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**LEGAL SERVICES CORPORATION  
REAUTHORIZATION COMMITTEE MEETING**

**OPEN SESSION**

**June 3, 1991**

**The Madison Hotel  
15th and M Streets  
Executive Chambers  
Washington, D.C. 20005**

**9:30 a.m.**

**Members Present:**

**Basile Uddo, Chairman  
Howard Dana, JR.  
Luis Guinot  
J. Blakeley Hall  
William Kirk, JR.  
Jo Betts Love  
Thomas Rath  
George Wittgraf  
Jeanine Wolbeck**

**Staff Present:**

**David Martin, President  
Alan Severson, Vice President  
Patricia Batie, Secretary  
Victor Fortuno, General Counsel (Acting)  
Kathleen DeBettencourt  
Christopher Sundseth  
Christopher Dawe**

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

1  
2 MR. WITTGRAF: Good morning. If I could have your  
3 attention, please. This is the time and the place scheduled  
4 for a meeting with respect to the reauthorization committee of  
5 the Legal Services Corporation's Board of Directors.

6 As constituted by the board this committee has five  
7 members. The chair is Basile Uddo, additionally Howard Dana  
8 and George Wittgraf, Penny Pullen and William Kirk are members  
9 of the committee. Only Mr. Dana is here at this time. Mr.  
10 Uddo and Mr. Kirk will be arriving later this morning.

11 We don't have a quorum and in the absence of a  
12 quorum we're going to defer further consideration or the  
13 receipt of further information of evidence until 1:30 this  
14 afternoon.

15 Let me say by further way of background or  
16 introduction to today's meeting that in addition to the  
17 meetings we had in April in San Francisco and in Chicago at  
18 which Mr. Uddo and Mr. Boehm, who is a member of the Legal  
19 Services Corporation staff, made a substantial and concerted  
20 effort to make sure that anybody who was interested in being  
21 heard on reauthorization issues was advised of those meetings  
22 and they were given the opportunity to appear, either in

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1 person or by written statement.

2           It's come to the attention of the committee, the  
3 reauthorization committee, that certain interests feel that  
4 they haven't yet had an opportunity to be heard and wish to be  
5 heard. And in light of the fact that so far as we can tell  
6 the reauthorization legislation which was on a fast track  
7 coming out of subcommittee is now apparently on a slower track  
8 behind crime and civil rights and other legislation that's the  
9 concern of the judiciary committee of the House and the White  
10 House itself.

11           We have additional time and we want to make sure  
12 that everybody who wants to be heard can be heard.  
13 Specifically, we're anticipating that Congressman McCollum,  
14 the principle author of H.R. 1345 will join us this afternoon  
15 at approximately 2:00 p.m. I'm also curious and will ask at  
16 this point if anyone who is present here this morning is  
17 wishing to be heard or if everybody is here simply to hear  
18 rather than to be heard. Is there anyone here who's hoping to  
19 be heard yet today?

20           Apparently not. That's fine. As we will discuss  
21 this afternoon because we gave notice of today's meeting  
22 relatively late, just within the last ten days there yet may

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1 be some other people wishing to be heard and we wanted to  
2 accommodate them if at all possible. And perhaps this  
3 committee will meet both for the purposes of receiving  
4 information and for the purposes of further deliberations yet  
5 again in June. Mr. Uddo can speak to that this afternoon.

6 If there are no questions or comments the meeting  
7 which hasn't formally begun in the absence of a quorum will be  
8 begun at approximately 1:30 p.m. in this room this afternoon.

9 Any questions or comments?

10 (No response.)

11 We will see you this afternoon, then, thank you.

12 (A recess was taken.)

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## A F T E R N O O N   S E S S I O N

(2:00 p.m.)

1  
2  
3           CHAIRMAN UDDO:   Let me open the meeting, I don't  
4 know that I've officially done that. I'll do that now, open  
5 this meeting of the committee on the reauthorization of Legal  
6 Services Corporation and just indicate to the folks here that  
7 this is an additional meeting of this committee.

8           I'll talk somewhat more at the end of the meeting to  
9 give you some more insight into the work of the committee from  
10 here. Our most important business today is to hear from  
11 Congressman McCollum who you see has joined us and to give him  
12 an opportunity to address the committee; give us some of his  
13 thoughts and, of course, give us an opportunity to ask him  
14 some questions about the legislation, primarily the  
15 legislation that bears his name.

16           So, not to delay the Congressman any more than we  
17 have to I turn the floor over to Congressman McCollum and  
18 welcome you to our meeting.

## PRESENTATION OF CONGRESSMAN WILLIAM MCCOLLUM

19  
20           MR. MCCOLLUM:                   Thank you very much, Mr.  
21 Chairman. I'm very pleased that you're having this hearing  
22 and I'm pleased, as I understand it, that you're going to have

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1 still another one with some of the business community who have  
2 expressed interest in it.

3 I think it's important for the committee and for the  
4 Corporation and for that matter for the public to be able to  
5 air, as we go through the Congress these matters to air the  
6 various issues and to understand perhaps more deeply the  
7 motives of those who are concerned with reform.

8 I'm going to very briefly outline some of the things  
9 that I think are the most significant in the efforts that  
10 McCollum and Stenholm have made over the years. I put my name  
11 up there, it is certainly there in front of this bill and I'm  
12 very proud that it has been there.

13 Congressman Charles Stenholm is a coauthor and he  
14 and I have been working together for a number of years as I  
15 know the members of the board understand, for the purpose of  
16 trying to gain some of these reforms.

17 Let me say at the outset that the basis for this  
18 effort has come from what happened to the Corporation over the  
19 years of the seventies and of the eighties. Now, the history  
20 of this is the fact that we had, as I think all of you know,  
21 excessive political involvement, at least it was viewed that  
22 way by many of us, by Corporation attorneys in many parts of

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1 the country, in the seventies in particular; some  
2 mismanagement in the seventies of some of the recipient  
3 organizations. And a considerable amount of controversy that  
4 developed as a result of this.

5 I don't mean to rehash the whole history and I will  
6 not, but we all know that this organization was under  
7 considerable stress by the fact that President Reagan wanted  
8 to abolish it at one point, largely because of those  
9 activities that I've described loosely as political and  
10 mismanagement.

11 The fact of the matter is that a good deal of that  
12 subject matter was appropriate but in many ways the efforts of  
13 certain attorneys blew it out of proportion in local areas and  
14 the Corporation, it seemed to me, looking back on it, lacked  
15 the kind of power and the kind of control to be able to  
16 mitigate the various areas where excesses were built into the  
17 system.

18 This was particularly true where there were class  
19 actions and actions that were designed to alleviate perceived  
20 causes of poverty rather than actions designed to alleviate  
21 particular ills of an individual client, an eligible poverty  
22 person, such as a landlord-tenant matter, or whatever else

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1 might be the case.

2           So, in that light I want to state up front what I  
3 think all of you know, but on the record once more from my  
4 perspective, is that I have always been in favor of a  
5 federally funded legal services program for the poor. I still  
6 remain convinced that that is a very appropriate role for the  
7 federal government to play. It is difficult for the bar  
8 associates around the country to provide complete pro bono  
9 services; even though I think they're efforts need to be  
10 enhanced considerably more than they have been.

11           I opposed the efforts of the past administration to  
12 abolish this Corporation and I strongly believe that the  
13 objectives of any reauthorization or reform have to be to  
14 improve the delivery of legal services to the poor. They also  
15 have to be directed, in my judgment, to reduce the political  
16 controversy that surrounds this organization that is designed  
17 to deliver those services and to restore the credibility of  
18 the Corporation and its attorneys in the public eye and in the  
19 area of the public arena, especially with regard to Congress,  
20 the members of Congress that have to vote the funding.

21           And I suppose you could say indirectly or perhaps  
22 directly there is still a fourth reason for reauthorization

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1 and reform and that is to provide a basis and predicate for  
2 greater funding. We do not have adequate resources currently  
3 being devoted to legal services for the poor in this country.  
4 I think all of us involved understand that fact.

5 Now, what do we do in this bill. There are three  
6 broad overreaching objectives that we looked at when Charlie  
7 and I worked on this, and we refined it over the past several  
8 years. One of them was to reduce the controversy that I  
9 mentioned, to try to put a framework on the Corporation and  
10 the activities that recipients that would allow for greater  
11 confidence and credibility and greater funding for the primary  
12 purpose of delivery of legal services to individual poor in  
13 the country.

