIRMAN WITTGRAF: Those who are in favor the
8 resolution as amended will signify by saying aye.
9 (A chorus of ayes.)
10 CHAIRMAN WITTGRAF: Those who are opposed, nay.
11 (No response.)
12 CHAIRMAN WITTGRAF: The ayes appear to have it. The
13 ayes do have it. Resolution No. 10 as amended is adopted.
14 M O T I O N
15 MR. KIRK: No objection to 11.
16 CHAIRMAN WITTGRAF: Just a second. We accept your
17 evolving role as the conscious of the board, Mr. Kirk, but let
18 me take just a moment, please. If I recall our earlier
19 discussion prior to the departure of Mr. Rath, and if the
20 absence of papers with Roman numerals before me is any
21 indication, it appears that resolutions 11, 12, 13, and 14 are
22 without controversy.

1 If the Chair is correct in that understanding, he's
2 prepared to move to a vote on those four resolutions, 11, 12,
3 13, and 14 together. Is there any objection to that
4 procedure?
5 (No response.)
6 CHAIRMAN WITTGRAF: Hearing none, those who are in
7 favor of the passage of those four resolutions as presented in
8 the board briefing book, resolutions No. 11, 12, 13, and 14
9 will signify by saying aye.
10 (Chorus of ayes.)
11 CHAIRMAN WITTGRAF: Those who are opposed, nay.
12 (No response.)
13 CHAIRMAN WITTGRAF: The ayes appear to have it. The
14 ayes do have it. Resolutions 11, 12, 13, and 14 as presented
15 in the board briefing book are adopted. Resolution No. 15.
16 M O T I O N
17 CHAIRMAN WITTGRAF: I have no piece of paper before
18 me. Before I turn to Mr. Kirk for any thoughts he may have in
19 his mind, let me turn first to Mr. Dana for some remarks
20 regarding and on behalf the resolution No. 15, as presented at
21 page 29 in the board briefing book. Mr. Dana.
22 MR. DANA: Mr. Chairman, this resolution is intended

1 to facilitate the promotion of nonfederal sources for the
2 provision of legal services for the poor by making it possible
3 for this Corporation to grant, to make grants to entities to
4 accomplish that objective.
5 The difficulty with our current capacity to do that
6 is that we infect the recipient with all the congressional
7 restrictions that currently follow federal monies under 1010-C
8 and under resolutions passed by us here today.
9 Since most of the recipients for, potential
10 recipients, are entities that are not currently in the
11 business -- who are not currently recipients, if we make a
12 sole source grant to a bar association or a bar foundation for
13 the purpose of promoting the development of nonfederal funding
14 sources, they wouldn't take that money if it tended to affect
15 all their other programs, hence the resolution.
16 MR. KIRK: I'm sorry, but --
17 CHAIRMAN WITTGRAF: Mr. Kirk.
18 MR. KIRK: I still don't understand what it is that
19 can't be done now that you're trying to cure.
20 CHAIRMAN WITTGRAF: Mr. Dana.
21 MR. DANA: Let me do it again. You have, under
22 1010-C, under the act now, and under the proposals you passed

1 earlier today over my objections, you have -- Congress has,
2 you would, prevent the use of nonfederal funds in any way
3 prevented by Congress. I'm not speaking very clearly. It
4 must be late.
5 All this does is says if we are going to make a
6 grant, a one-time grant, to an entity to promote for it to go
7 out and promote additional funding for legal services for the
8 poor, that just by accepting that money, the recipient will
9 not be forever infected with all of the congressional
10 restrictions that we infect our permanent grantees with.
11 In short, all of the restrictions that we're putting
12 on our grantees, that Congress puts on now, that we would put
13 on by some of what we've done today, would not be put on a
14 recipient of a one-time grant from this Corporation to promote
15 the development of nonfederal funding sources.
16 CHAIRMAN WITTGRAF: Mr. Kirk.
17 MR. KIRK: So this enables us to give money to some
18 organization that supports abortion counseling and abortion
19 related litigation so that they can go out and get more non-
20 LSC funds for us? I don't understand.
21 CHAIRMAN WITTGRAF: Let me make a comment first,
22 before we go back to Mr. Dana and see, if it does any good.