14 The second thing we wanted to do was to provide  
15 accountability. In many ways we know that that's the job this  
16 Corporation should have; as a board without any legislation to  
17 give you that power. On the other hand, because of the  
18 controversies and all of the battles that have been going on,  
19 in many cases we've observed that your hands have been tied  
20 even by our colleagues in Congress and that the board  
21 consequently has not had the powers, nor has it exercised them  
22 for these political reasons, to provide the accountability for

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1 the recipients and for the individual attorneys in a way that  
2 is appropriate.

3           And last but not least we think that there are  
4 certain things that need to be done in the way of reform and  
5 the structure of the Corporation and the handling of legal  
6 matters to provide an assurance of fairness for all parties,  
7 both the poor as well as those who might be involved in  
8 litigation or the subject of legal efforts on behalf of the  
9 poor. There are a number of things that we've proposed in  
10 that connection. Some of them overlap.

11           Again, without getting into every detail I think  
12 that it is best if we put it in some kind of a framework so  
13 you can see the thought pattern that went into each one of  
14 these. To reduce controversy and to make this less political  
15 and to restore credibility we particularly thought it was  
16 necessary to get the Corporation out of the business of  
17 activities involving reapportionment or redistricting and  
18 legislative arena. That was something we thought had to be  
19 first and foremost at the top of the list because of  
20 controversies at the 1980, '81, '82, '83 period. We also  
21 thought that lobbying and rule making efforts on the part of  
22 those who are attorneys for the Corporation's recipients was

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1 very, very controversial in many cases.

2           While there are certain narrow instances where that  
3 might be appropriate it is not something on the whole that can  
4 balance. I think everything we looked at, and we hope you do,  
5 is a question of balance. We're balancing interests and  
6 concerns here.

7           On the whole and on the balance we came down, and we  
8 do come down, rather heavily on the side of just simply  
9 getting the Corporation and its legal process out of the arena  
10 of legislating, rule making, this sort of thing, and back  
11 primarily into the arena where we think that it should be; on  
12 a matter of policy, both from the standpoint of reducing  
13 controversy and just the fact that there is such a great need  
14 for the limited funds that are there, and that is involving  
15 more everyday matters that are of concern to the individual  
16 client.

17           Involving that and perhaps the most controversial as  
18 far as the organized bar is concerned -- while we were adding  
19 and certainly refining the restrictions in the areas of  
20 redistricting and lobbying and areas of rule making we, of  
21 course, already had the question of abortion and restrictions  
22 on activities in that area existing and we simply reaffirmed

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1 those and some other restrictions in the areas such as alien  
2 support -- we felt very strongly and Charlie and I still do as  
3 members of Congress, that if we are going to have these kinds  
4 of restrictions, whatever the restrictions are, whether  
5 they're the ones we list or ones that already exist or ones  
6 that Barney Frank has in his bill or whatever, that if those  
7 restrictions are to be meaningful in the public eye they have  
8 to apply not only to the federal funds that come to Washington  
9 for the recipients but they have to apply equally to any  
10 private funds that are given to the recipients, that is the  
11 use of those funds, as well as to the use of any funds that  
12 are contributed by local or state government entities and that  
13 includes, of course, the bar associations in whatever form  
14 around the country.

15 We realize again that that's controversial because  
16 right now the current president and the president elect of the  
17 American Bar Association are very interested in encouraging  
18 the use of IOLTA bar funds, the trust funds, for the purposes  
19 of legal assistance and legal aid.

20 I think that's a good idea. I know in my home state  
21 of Florida that it's a very coming thing and it's a very  
22 important thing that these monies are available and resources

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1 are available. But from the perspective of members of  
2 Congress who have to go to town meetings, who have to answer  
3 to the public, the public does not discern the difference  
4 between whether that money is public or private or federal or  
5 state. And when they hold us accountable for an agency  
6 created by the federal government, which is what this is, and  
7 ask us as members of Congress why we are allowing X, Y and Z  
8 activities which we have said we're prohibiting, why is that  
9 going on.

10 It is a very, very difficult public policy thing to  
11 answer. In fact, I would submit to you it's not a very  
12 responsible thing for Congress to allow this circumvention of  
13 the very prohibitions it's put in the law by this method, that  
14 is using private or non-federal funds for the purposes that  
15 are prohibited.

16 So, consequently I feel very strongly that we have  
17 to restrict those uses if we're going to restore credibility.  
18 After all, the objective here in large measure for these  
19 particular provisions that we've outlined with regard to  
20 politics, if you will, is to reduce the controversy, is to  
21 restore credibility, is to gain greater opportunity for  
22 funding. And in that way you are really aborting that if you

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1 are going to go to allowing -- continuing to allow the outside  
2 funds to circumvent that process.

3 And if the bar associations wants to, there is  
4 nothing that prohibits them from setting up what Orange  
5 County, Florida has as a model program and there are others in  
6 the country who do too, and that is independently funded bar  
7 associated types of legal services or legal aid programs with  
8 those IOLTA funds or with other funds to do things that  
9 otherwise the Legal Services Corporation attorneys would be  
10 prohibited from doing.

11 In the area of accountability, and I think moving  
12 into that -- segregating it out here is appropriate at this  
13 point. There are some that I don't think are that  
14 controversial. The Frank bill addresses a couple of these and  
15 one of them not additionally but in the amendment process and  
16 that's timekeeping. The idea of fraud and embezzlement laws  
17 applying to the Corporation has been accepted by the bar  
18 associations around the country as something we ought to be  
19 doing.

20 Timekeeping, by the way, has been refined in our  
21 proposal, and is what is in the subcommittee mark right now,  
22 to only pertain to attorneys and paralegals. At one time it

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1 was too broad and we recognized that. We don't want every  
2 person who's working on the staff of Legal Services  
3 Corporation grantees to have to keep time. But lawyers and  
4 those who are paralegals, it seems to us, should keep it.

5 Now, again, this goes back to accountability so that  
6 the boards of the local recipients and you as the Corporation  
7 can keep track of what type of activity and effort is going  
8 on. Not to necessarily prohibit but so that in an oversight  
9 capacity you can see where the dollars are going. After all,  
10 you are monitored by Congress and the local boards are  
11 monitored for their individual chartered organizations.

12 And then I come to the one that I think is the most  
13 significant accountability provision and perhaps the most  
14 significant provision that is involved in this entire piece of  
15 legislation and that is a provision that would require  
16 competitive bidding for grantees and those who contract with  
17 the Corporation and to be able to retain and keep their  
18 franchises.

19 I don't need to tell you that essentially what you  
20 are dealing with as a Corporation is a franchise operation not  
21 unlike a fast food chain, although I don't want to demean the  
22 purposes by making that comment. I'm very aware of the

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1 sensitivity of the subject matter we're dealing with.

2 I think we have to understand that as lawyers that  
3 we are dealing with the right to be a legal services delivery  
4 outfit and in a given geographical area or in a given  
5 geographical area with a particular purpose in mind such as  
6 the rural legal services that are involved, often times, with  
7 migrant workers; either some specialty franchise or some  
8 geographical franchise is involved.

9 And what we have, I think, because of the politics,  
10 because of the threat to the Corporation because Congress and  
11 some protectors of the Corporation and the program were  
12 fearful of the abuses that the board existing before you, the  
13 previous board, might do. We've had presumptive refunding of  
14 these entities, of these recipient grantees around the  
15 country. I don't think that's healthy and I don't think that  
16 those in the Senate as well, Senator Rudman included, believe  
17 that that is a healthy thing.

18 Quite a long time ago he and I drafted a tentative  
19 bid language that was put in on a conditional basis in the  
20 appropriation language on legal services even though it's  
21 never been in any reauthorization language. The idea here is  
22 not to bid on a cost basis, not to be like a building

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1 contractor and have the lowest cost bidder achieve the bid  
2 that is to become the grantee but rather to have the bidding  
3 process based on quality, delivery and other standards that  
4 would be appropriate that this Corporation would set in its  
5 regulations and in its policy, the members of the board would  
6 set it so that we could gain assurance that every so often,  
7 every so many years, there would be an opportunity for other  
8 groups, other non-profits that are appropriate, to come  
9 forward and seek to get the funds and seek to have the  
10 franchises to deliver these services.

11 Why is that so important? Well, I don't think it's  
12 just a sense of fairness, because it certainly is that, but I  
13 think that is a method that is very important for the board  
14 and the Corporation at the national level to have enforcement  
15 of its policies within the various recipient organizations.  
16 You set a policy guideline today it is often times, as I've  
17 seen in the past, breached. It's honored by mouthing and  
18 everybody understands it and in some cases they follow it  
19 religiously: they breach it. And there is very little you can  
20 do about that.

21 In most cases today I've found that legal services  
22 are being properly delivered. The deviant path of some of the

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1 organizations out here, the recipients in the past are  
2 certainly fewer today and I'm pleased with that, I know you  
3 are. But there are still those who are wavering and they're  
4 going to continue to be. And as a matter of public policy this  
5 Corporation board needs to have teeth with what it says. Now,  
6 you shouldn't have to go out every time you pass some  
7 regulation and get really angry and have hearings and so forth  
8 at somebody for not following.

9           And it shouldn't be a routine pattern not to follow  
10 your guidelines, your regulations whatever they are. And by  
11 the competitive bidding process I think you bring a sense of  
12 alertness and awareness on the part of the organizations out  
13 there who are bidding that yes, they have to answer to  
14 somebody. It is truly an accountable process. And when  
15 that's not abused it's right. The only reason that has not  
16 come into effect up till now is because Senator Rudman,  
17 particularly, has felt that until this board that you're  
18 sitting on becomes confirmed by the Senate and we are away  
19 from the Reagan era of the board threatening the existence of  
20 this Corporation, that competitive bidding is not a good idea.

21           But now we're on the verge of that. I hope each of  
22 you are up very shortly for confirmation in the Senate and I

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1 would anticipate that all of you, I would hope, would be  
2 confirmed. And it's time for competitive bidding.

3 The last two or three things, and I will be very  
4 quick with that. They're not simple but they're much simpler  
5 than they were before. This might be an area not only of  
6 accountability but of fairness. We think very strongly that  
7 there has to be a way for the defendant who is being sued by  
8 legal services attorneys to have some balance in this process,  
9 even in the pre complaint stage.

10 Often times we've seen cases -- I hope that you get  
11 to hear about some of this in the next couple of weeks when  
12 you do have another hearing -- where there are suits and there  
13 are claims even before a suit is brought by legal services  
14 attorneys against particular agriculture, farm workers,  
15 farmers, I should say, who do not know who the individual  
16 parties are, which farm workers are making the complaints of  
17 the farm workers and their attorney's don't know. It's very  
18 difficult to prepare to even decide to defend or to go forward  
19 with this saying, hey, we won't settle this, we'll go ahead  
20 and go to trial or we'll go to suit or we'll go to some next  
21 stage without knowing the full scope of it.

22 And that's largely because of the expense of this

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1 type of litigation, and often times the burdens of small  
2 businessmen and farmers as well, who simply don't always have  
3 the cash flow to be able to conduct a lawsuit defense in these  
4 situations.

5 And so out of fairness for this and because we  
6 thought we did go excessively perhaps -- referring to have  
7 hoops to be jumped through in previous proposals we made--  
8 Congressman Stenholm and I came up with this latest bill with  
9 the idea of requiring the identity of all plaintiffs to all of  
10 these class action suits that might be filed out there,  
11 whatever the nature, not specific to agricultural suits but to  
12 all suits and allow an out, allow a court protection so that  
13 there isn't harassment. We don't want to see that occur.

14 We want to see the attorneys, though, before the  
15 defendants be able to -- or the claim against the parties be  
16 able to get out into to the field and to find what the case is  
17 against them, to do research if there is proper protection.

18 We also think there ought to be accountability or in  
19 the sense of statement of claim, a statement of facts, a  
20 statement of the case that's signed by each of the clients  
21 individually and put on file; not for discovery but rather for  
22 you to be assured, and the local boards to be assured, that

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1 the attorneys involved are not going out with excessive zeal  
2 drumming up the cases and making them bigger than perhaps they  
3 really are. At least something that's in the file to  
4 demonstrate that for oversight purposes and history purposes  
5 but not with regard to actual litigation.

6 In this same connection we're concerned and have  
7 been about the fact that there is a movement inside the bar  
8 that some of you have talked with me about and I'm very  
9 familiar with, with regard to allowing pro bono work to be an  
10 exception to the rules of the bar against solicitation.

11 I do not believe that we should be treating the  
12 federally funded legal services lawyers in the same way that a  
13 pro bono attorney is being treated in terms of solicitation  
14 when a private member of the bar decided to undertake a matter  
15 without compensation. The fact of the matter is that Legal  
16 Services Corporation attorneys are paid for what they do.  
17 They are getting a salary. In fact, salaries constitute what,  
18 almost 90 percent of the actual budget of the Corporation.

19 And while they may not be the fat cat salaries some  
20 people have on the other side of them, I don't pretend that  
21 they are wealthy attorneys that we're hiring out there. There  
22 none the less is a deep pocket, relatively speaking. It is a

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1 federally funded program.

2 From the public perception standpoint as well, I  
3 think as a reality standpoint it seems to me that we ought to  
4 have the general rules of solicitation apply. None of this is  
5 to say that a legal services lawyer should be prohibited from  
6 going to an outreach program to identify the offerings of the  
7 services of the Corporation to the public and the poor, to  
8 migrant workers if that be the case, or wherever.

9 We think there ought to be opportunities for that,  
10 to go to the fields, to go to the lecture halls, to go to the  
11 farm workers unions or wherever, wherever it happens to be.  
12 It could be the union hall for a corporation somewhere that's  
13 totally unrelated to farming, anything, any place; to let the  
14 poor know, wherever it happens to be, of the services but not  
15 to go out and button hole and literally pull on the coats of  
16 individual clients or potential clients in a way that would be  
17 prohibited for the general bar as a whole.

18 And last in this same connection we have set up a  
19 proposal in this legislation for the local boards to set  
20 priorities. Now, we don't require that you set priorities,  
21 though there is a provision that suggests that you might  
22 propose priorities, suggest priorities with no requirement--

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1 no allowing even as a board nationally, to set the priorities  
2 for the local board.

3 I do think that the local boards ought to set  
4 priorities. There ought to be some way of taking the limited  
5 resources we have and making sure that over all there is a  
6 responsible allocation. It doesn't have to be an exact  
7 percentage of going to this type of case or that type of case  
8 but there ought to be a sense that in the given community that  
9 there is a spectrum of services being provided across the  
10 board and that you're not denying an element of the poor from  
11 having the type of relief that they ought to be able to have  
12 some access to simply because in that particular community the  
13 particular attorneys for legal services are getting all  
14 excited about one or two major problems they perceive in the  
15 community. That, again, goes to the accountability.

16 Last in all of this I've come to what I call  
17 fairness. And as I've said, a couple of those I just  
18 mentioned could be considered fairness questions, I think.  
19 These two I'm going to mention now are fairly simple, straight  
20 forward things. One of them is the application of a fund that  
21 we propose creating to compensate those who are harassed or  
22 found to be harassed or involved in suit that have come out of

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1 Rule 11 where there has been either a frivolous nature of the  
2 suit or a harassing involvement of the legal services  
3 attorneys.

4 I'd like to believe that's far and wide between. We  
5 have seen some of the Rule 11 applications in the legal  
6 services arena and I'm sure we'll see it again. We envision  
7 that where there is not a federal court and there is not  
8 another means of applying this through a state court system  
9 that has a comparable Rule 11 system, that the president of  
10 this Corporation be allowed to make an adjudication not in a  
11 court room but in an equity basis to determine if the fund is  
12 to be dipped into to compensate any of the defendants in  
13 litigation who might have been harmed by a frivolous law suit  
14 or by some harassment that is not appropriate. And that fund,  
15 of course, would be with federal money.

16 Last I would point out to you the fact that we do  
17 touch class actions and we touch them in one way only and that  
18 is to require that in cases where there are government  
19 entities, that the local boards have to approve the class  
20 actions against government entities. That has been a highly  
21 controversial area in the past. Lots of local governments  
22 have complained to me personally all across the country over

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1 the years. And it seems to me that it's highly appropriate  
2 that the boards approve class action suits against government  
3 entities before they are filed at least to get some semblance  
4 that they have been reviewed at a level higher than individual  
5 attorney discretion.