1 We make many, as a corporation, make many special, and in some
2 cases, one-time grants right now. Let's talk about law school
3 clinic grants, Drake University of School of Law.
4 In giving the Drake University School of Law a grant
5 of $20,000 or $25,000, we do not, because they're not a basic
6 field grant recipient, we do not -- the law does not impose
7 upon them the kinds of limitations about grass roots political
8 activities, about abortion related legal activities, about
9 alien amnesty activities that the law does impose upon basic
10 field grantees, our regular 325 more or less recipients.
11 I think, if anything, this resolution could be
12 expanded to acknowledge that it's not realistic for Drake
13 University to be subject to all of the kinds of grants or all
14 the kinds of legal limitations that Legal Services grantees
15 are just because they're accepting a little bit of money for a
16 law school clinic.
17 Mr. Dana is concerned specifically with awarding
18 grants to stimulate promotion of nonfederal funding sources
19 for Legal Services grantees. That's one specific purpose.
20 Actually, there are lots of purposes, I think, that
21 we want to promote, probably, and that we do today promote and
22 have promoted for years, but those grantees, except for the

1 basic field grantees, are not burdened, so to speak, with the
2 limitations that are put upon our basic field grants.
3 MR. KIRK: Can you give me some entities?
4 CHAIRMAN WITTGRAF: Well, I think it would be
5 dozens. Probably Mr. Richardson or Mr. Martin is in a better
6 position. I think, for example --
7 MR. KIRK: Then I would think entities that would
8 come under this one --
9 CHAIRMAN WITTGRAF: Under this specific resolution
10 --
11 MR. KIRK: The people we want to give the money to
12 without restriction.
13 CHAIRMAN WITTGRAF: One would be Orange County Legal
14 Aid Foundation or whatever it's called, I suppose, but if we
15 were going to give it a one-time grant to be utilized for the
16 purpose of generating additional funds for pro bono legal
17 services or some other form of legal services for the poor
18 that it would not necessarily be bound by the other legal
19 restrictions that go to, say, Florida Rural Legal Services,
20 because it's a basic field grantee.
21 MR. KIRK: Just one last thing. To use a Mr. Uddo
22 --

1 CHAIRMAN WITTGRAF: ism?

2 MR. KIRK: --ism, we didn't hear that it was a
3 problem in any of the testimony, so I can't believe it needs
4 to be addressed.

5 CHAIRMAN WITTGRAF: Mr. Hall.

6 MR. HALL: If we give, say, Orange County Legal Aid
7 that one-time grant, and whoever else give them money can
8 -- their money is used for what they gave it to them for--
9 and Orange County finds a way to raise another million
10 dollars, who gets the money? And if Orange County gets it,
11 can they use it to do some of the prohibitive activities that
12 --

13 CHAIRMAN WITTGRAF: Well, I think probably so, yes.
14 If the Drake University School of Law is running under present
15 law and a program helping aliens obtain amnesty, they're not
16 prohibited but they got a law clinic grant from us for
17 continuing with that program either currently or in the
18 future. Mr. Hall.

19 MR. HALL: But because we gave them money, they're
20 able to raise more money, which they're using for the
21 prohibited activity. Had we not given them the money to raise
22 that more money, they wouldn't have had the money to do the

1 prohibited activity.

2 CHAIRMAN WITTGRAF: I think that's a possibility.

3 MR. HALL: Does that alarm anyone?

4 CHAIRMAN WITTGRAF: Mr. Dana.

5 MR. DANA: Well, these activities that you are
6 calling prohibited are not illegal activities.

7 MR. HALL: No, sir.

8 MR. DANA: They are typically activities which, in
9 large measure, lawyers have an ethical obligation to see that
10 these people, that certain people's interests are represented.
11 It doesn't happen to be one of those things that Congress
12 wants to pay for, but it's not immoral, and it is legal.