6 I might say to you in closing that while some of  
7 these things may be perceived as restraints on individual  
8 attorney and judgment, they are really no more than what I  
9 think you would find at any law firm of trying to account for  
10 the attorney behavior and to allow as wide a license as  
11 possible but to provide some accountability. And again, all  
12 of these things are designed so that we propose in as concise  
13 manner as possible to restore credibility to the Corporation,  
14 to eliminate some of the controversy that we perceived as  
15 having been excessive and having been detrimental to delivery  
16 of legal services for the poor and to provide an opportunity  
17 for greater funding.

18 I understand at the conference last year the  
19 Corporation held, and had a rather interesting revelation up  
20 here in Washington, that four out of every five eligible poor  
21 persons in this country were not using legal services today.  
22 In other words, one out of five are; four out of five are not.

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1 That's a sad case.

2           The bar needs to address this and we need to address  
3 it. We're not ever going to see this problem resolved and  
4 full access to justice until we do. And it's not all going to  
5 occur because we here in Washington, either the Congress or  
6 through the legal services board are providing every bit of  
7 that. I feel we need to provide more of it and we need to  
8 have the bar associations of the country, both the national--  
9 the American Bar as well as the individual state bars and  
10 local bars involved in a coordinated cooperative effort. We  
11 need to end the bickering and we need to find a way to get a  
12 common bond.

13           I think that's the challenge that all of you have  
14 and I share it with you. And I share it with those who are  
15 opposed to me in some of these hearing. I think we all want  
16 to see the same bottom line. It's just that I happen to  
17 strongly believe, and I've lived with this a long time, that  
18 what we proposed in the McCollum-Stenholm Bill is a very  
19 important process to get us further along to that objective.

20           Thank you, Mr. Chairman.

21           CHAIRMAN UDDO: Thank you very much, Congressman  
22 McCollum. We appreciate your comments. I assume you have

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1 some time to spend with us?

2 MR. MCCOLLUM: I brought my beeper with me and if it  
3 goes off I'll have to go. I hope it doesn't.

4 CHAIRMAN UDDO: My usual method it to ask members of  
5 the committee if they have any questions and then we'll ask  
6 members of the board if they have any questions. I will start  
7 with members of the committee. For your information, that's  
8 Mr. Dana, who's a member of the committee, Chairman Wittgraf  
9 is a member of the committee. I'm the Chairman of the  
10 committee. Mr. Kirk is a member of the committee and Ms.  
11 Pullen, who is not here today, is a member of the committee.

12 So, among those committee members are there  
13 questions? Mr. Dana, you're starting from the --

14 MR. DANA: From the left.

15 CHAIRMAN UDDO: I was going to say from the left but  
16 I knew Bud Kirk would say something.

17 MR. DANA: Thank you, Congressman. This is our--  
18 if I didn't ask questions of the author of the McCollum Bill  
19 everybody would say what on earth have you been doing for the  
20 last three hearings.

21 It's nice to have someone to talk to about your  
22 legislation. Everybody has been telling us what's wrong with

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1 it and we've had virtually no one to defend it.

2 I have a hard time myself in many respects. I'd  
3 like to focus on a section or two at a time or a section at a  
4 time. Mr. Chairman, if you think I've had too much time, move  
5 on to somebody else. If there is more time you can come back  
6 to me.

7 Congressman, focusing on your redistricting, and I  
8 understand the difference between your bill and the Frank Bill  
9 is in two respects, how you deal with -- you outlaw legal  
10 services representation at the local level, the Frank Bill  
11 does not.

12 MR. MCCOLLUM: That's where it's evolved now, Mr.  
13 Dana. Initially we did it and he did not at all and then we  
14 did it congressionally and then subsequently modified it  
15 further. Just as ours has evolved so has his.

16 MR. DANA: If you were satisfied that there were not  
17 sufficient attorneys at the local level to vindicate rights  
18 under the voting rights act would you support the Frank Bill  
19 or the McCollum Bill?

20 MR. MCCOLLUM: Well, I quite frankly do not think  
21 that it's a question of where you draw the line under local or  
22 national. I think the principle is the same in all cases.

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1 The principle is that we want to get the legal services  
2 lawyers out of the business of controversy and politics.

3 And I think everything in connection with  
4 redistricting is controversial, political and is detrimental  
5 to the long-term interests of this Corporation. Not that  
6 there can't be arguments made, as I'm sure you can make them,  
7 for individual cases where it would be helpful to some causes  
8 of some of the poor to be able to have someone in there  
9 representing them in a collective fashion.

10 MR. DANA: So, even if it meant that those rights  
11 would not be vindicated you would still favor federal legal  
12 service programs getting out of redistricting?

13 MR. MCCOLLUM: Mr. Dana, I don't believe that you  
14 will find that there is not an outlet for vindicating those  
15 rights. The very nature of that arena is politics and the  
16 very nature of this whole process, it seems to me, is the area  
17 of legislation; Congress, as well as the courts but  
18 predominately Congress, and politics.

19 So, I don't think that they're unrepresented or will  
20 be unrepresented.

21 MR. DANA: Moving to the migrant suggestions. And  
22 we may disagree on this but I think it is reasonably accurate

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1 that almost all the legal representation that migrant farm  
2 workers get in this nation is provided by the Legal Services  
3 Corporation's grantees. Your section four, I think, of your  
4 bill, would limit service by the grantee to either diagnosing  
5 a problem, coming out and -- or solving the problem but not  
6 both because that would be viewed, I think, through your bill,  
7 as solicitation.

8 What do you say to those people who suggest that  
9 what in effect your bill does is leave migrant farm workers  
10 with the knowledge that an injustice is being done to them but  
11 no champions to vindicate that injustice?

12 MR. MCCOLLUM: I'd say that's hogwash. I'd say that  
13 my bill doesn't affect the representation of migrant workers  
14 at all. I would say to you that what we propose to do is to  
15 simply allow what ought to be the normal course in this affair  
16 and that is for the attorneys for legal services, when they  
17 have an opportunity, to talk with the leaders, and they do  
18 have leaders of migrant worker interests and they have a lot  
19 of social workers who involve themselves on a regular basis  
20 with migrant workers and those problems and those litigation  
21 issues and those things that are terrible are brought to their  
22 attention on a regular basis as a generic rule.

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1           If migrant workers want to come forward they are,  
2 and can be encouraged to come forward -- I'm sure they would  
3 be encouraged to come forward by the social worker system that  
4 works with them as well as perhaps by some of their comrades  
5 if there is a known entity out there that can represent them.

6           We not only do not prohibit we encourage in our  
7 legislation the actual going out into the field if you will,  
8 to the farm worker meetings, and letting the farm workers know  
9 that the litigation expertise is available and even noticing  
10 the type of litigation or the type of claim that might be  
11 made.

12           What we do not want to see is the going out into the  
13 field in a sense of a one on one and saying, "I want to get  
14 you to be a party to this suit, let's sit down with John Jones  
15 out here in the field and say, you know, Sam and Dick and  
16 Harry and Bob have said so and so, they want us to have a  
17 lawsuit here we need you to join in this suit, we'll add your  
18 name to it."

19           I don't want the attorney doing that. I don't have  
20 any problem if Tom and Dick and Harry and Bob go to Sam and  
21 say, hey, we want you to join in here, we've got one going.  
22 But I don't think the attorney ought to be doing it and I

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1 think as much as anything else it's perception and I think  
2 it's a bad perception and I think it's something which is why  
3 we have the solicitation rule generally in the bar as a whole.  
4 It's just a bad image and it doesn't do the Corporation any  
5 good to have that image.

6 MR. DANA: I think that maybe there is a  
7 misperception as to what your bill accomplishes. Are you  
8 saying that a legal services attorney can go out to a migrant  
9 farm worker camp, go around and talk to the various workers,  
10 inquire about their situation, find out, learn, sort of  
11 investigate their lot, discover that they are being underpaid  
12 or that the situation is not in accordance with the ABA and  
13 then take that case?