13 It is just exactly this debate that this resolution
14 is intended to circumvent so that if we are going to make a
15 one-time grant to an entity to encourage them or as seed money
16 for them to go out and raise other money to provide legal
17 services for the poor, it is not that they are necessarily--
18 the thrust of this resolution is that we will not preclude
19 that entity with the funds that they are raising or their
20 other funds from doing all the things that Congress has
21 indicated they don't want to pay for with federal funds.

22 CHAIRMAN WITTGRAF: So is there a problem at this

1 time to follow on Mr. Kirk's inquiry?

2 MR. DANA: Well, I was happy to hear you state that

3 grants to law schools did not infect the law schools.

4 CHAIRMAN WITTGRAF: That's my understanding.

5 MR. DANA: That is certainly the opinion that the

6 Corporation is following. I have not heard -- I've heard that

7 opinion. I haven't seen the -- I can't read it in the

8 statute.

9 CHAIRMAN WITTGRAF: So you're thinking that it would

10 be well to have any new statute, such as H.R. 2039, clarify

11 that point so that it's not custom in usage but rather

12 statutory?

13 MR. DANA: Yes. And my feeling is that if I were

14 advising bar associations and bar foundations in this nation

15 whether or not they should take a $5,000 or $10,000 grant from

16 this Corporation to promote private bar involvement and that

17 was the only money that they were going to take from this

18 Corporation, I would say, "Absolutely under no circumstances

19 should you touch that money."

20 So I wanted to make it very clear, because I think

21 that would be a good thing. I think it would be a wonderful

22 thing for this corporation to do to further promote, as it did

1 with IOLTA. We really funded the development of IOLTA as a
2 corporation back in the late '70s and early '80s, until some
3 people decided that developing alternate sources of funding
4 for the poor was not a good idea, and we cut it out.
5 I think we ought to be getting back into that
6 business of promoting nonfederal funding sources, and this
7 type of resolution and statutory authorization, if it got that
8 far, would do that.
9 CHAIRMAN WITTGRAF: Mr. Kirk.
10 MR. KIRK: From what you have said, this says we're
11 going to give money to organizations to raise more money so
12 they can do prohibited activities such as abortions and stuff
13 like this, but I don't think that's what it says. It says
14 "The board of directors of the Legal Services Corporation
15 supports the awarding of grants designed to promote the
16 development and implementation of nonfederal funding sources
17 for LSC grantees."
18 Well, the Orange County Bar Association Legal Aid
19 Society wouldn't be taking money from this organization, going
20 out and collecting money and give it to a grantee. What I'm
21 asking you is, who is the non-LSC grantee that we're going to
22 give the money to that's going to go get more money for LSC

1 grantees? Who is that?

2 CHAIRMAN WITTGRAF: Mr. Dana.

3 MR. DANA: It might well be the Florida Bar
4 Association, Florida Bar Foundation, or any other entity not
5 now receiving LSC funds that is another grantor of funds to
6 our grantees. Legal Aid Society, I think, of New York City
7 receives 3 percent of its funding from this Corporation, yet
8 it is entirely infected with congressional restrictions.

9 There are all kinds of entities that are providing,
10 seeking of funding from non-LSC sources, like IOLTA entities,
11 that are turning around and funding our grantees.

12 IOLTA programs across this country provide a
13 substantial amount of money to our grantees, and the purpose
14 of this is to encourage that and not to turn them into Legal
15 Services grantees for purposes of all of the restrictions,
16 some of which we've talked about today.

17 CHAIRMAN WITTGRAF: Mr. Kirk.

18 MR. KIRK: My observation is that it is not worded
19 as you have explained it, but as you have explained it, if
20 whatever the $100,000, whatever it is, that we give to the New
21 York Legal Aid Society, at this point in time, that legal aid
22 society cannot do the restricted activities, such as grass

1 roots lobbying and do abortion work, but if we pass this, then
2 we can say we can give money to this other grantee and it will
3 be given without the restriction against them doing grass
4 roots lobbying and abortion work; is that correct?
5 CHAIRMAN WITTGRAF: Mr. Dana.
6 MR. DANA: Mr. Kirk, I have no idea what you've just
7 said. I think, as near as I can articulate it, it is set
8 forth in the rationale in support of the resolution. Have you
9 had a chance to read that?
10 MR. KIRK: I've read it several times. I'll read it
11 again.
12 CHAIRMAN WITTGRAF: Is there any chance that we
13 might want to substitute the rationale for the resolution?
14 MR. KIRK: I'm going to vote against it. I'm ready
15 to vote.
16 CHAIRMAN WITTGRAF: I do think the rationale is more
17 kosher than the resolution.
18 MR. HALL: What does it say?
19 MS. PULLEN: Mr. Chairman.
20 CHAIRMAN WITTGRAF: Ms. Pullen.
21 M O T I O N
22 MS. PULLEN: I move to table resolution 15.

1 CHAIRMAN WITTGRAF: Is there a second?

2 MS. LOVE: Second.

3 CHAIRMAN WITTGRAF: There's a motion to table
4 resolution No. 15. There's a second. A motion by Ms. Pullen,
5 a second by Ms. Love. Those who are in favor of the motion to
6 table will signify by saying aye.

7 (Chorus of ayes.)

8 CHAIRMAN WITTGRAF: Those who are opposed, nay.

9 (A chorus of no.)

10 CHAIRMAN WITTGRAF: The Chair is in doubt. The
11 Chair heard four voices, two on each side. The Chair didn't
12 hear all six voices. There will be a roll call vote by the
13 Chair.

14 Mr. Dana?

15 MR. DANA: Nay.

16 CHAIRMAN WITTGRAF: Mr. Guinot?

17 MR. GUINOT: (No response.)

18 CHAIRMAN WITTGRAF: Mr. Hall?

19 MR. HALL: No, vote to table it.

20 CHAIRMAN WITTGRAF: Excuse me?

21 MR. HALL: Yes.

22 CHAIRMAN WITTGRAF: Mr. Kirk?

1 MR. KIRK: Yes.

2 CHAIRMAN WITTGRAF: Ms. Love?

3 MS. LOVE: Yes.

4 CHAIRMAN WITTGRAF: Mr. Molinari?

5 MR. MOLINARI: (No response.)

6 CHAIRMAN WITTGRAF: Ms. Pullen?

7 MS. PULLEN: Yes.

8 CHAIRMAN WITTGRAF: Mr. Rath?

9 MR. RATH: (No response.)

10 CHAIRMAN WITTGRAF: Mr. Uddo?

11 MR. UDDO: (No response.)

12 CHAIRMAN WITTGRAF: Mr. Wittgraf votes nay.

13 Ms. Wolbeck?

14 MS. WOLBECK: Yes.

15 CHAIRMAN WITTGRAF: There now are four votes to

16 table, two against. The motion is tabled. There are no

17 further resolutions -- 5-2, excuse me, not 4-2. There are no

18 further resolutions to be considered in connection with the

19 report of the Special Reauthorization Committee at this time.

20 MS. PULLEN: Mr. Chairman.

21 CHAIRMAN WITTGRAF: Ms. Pullen.

22 MS. PULLEN: I have an inquiry, Mr. Chairman.

1 CHAIRMAN WITTGRAF: Ms. Pullen.

2 MS. PULLEN: About the status of the rationales, is
3 it contemplated that the rationales will be retained with the
4 resolutions as part of this report? And if that is what is
5 intended, then I have a motion.

6 CHAIRMAN WITTGRAF: I believe Mr. Uddo indicated at
7 the beginning of our deliberations in this area at
8 approximately 2:45 p.m. that that is not the case.

9 MS. PULLEN: So the rationales are presented only
10 for purposes of board discussion and will be deleted in any
11 publication of these resolutions?

12 CHAIRMAN WITTGRAF: That is my understanding, based
13 upon the statements made by Mr. Uddo, yes.

14 MS. PULLEN: Thank you, Mr. Chairman.

15 CHAIRMAN WITTGRAF: Mr. Hall.

16 MR. HALL: Or you could at least put committee
17 rationale before them. It's probably unnecessary if they're
18 not part of it.