14 MR. MCCOLLUM: I would suggest to you they can but  
15 it's a marginal question and you begin to get into a question  
16 of fact. You begin to get into a question that may be  
17 litigated, a question that could be debated as to whether you  
18 crossed the line of solicitation. And there are a whole set  
19 of ethical determinations as you're aware, I'm sure, trying to  
20 draw those kinds of lines.

21 MR. DANA: Well, as I know you know, in 50 states of  
22 the nation a pro bono attorney or an attorney who is not being

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1 paid by the client can do just exactly that. But an attorney  
2 who is being paid by that client can't basically come out and  
3 -- what if -- if they're personal economic interest is  
4 affected by that particular representation that's called  
5 ambulance chasing and that's the solicitation rule.

6 It is the absence of a personal financial benefit  
7 flowing from the client to the lawyer that in 50 states of the  
8 nation permit an attorney who is not charging or an attorney  
9 that is paid by the year, from taking that case. Your  
10 legislation would change the law in 50 states, the ethical  
11 rules of 50 states. This is the first time that I know of  
12 that Congress has decided to regulate our profession's ethics.

13  
14 I know you are aware of that but to suggest that  
15 this is returning to yesterday or that there is something--  
16 some modest difference between what you're proposing and what  
17 is the fact today is not my understanding.

18 MR. MCCOLLUM: I'm suggesting, Mr. Dana, that this  
19 is a public policy matter and I'm suggesting to you that on  
20 the balance that the public policy to establish the  
21 credibility of this Corporation and legal services efforts and  
22 to get some balance of interest here with respect to the fact

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1 that many of the defendants, in the farm worker area,  
2 particularly the farmers, have been abused by this process, by  
3 attorneys who have deep pockets albeit representing the poor;  
4 that this is a very appropriate restriction and it is one that  
5 is in conformity with the longstanding history of the bar.

6 It's only in very modern and recent times that this  
7 pro bono exception to solicitation has evolved and as a matter  
8 of fact, I don't think that it was ever envisioned  
9 particularly that it applied to those who are paid legal  
10 services lawyers as opposed to those who are truly doing it  
11 for free.

12 MR. DANA: Do you know of one state in the nation  
13 where that is the case?

14 MR. MCCOLLUM: I don't know, I have no research on  
15 it. I don't think I need to know that. I know that from  
16 common sense is why I proposed this rule and because I've  
17 heard from a lot of people out in the field who complain  
18 vigorously about the invasion of their particular interest by  
19 legal services lawyers in a very abusive manner.

20 MR. DANA: Under your section five you have proposed  
21 that every lawyer representing or undertaking to represent a  
22 client cross examine the client and get all the facts down and

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1 create a statement and have the client sign it, both in  
2 English and in their language if that seems appropriate.

3 You've indicated, and I was happy to hear it, that  
4 this is a statement that is not discoverable. What is the  
5 basis for your view that it is not discoverable if it indeed  
6 is discoverable, if the statute says that it is discoverable  
7 in accordance with law and it is required to be produced by  
8 auditors and a variety of other people so that the typical  
9 attorney-client privilege is waived if third parties get a  
10 chance to see it.

11 MR. MCCOLLUM: Well, it's my opinion that that's the  
12 case and if we haven't written it strongly enough we'll write  
13 it in there in some way. You and I have had individual  
14 conversations about this and I think you're fully aware that I  
15 am sensitive to that matter. But my impression, I think we've  
16 written it well enough to say that. I don't happen to have  
17 researched that language, although I've got it in front of me  
18 here, to be able to debate that with you today in specific.  
19 But I have gone back over this in the past, actually triggered  
20 by you and I talking about this on the phone, and worked on  
21 the language to make it as clear as possibly I could, at least  
22 as I felt I could, that that was the objective here and that's

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1 what we wanted to protect; the same way with the names. We've  
2 gone through an elaborate procedure to say the courts can  
3 protect the names.

4 No one wants to impair the rights of the migrant worker  
5 or the individual client, whoever it happens to be and expose  
6 them unduly but we do want accountability, we want the  
7 Corporation to be able to know and for the attorneys who are  
8 representing them to -- and the individual LSC attorneys to  
9 make sure that they have a case, that they really have a true  
10 client.

11 MR. DANA: You and I, I think, share a very high  
12 regard for members of our profession and I accept that but we  
13 all know that people make mistakes, one of the reasons for  
14 your fraud and abuse section is that people do make mistakes.  
15 I am really concerned about your naming provision because you  
16 require if somebody had a lawsuit or a client and there is a  
17 fear of physical violence, physical harm to that client there  
18 is a process by which even now one can file a John Doe  
19 complaint. But you require, as a matter of federal law under  
20 those circumstances, disclosure to the defendant's attorney.

21 What is to prevent an occasional loss of life and  
22 physical harm to a migrant worker whose lawyer lets --makes a

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1 mistake and lets that information out to the farmer when he's  
2 doing his investigation of the case.

3 MR. MCCOLLUM: Well, Mr. Dana, there is nothing and  
4 I would say that's one of the risks that is in everything, in  
5 law or anything we do. But I think the risk is extremely  
6 minimal and I think you would agree with that and I think in  
7 addition to that that you have to again weigh, as I think we  
8 do all the time in our profession and as I do in Congress, a  
9 balancing test. And that's what I'm using in this case and I  
10 think the balance of weight comes down heavily on the side of  
11 this case. Fairness -- to allow some balance back in the  
12 favor of those who are trying to defend themselves from what  
13 has become in many cases blackmail situations in precomplaint  
14 cases where they don't know who the heck it is who is bringing  
15 the accusations or the truth or voracity and have no way of  
16 checking it out.

17 We have gone overboard here in this provision, I  
18 think, as authors to try to allow protection by court and so  
19 forth so that only the attorney, only the paralegal can have  
20 access and I think we have to somewhat rely on the ethics of  
21 our bar which has been very good in disciplinary matters  
22 across the country and on some of the basic principles of

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1 criminal law which would perhaps apply in those cases as well  
2 to protect farm workers on the whole.

3 Again, I think the exception would be very rare,  
4 indeed, to that, not absolutely out of the question, not  
5 totally out, ruled out, but very rare.

6 MR. DANA: Congressman, I hope I get a chance to ask  
7 some more but I've been told to shut up and let someone else  
8 ask.

9 CHAIRMAN UDDO: I was just getting ready to tell you  
10 that. Who told you that? That's about 15 minutes and I was  
11 going to stop you and if we have some more time I'll come back  
12 to you. Somebody sent you a note to that effect? It didn't  
13 come from me, Howard.

14 Mr. Kirk, do you have -- I sensed you had some  
15 questions. Do you want to go next?

16 MR. KIRK: No, whoever is next in line. Let Mr.  
17 Wittgraf do it, I'll take my turn.

18 CHAIRMAN UDDO: Mr. Wittgraf?

19 MR. WITTGRAF: Thank you, Mr. Uddo. Thank you,  
20 Congressman, for being here on relatively short notice and  
21 hopefully without too much disruption to you schedule. I  
22 trust central Florida is no more humid than greater Washington

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1 today?

2 MR. MCCOLLUM: Well, I think not although you cooled  
3 off a little bit with a cloud when I came in. I want to thank  
4 you personally for your hospitality though. And as I  
5 indicated to you on the phone last week I was happy to come in  
6 and do this today if it was convenient to your members.

7 MR. WITTGRAF: Thank you. I think the advantage  
8 probably is it does allow us a little bit more time. I'm  
9 pleased that there were nine of the eleven of us able to be  
10 here. Mr. Guinot had to leave, he had a flight at three  
11 o'clock and had to excuse himself early but fortunately most  
12 of the board members were able to be here.

13 A couple of questions. As you've indicated and as  
14 you and I have discussed and as Mr. Uddo and I have discussed  
15 there are some other people who representing themselves or  
16 different interest groups have some information they'd like to  
17 share with us and we plan to afford them that opportunity. But  
18 even today I'm wondering -- you mentioned particularly, I  
19 think, some Rule 11 type abuses, some frivolous law suits that  
20 either were sanctioned under Federal Rule of Civil Procedure  
21 11 or could have been sanctioned under that rule.

22 Do you happen to have any specific information, any

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1 data, any examples of any kind?