19 CHAIRMAN WITTGRAF: Right. Actually, Ms. Pullen's
20 inquiry is a good one. As to what distribution aside from
21 through the news media of one kind or another or organizations
22 who have the need to follow our deliberations, beyond that, I

1 don't think we've established what distribution of either
2 these resolutions, or perhaps just as importantly, the three
3 or four volumes of fact-finding material will be made.
4 At this point, I don't think there's authority for
5 anything more than the resolutions themselves, which will be
6 publicized, I'm sure, in certain places. I do think that, at
7 least at this point, the three going on four volumes of the
8 fact-finding material will be available as well to anyone who
9 inquires of it, but I think for the moment, distribution will
10 be only through reporting of the deliberations of the board.
11 Should Mr. Uddo or his committee have further
12 thoughts, I trust that he will bring that to the board at our
13 next meeting, which appears to be going to be held on August
14 12 of 1991. Let me return to the agenda, then.
15 First, an item mentioned this morning, I think by
16 Mr. Kirk, in our discussions of a review of pending
17 regulations that have been staid, I'd indicated to Mr. Dana
18 that the materials presented by our staff, both today and
19 between now and our next meeting together with some
20 resolutions proposed by
21 Mr. Dana, will be on the agenda at our next meeting.
22 There had been some concern as to whether or not the

1 so-called Regulations Committee should meet beforehand
2 regarding those. At this point, it's the Chair's
3 understanding that the Regulations Committee, which will,
4 perhaps, be reconstituted at that meeting will not necessarily
5 be considering those regulations.
6 So that will be an agenda item, then the board can
7 decide whether or not to take any action on those resolutions
8 as they pertain to the regulations or not.
9 Agenda item No. 10, put on at the request of the
10 Chair, pertains to the possibility of an annual meeting, much
11 as was held object December 10 of last year, with
12 representatives, executive directors, staff attorneys, board
13 members of Legal Services projects. I don't think we have
14 time for discussion of that now.
15 As we look to the calendar, we'd be looking toward,
16 probably, December 10, when those of us who are on the board
17 at the moment may or may not exist officially as board
18 members, a problem we had last December.
19 I would make one comment that if we have such a
20 meeting, it's my hope that we can do it, perhaps, in the
21 heartland of the country, be it Minneapolis, be it St. Louis,
22 be it Dallas, someplace that's readily accessible for people

1 from the field so that attendance can be enhanced.

2 I would like the thoughts of board members as well
3 as the thoughts of people from the field who represent the
4 field between now and our board meeting in August as to what
5 subjects are of mutual interest that might be considered at
6 that time beyond the recognition, much as we did last year, of
7 people who will have reached the 25-year mark, in terms of
8 their services to the Legal Services program. Mr. Kirk.

9 MR. KIRK: Nothing.

10 CHAIRMAN WITTGRAF: Oh, you're stretching. Enough
11 said on that point. Let me go back to the calendar again. We
12 touched on it briefly early this morning. I'm anticipating,
13 as I've been saying, a board meeting on Monday, August 12, in
14 Washington. I had mentioned this morning the possibility of a
15 board meeting on September 9.

16 The way the meetings are falling a little bit more
17 toward the midst of the month, the middle of the month, from
18 August on, and in light of some possible conflict with
19 religious holidays, it probably makes more sense to look at
20 Monday, September 16, tentatively, in the Jackson, Mississippi
21 area.

22 We're then looking, again, toward October 21,

1 tentatively -- well, actually, plans are good forward for the
2 Portland, Maine area. If need be, I'm not sure that the need
3 will be, but if need be, Monday, November 11, and then, as I
4 indicated a few moments ago, Monday, December 9.
5 Finally, at this time, to expedite deliberations at
6 our next board meeting, I'm prepared to consider a vote at
7 this time or a motion at this time that we close a portion of
8 our next meeting on Monday, August 14, 1991, for the purpose
9 of discussing confidential personnel litigation and other
10 privileged matters.
11 M O T I O N
12 MR. HALL: I move we do that.
13 CHAIRMAN WITTGRAF: There is a motion to that effect
14 from Mr. Hall. Is there a second?
15 MS. LOVE: Second.
16 CHAIRMAN WITTGRAF: A second by Ms. Love. Is there
17 discussion?
18 (No response.)
19 CHAIRMAN WITTGRAF: Hearing none, those who are in
20 favor the motion will signify by saying aye.
21 (Chorus of ayes.)
22 CHAIRMAN WITTGRAF: Those opposed, nay.

1 (No response.)

2 CHAIRMAN WITTGRAF: The ayes appear to have it. The
3 ayes do have it. The motion is adopted.

4 MS. PULLEN: Mr. Chairman.

5 CHAIRMAN WITTGRAF: Ms. Pullen.

6 MS. PULLEN: Is it necessary or desirable to have a
7 record roll call vote on the question of closing a portion of
8 the next meeting?

9 CHAIRMAN WITTGRAF: I think that's a point well-
10 taken, Ms. Pullen. For the purpose of erring on the side of
11 being safe rather than sorry, the Chair will ask for a roll
12 call vote on that motion.

13 The motion you've heard. It was made by Mr. Hall.
14 It was seconded by Ms. Love. On the motion to close a portion
15 of the next meeting to executive session, for the reasons
16 stated, on August 14, 1991, Mr. Dana, how do you vote?

17 MR. DANA: Yes.

18 CHAIRMAN WITTGRAF: Mr. Guinot?

19 MR. GUINOT: (No response.)

20 CHAIRMAN WITTGRAF: Mr. Hall?

21 MR. HALL: Yes.

22 CHAIRMAN WITTGRAF: Mr. Kirk?

1 MR. KIRK: Yes.

2 CHAIRMAN WITTGRAF: Ms. Love?

3 MS. LOVE: Yes.

4 CHAIRMAN WITTGRAF: Mr. Molinari?

5 MR. MOLINARI: (No response.)

6 CHAIRMAN WITTGRAF: Ms. Pullen?

7 MS. PULLEN: Yes.

8 CHAIRMAN WITTGRAF: Mr. Rath?

9 MR. RATH: (No response.)

10 CHAIRMAN WITTGRAF: Mr. Uddo?

11 MR. UDDO: (No response.)

12 CHAIRMAN WITTGRAF: Mr. Wittgraf votes yes.

13 Ms. Wolbeck?

14 MS. WOLBECK: Yes.

15 CHAIRMAN WITTGRAF: The ayes appear to have it. The

16 ayes do have it. The motion is adopted. Is there further

17 business to come before the board at this time?

18 M O T I O N

19 MR. DANA: Motion to adjourn.

20 CHAIRMAN WITTGRAF: Ms. Pullen, let me commend you

21 for your tenacity, although at least you don't have to travel

22 home, be it one or two days worth of travel.

1 MS. PULLEN: Mr. Chairman, I appreciate your
2 indulgence in allowing me to participate in this matter today.
3 I will tell those of you who have not yet done this, and I'm
4 sure Mr. Kirk and others who have done this will agree that
5 this is not something to do if you can possibly be present.
6 MR. KIRK: But I have to say it worked --
7 CHAIRMAN WITTGRAF: Mr. Kirk.
8 MR. KIRK: Excuse my. I'm sorry. It worked very,
9 very well, once you got on the good speaker phone, and I got
10 to tell you, we could have operated very well other times if
11 we'd had this good system. You're to be congratulated, Mr.
12 Chairman and Mr. President.
13 CHAIRMAN WITTGRAF: Further discussion.
14 (No response.)
15 CHAIRMAN WITTGRAF: Hearing none, the Chair is
16 prepared to entertain a motion to adjourn. Mr. Dana.
17 MR. DANA: So move.
18 CHAIRMAN WITTGRAF: Second by Mr. Kirk. Those in
19 favor of the motion to adjourn will signify by saying aye.
20 (Chorus of ayes.)
21 CHAIRMAN WITTGRAF: Those opposed, nay.
22 (No response.)