2 MR. MCCOLLUM: I didn't bring anything with me  
3 today, Mr. Wittgraf, but I have personally been involved in  
4 reviewing pieces of litigation over some period of time. I  
5 couldn't tell you where they are right now and what stage  
6 they're in and how confidential they are but I've been under  
7 the impression that there have been some actual Rule 11  
8 rulings. Maybe there have not been, I've been under that  
9 impression. And I certainly am aware of some of the abuses  
10 within the system that have been described at great length to  
11 me and I am confident they were real.

12 MR. WITTGRAF: I think it would be real helpful  
13 because one of our purposes, if not perhaps our primary  
14 purpose, really is fact finding. And we're doing some fact  
15 finding that certainly is of benefit to our own knowledge. I'm  
16 not sure to what extent ultimately that the Congress or the  
17 White House is going to be that interested in our fact  
18 finding. But if say members of your staff have that kind of  
19 information that is not of a privileged or confidential nature  
20 that could be given to us I think it would be real helpful,  
21 likewise, if any of the people you visited with who might be  
22 visiting with us in the future have specific examples,

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1 particularly by cases or at least by local projects who have  
2 perhaps done something for which sanctions were imposed it  
3 would be real helpful.

4 MR. MCCOLLUM: Let me respond by saying this: I'm  
5 personally working and my staff is, very hard to give you that  
6 case structure. What we have determined is that examples  
7 through a sequacious route of sorts, what we have found is that  
8 particularly in the farm worker area the farmers, even after  
9 litigation is concluded or a complaint is settled, even in a  
10 pre situation the farmer is scared to death to come forward  
11 for fear that the legal services lawyers will once again focus  
12 on him and come after him.

13 So, while there may be this sense that Mr. Dana  
14 described earlier of intimidation and fear on the part of  
15 workers there is fear, I've seen it, I've talked to them in  
16 the farm community. That's been why it's been so difficult to  
17 get them to come public with it not only this year with you  
18 but in the last two or three years that I've been involved  
19 with it. It's very frustrating but we're working to try to  
20 find a way to present a reputable, credible witness before you  
21 or two so he can reveal what he has discovered and worked with  
22 in as much specificity as possible. Perhaps keeping the names

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1 of those involved privileged.

2 MR. WITTGRAF: If I'm recalling correctly I think a  
3 year ago, in late March of last year, there were some farm  
4 organization representatives who appeared before us as well as  
5 before Mr. Frank's subcommittee and provided some information  
6 which turned out either to be very outdated or inaccurate.

7 I think we'll all be better off if any information  
8 that can be shared with us is as current as possible and  
9 obviously as accurate as possible so that --

10 MR. MCCOLLUM: Well, that's what I hope to do.  
11 We're working to try to provide that.

12 MR. WITTGRAF: Thank you. And I guess going beyond  
13 that concern with sanctions or particularly in H.R. 1345 your  
14 proposal for giving the president of the Legal Services  
15 Corporation some authority that the president's never had  
16 before and I don't know whether this president is seeking it  
17 or not particularly, of a quasi judicial nature regarding  
18 having funds available for aggrieved defendants to be able to  
19 recoup their unwarranted losses.

20 Going beyond that are there other examples, do you  
21 think, of excesses by legal services projects in the legal  
22 system that don't have to do necessarily with Rule 11

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1 sanctions but simply with what other people at least perceive  
2 to be and allege to be abuses of the process.

3 MR. MCCOLLUM: Well, outside of the farm worker area  
4 the most current complaints I've had have dealt with housing  
5 authorities. And they felt abused as a general whole. I  
6 don't know whether that's justified or not and I'm not --

7 MR. WITTGRAF: Local public housing authorities?

8 MR. MCCOLLUM: Right. I'm not attempting to modify  
9 those. I asked one in particular to come testify before you  
10 and like the farmers they don't want to do it. So, you can  
11 say well they don't have credibility. All I can do is pass on  
12 to you the fact that because of my involvement with this issue  
13 that I get people calling and regularly do make complaints.  
14 The two areas that they're most commonly found in today are  
15 housing and in the area of farm workers.

16 MR. WITTGRAF: When you're talking about housing I  
17 assume you're speaking of the representation of --

18 MR. MCCOLLUM: Housing agencies.

19 MR. WITTGRAF: The representation of people who are  
20 in eviction proceedings and who in the minds of at least the  
21 local public housing authorities don't deserve federally  
22 subsidized representation because of their own criminal

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1 activities?

2 MR. MCCOLLUM: Well, in some cases that's true.  
3 I've also seen cases, a couple of them, where they've come  
4 forward and said to me that they thought that there was a  
5 claim at least being brought against them by legal services  
6 trying to get them to do something that they thought was  
7 inappropriate.

8 Again, I have not tried to involve myself in the  
9 details of every one of those. I passed them on to some of  
10 the counsel in your shop. Sometimes those have born fruit and  
11 sometimes they've not because like so many of these things you  
12 don't know whether they're A, credible people complaining or  
13 whether they're not. And the main thing I want to emphasize  
14 is that structure that we've put forward here, Charlie and I  
15 have, is a framework to give what we think is more flexibility  
16 and the power to you to be able to address those if there are  
17 any real ones, not to try to suggest that there is a huge  
18 group of them out there but to provide a mechanism for relief  
19 on those hopefully very rare occasions when that does happen.

20 MR. WITGRAF: I do, at least from my experience  
21 over the last 15 or 16 months share the view you've just  
22 stated, that the problems we're dealing with do tend to

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1 involve a very small number of the so-called grantees and in  
2 turn probably a very small number of the attorneys of those  
3 grantees.

4 Just a few examples can be blown to great proportion  
5 if not well out of proportion when it comes to the political  
6 arena. I guess going back to your early comments about  
7 restoring the political credibility of the Legal Services  
8 Corporation and legal services grantees and -- forgive me Mr.  
9 Kirk if it seems like I'm testifying here I'm hoping this is  
10 more of a colloquy.

11 MR. KIRK: You guys have taught me a lot, you really  
12 have.

13 MR. WITTGRAF: I'm not sure that's possible but we  
14 appreciate your being open minded. I can't help but think  
15 that in part just the nature of the undertaking when you're  
16 representing people who are going up against interests of one  
17 kind or another, be it landlords or be it farmers or be it any  
18 other kind of interest, that someone's ox is being gored and  
19 that's going to cause them to come back to their congressman  
20 or people even call me and I think some of the rest of us as  
21 board members and complain to us, people in our areas, how can  
22 these legal services attorneys represent these folks, you

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1 know, what's wrong, why do you let them do this.

2 To some extent the political controversy to which  
3 you've referred is endemic to the enterprise, don't you think?

4 MR. MCCOLLUM: Well, some of it is but the question  
5 here is what framework do you put on it, how do you mitigated  
6 it, how do you reduce it, how do you minimize it, how do you  
7 try to keep a lid on the simple feelings that are being out  
8 there that this Corporation as a whole is the rotten apple,  
9 which it's not. And it's better than it was. But now is the  
10 time -- just like when you have a healthy economy that's the  
11 time to get a hold of your budget deficit not when the economy  
12 is in trouble.

13 This Corporation is doing better now. Now is the  
14 time to get a hold of it and do the type of things that a  
15 responsible board needs to put in place in order to put a  
16 check on those instances that we hope don't occur often in the  
17 future. I might add to you as well that I think that having  
18 mechanisms like the fund in place for Rule 11 problems itself  
19 provides some degree of deterrence, I think, to those who  
20 might think about breaching it.

21 Those are the subtleties that are very difficult  
22 sometime to get a grip on and say hey, you know, we're going

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1 to take care of this. One would hope that you have a very  
2 small fund that never gets to be used but it could still  
3 provide a very good effect and I don't see why it shouldn't  
4 exist if it doesn't do any harm. It could do some real good  
5 in some instances.

6 And I might add that we've narrowed this down and  
7 I'll be glad to look at narrowing it further if it would be  
8 appropriate, so that the president of the Corporation rarely  
9 is involved or should be involved in these things. We want to  
10 see it, Charlie Stenholm and I, where there is no opportunity  
11 for court decisions in this area. And where there is an  
12 outlet in the courts there should be no compensation paid out  
13 of the fund unless the board itself makes that ruling.

14 MR. WITTGRAF: The complaints that have been brought  
15 to me have most often dealt with whether or not somebody is  
16 eligible from an income guideline standpoint to receive legal  
17 service's attorneys services. And at least when I've checked  
18 into those by in large they have been eligible but people are  
19 kind of wondering, "Gee, I'm having a tough time making it,  
20 why is it that these folks that have had to sue get the  
21 benefits of a legal service's attorney."

22 Beyond the farm area and beyond the public housing

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1 authority area are there some other areas or interests,  
2 particularly as we talk about the politics of this, who have  
3 come to you because they have felt aggrieved?

4 MR. MCCOLLUM: Well, over the years we've had  
5 bankers come to us, we've had some small businessmen come to  
6 us who have said that in given cases they've had problems with  
7 the Legal Services Corporation. The proliferation of legal  
8 service's difficulties in the political arena was at its  
9 height in the late seventies and the early eighties. In the  
10 last five or six years this has quieted considerably and I'm  
11 very pleased with that. So, I don't want to exaggerate.

12 I can't tell you that there are a whole laundry list  
13 of people out there banging on the door. I think you will see  
14 when you do have your next set of hearings that there is a  
15 fairly wide variety of business interests who have experienced  
16 difficulties with legal services, who perceive the problem,  
17 maybe that the perception is greater than the reality today  
18 but the problems have existed in the past and I think they  
19 would encourage you to support the type of framework for  
20 protection in the future that they've had abuses over the  
21 past, even if they aren't experiencing any currently.

22 I can't tell you the whole laundry list and I will

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1 be the very first to be frank with you that the primary group  
2 that's still complaining the loudest are farmers.

3 MR. WITTGRAF: Let me touch on just one last area,  
4 if I might with you. Looking at your legislation in what I  
5 think you have already said both today and previously is  
6 probably the key area in your mind, the area of competition.  
7 You provide simply that all grants and contracts shall be  
8 awarded under a competitive bidding system.

9 MR. MCCOLLUM: Yes.

10 MR. WITTGRAF: I think one of the things we've all  
11 here come to realize during the last year and a third is a  
12 competitive bidding system means any number of things to any  
13 number of people, perhaps almost means something different to  
14 each person who has some ideas on the subject.

15 Particularly as we realize that reauthorization yet  
16 may be at a minimum a year, year and a half if not longer than  
17 that, off. It may be that we as a Corporation can begin to  
18 move in the area of providing alternative means of delivering  
19 legal services, not so much in the sense which I think is the  
20 touchy sense congressionally of defunding existing projects or  
21 grantees but rather in providing alternative or competing  
22 means of delivery of legal services alongside them; it just

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1 certainly exists in some areas already, much as your part of  
2 Florida and Orange County, as you've referred to the  
3 independent corporation.

4 My question is, when you talk in your legislation  
5 and otherwise about a competitive bidding system what do you  
6 have in mind?

7 MR. MCCOLLUM: I have in mind a checklist of factors  
8 that you craft as a corporate board of what goes into the  
9 competition, what criterion there are. Now, we have been  
10 accused in Congress all too often of writing with too much  
11 detail to directing agencies of the government and you are a  
12 Corporation however; you want to view it as a body we created.

13 And I would think that what we would do in any  
14 passage of this would be to put report language that specifics  
15 the fact that this is not -- and this is the biggest criticism  
16 I hear, somebody fearing that it's all cost related so you  
17 have the cheapest lawyer in town coming in and making the bid.

18 That is not our intent at all but it is our intent  
19 to leave your board with the flexibility to set it up. And it  
20 is for that reason that I think that some in the past have  
21 been hesitant to let it go into effect for fear of what your  
22 board would do and the members of the board being of a

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1 persuasion as a whole that were not necessarily supportive of  
2 the corporate objectives for providing legal services to the  
3 poor.

4 I don't have that fear of your board and I don't  
5 think that -- I think we need to get over that hurdle. The  
6 sooner we get over it -- I mean, messing around and waiting  
7 around, we've waited long enough. The sooner we get over  
8 this, and I can't stress this any more significantly in area  
9 but this and I can't overstress this is what I'm really trying  
10 to say.

11 If we can get your board approved and confirmed by  
12 the Senate, the members sitting up here today, and we can get  
13 responsible authorization legislation through Congress that  
14 sets up most, if not all of what Stenholm-McCollum is about  
15 then I think that what follows just as sure as day follows  
16 night is going to be a greater degree of support. There is  
17 going to be a much greater willingness on the part of Congress  
18 to fund this program, to increase it's funding, to protect it,  
19 and I think you will find that those of us sitting around who  
20 are wondering about the validity of the complaints that come  
21 in from a housing group or whoever it is, we're going to be  
22 more willing to say, hey, that probably is not so we've got a

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1 system that works, that's fair.

2           And that's why competitive bidding is so darned  
3 important because I look at this, I really believe that you as  
4 a corporate board functioning the way you should, nationally,  
5 need this kind of a check on the system. With that check in  
6 place I as a legislator and others in the public who look at  
7 the Corporation can have a greater degree of confidence in the  
8 accountability of the system and feel comfortable that, you  
9 know, we've got things going on here that are controversial,  
10 so what.

11           CHAIRMAN UDDO:     Mr. Wittgraf, that's about the  
12 amount of time that I can give you right now.

13           MR. WITTGRAF:   Thank you, Mr. Uddo,

14           CHAIRMAN UDDO:   Mr. Kirk?

15           MR. KIRK:     Thank you, Mr. Uddo.   Congressman, I'm  
16 not going to address question by question, what the earlier  
17 ones were.   I think that your answers and the method the  
18 questions were put kind of takes care of that one.

19           I would like to ask you a couple of specific issues  
20 regarding solicitation to start with. There was a mention of  
21 solicitation being allowed by many states. Do I understand  
22 that your position is that Congress has a right to expect more

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1 from its lawyers then what the minimum is of these various  
2 states?

3 MR. MCCOLLUM: Yes, I think that's correct, Mr.  
4 Kirk. I think that in this instance since we are funding this  
5 program, it's a federally funded program, you're dealing with  
6 something that is not created by the bar and that's a really  
7 difficult thing for some people to grasp. I had a big debate  
8 with the president elect of our state, Mr. Kirk, Mr. Delapert,  
9 over that issue.

10 This is not a bar or a states rights issue, this is  
11 a program that the federal government created and primarily  
12 funds and I think that we have the right to control to a  
13 reasonable degree, that is, the federal government does, the  
14 activities of our recipients and their attorneys. Not to  
15 discipline them, I have yielded on that and I would like to  
16 add that too, in response to your question.

17 Last year a bill a we proposed and had an  
18 opportunity for the board to discipline, the Corporation to  
19 discipline attorneys and I think that its -- and it was  
20 infringement upon some time honored traditions of the bar and  
21 inappropriate.

22 But when it comes to solicitation, the matter of how

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1 this operates I think we have a right to it and an obligation  
2 to come in and put a higher standard up there, perhaps.'

3           Again, I don't know that I would differentiate  
4 particularly except to say that there is a difference between  
5 an attorney who is paid and who has a deep pocket, and that's  
6 what this attorney is, a legal services lawyer, and one who's  
7 out there doing true pro bono work. There is a big  
8 difference. Even though I recognize Mr. Dana's distinction of  
9 the rationale for solicitation to private bar, this isn't the  
10 private bar we're in, this is a different arena. We have the  
11 right to point out the differences.

12           MR. KIRK: As far as getting paid in fact many of  
13 these instances where the solicitation occurs, aren't the  
14 local field offices eligible for attorneys fees from the other  
15 side in that event?

16           MR. MCCOLLUM: They can be, it depends on the type  
17 of a suit that's involved. They definitely can be. That's  
18 something else that we attempt to keep from happening. Here  
19 in our proposal there is a restriction on the right to collect  
20 attorneys fees. We don't think that legal services lawyers  
21 ought to be running out there trying to collect attorneys  
22 fees.

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1           MR. KIRK:   Why do you think that the ability to  
2 collect attorneys fees by the Legal Services Corporation puts  
3 them in an unfair situation?

4           MR. MCCOLLUM:   Well, first of all they have a deep  
5 pocket.   Legal services lawyers, again, are paid by the  
6 federal government.   Their time is whatever they want to give  
7 of it. The priorities are set, however they are, by the local  
8 recipient organization to determine that time.   They don't  
9 have to worry about managing that time as maybe a private  
10 practitioner would be worrying about whether he's going to be  
11 earning anything from it.   They're going to get paid  
12 regardless.   In other words, they're going to go on -- their  
13 salary flows constantly, steadily, et cetera throughout the  
14 process so that the billable hours, if you will, were not  
15 billable at all are going to keep running up however long and  
16 whatever way they want to.

17           Whereas, the attorneys for those who are defending  
18 against whatever the legal services lawyers are bringing  
19 actions on or claims about the attorney is either running a  
20 bill or a clock up that they're sending to a client who has to  
21 pay that bill.   And those bills can keep running up.

22           So, I think there is a potential for great abuse,

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1 here, maybe not even intentionally.

2 MR. KIRK: Does the inverse collectability, I mean,  
3 does the collectability if the defendant wins against the  
4 indigent affect the fairness issue?

5 MR. MCCOLLUM: Well, it does to an extent but my  
6 judgment is that if you're talking about collectability here  
7 we don't think that there ought to be really attorneys fees  
8 awarded in these cases at all except in the cases of  
9 harassment or in cases of Rule 11. And that's why the fund is  
10 there.

11 Our judgment collectively, at least those of us  
12 working on this, is that it is not appropriate in the legal  
13 services arena, with rare exception, to have fees. For one  
14 thing to a certain extent fee generated cases provide an  
15 incentive in some cases for recipient organizations to go out  
16 and take a particular type of case. And I think that's  
17 against the best policy interests of the poor, your very  
18 clients that are out there should be receiving services  
19 regardless of whether there is a fee involved.

20 Most of the needy, truly needy, have litigation  
21 matters and not litigation but legal matters period that don't  
22 represent fee generated cases.

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1           MR. KIRK: Let me shift for a moment. Just a  
2 comment -- you and I do not necessarily agree a hundred  
3 percent on the attorneys fee. I would rather see just the  
4 fees being paid by the local service offices as opposed to  
5 your plan. But nobody from Congress ever offered to put that  
6 in the bill for me so I don't think it's going to be  
7 considered.

8           MR. MCCOLLUM: We'd be happy to listen to all pleas,  
9 sir.

10          MR. KIRK: You mentioned something under credibility  
11 on restricting the Legal Services Corporation field offices to  
12 being able to do only that work or those types of -- handle  
13 those types of cases that are authorized by Congress which I  
14 take it would necessarily leave the other types of cases to be  
15 handled by other legal service groups, is that correct?

16          MR. MCCOLLUM: Well, what we're saying is that in  
17 almost every case the Legal Services Corporation can handle  
18 the attorneys out in the field, I mean, there are just a  
19 handful of restricted areas, a very narrowly drawn handful of  
20 restrictions.

21          And I don't contemplate Congress adding to those  
22 restrictions. Maybe there will be something else, one thing

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1 over the years that occurs somewhere to somebody that becomes  
2 that controversial, that it should be on the list but  
3 everything else is open and fair game.

4 If there is another and there should be -- we can't  
5 provide all the services up here from the federal government,  
6 if there is another entity out there, a local bar association,  
7 a state bar institute, that provides pro bono work or local  
8 lawyers who do pro bono work certainly they can get in and get  
9 involved and they should in these other areas if they wish.

10 MR. KIRK: What's your response to the question  
11 of -- or the issue that was brought up in the San Francisco  
12 hearing that you shouldn't be sending people to different  
13 offices, you know, it ought to be like one stop shopping, you  
14 come to one person and that's where you get your legal things  
15 handled, you shouldn't be sent somewhere else. And also the  
16 issue that there would be a duplication of administrative  
17 services or administrative costs involved in having two  
18 separate programs.

19 MR. MCCOLLUM: Well, it's possible you would have a  
20 duplication of cost but my observation of our working bar in  
21 Orlando is that's not a problem. You well know from having  
22 practiced there, and I have for years past, that the legal aid

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1 society of Orange County has over the last many years now  
2 worked side by side with a very active legal services  
3 recipients and no one has complained that I know of of  
4 duplication of cost. And there have been areas where there  
5 have been referrals back and forth between them.

6 I'm sure there is a good cooperation based on  
7 representation. So, I think that argument is exaggerated to a  
8 great extent. I suppose I went through an exercise once with  
9 one of you on the phone, I went through it in my mind and I  
10 don't know if there would be an objection to it, you could  
11 conceivably have office sharing just as you have it in law  
12 practice today and still distinctly keep these entities  
13 separate as long as you don't have the attorneys themselves,  
14 who are legal services attorneys, and their paralegals and so  
15 forth actually handling the cases that are in the areas that  
16 are restricted.

17 But I would think the key to this is segregating the  
18 entities in terms of total funding and employment. So, you  
19 don't have legal services lawyers running around handling  
20 abortion cases to put one of the more controversial ones out  
21 on the table.

22 MR. KIRK: Shifting again, and I just had some

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1 highlights, during some of the testimony in San Francisco and  
2 Chicago there were some pretty logical, pretty good points  
3 made for the fact that a lot of the local administrative  
4 things ought to be handled by Legal Services Corporation  
5 lawyers; zoning matters, maybe some public housing things that  
6 were almost a way of avoiding law suits, avoiding some of the  
7 class actions, you know, if the Legal Services Corporation  
8 lawyer could get in on the ground floor and do some  
9 negotiating and some working in that area.

10 Is there room in the way you look at it for Legal  
11 Services Corporation lawyers to operate on a local level like  
12 that?

13 MR. MCCOLLUM: Well, we think there is. The issue  
14 here is a question of whether the client who comes to you is  
15 specifically there for the purpose of an issue that you're  
16 representing him on or whether you're out there trying to  
17 change some rule in a rule making capacity. And there is a  
18 part in this statute that it would propose that allows for  
19 some flexibility in the area of specific client  
20 representation. I don't think I can find it but it does  
21 exist in here and I would hope that that would be utilized by  
22 those who are involved in that process. I find that looking

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1 up things without other than a table of contents does not  
2 always get us there quickly.

3 But my recollection of what was drafted encompasses  
4 the right to do this with some exceptions. Let me read you  
5 this, I think this comes under the exception. It says, here,  
6 "Except when legal assistance is provided by an employee of a  
7 receipt to an eligible client on a particular application,  
8 claim or case which directly involves the clients legal rights  
9 or responsibilities and does not involve the issuance,  
10 amendment or revocation of any agency promulgation described  
11 in subparagraph A."

12 So, we have by that narrowing -- we really tried to  
13 allow for the representation in the local government arena as  
14 long as we're not involving the issuance, amendment or  
15 revocation of the promulgation as circumscribed. And that is  
16 found under section six, the lobbying section of the bill.

17 MR. KIRK: Generally is it the goal of your  
18 legislation to place more responsibility on the board of  
19 directors of the Legal Services Corporation in administering  
20 the act?

21 MR. MCCOLLUM: It is. We feel, those of us who have  
22 written this, that the board needs to have the power to

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1 exercise, in appropriate cases, and that it needs to be  
2 understood by the local recipients that the power is there.  
3 We hope that that does not need to be exercised very often. We  
4 do have the desire to enhance the powers of this Corporation,  
5 to make the lines of demarkation clear. But it is the primary  
6 purpose of our legislation to leave the direction of the  
7 individual operation to the hands of the local board.

8 On the proposal that I wrote a number of years ago  
9 that's been law for all practical purposes and is still in  
10 effect and we embrace it; it is that a local governing board  
11 will be controlled by appointees of local and state bar  
12 associations. It was an objective effort at that time to  
13 provide some balance in there and make sure that the close  
14 affinity with the bar where oversight is closest to the  
15 people. And I think that everybody seems to have embraced  
16 that these days, conservatives and liberals.

17 MR. KIRK: That's all I have, sir.

18 CHAIRMAN UDDO: Thank you, Mr. Kirk. I had a few  
19 questions for Congressman McCollum. First, I want to thank  
20 you also for coming. It's important that we have this  
21 opportunity to talk to you and I really do appreciate your  
22 taking the time to be here with us. I think your presentation

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1 has been very helpful and very informative as well as you  
2 response to the questions.

3 I have just a few questions and the first two I  
4 guess I would put in the category of dealing sort of  
5 philosophically with your approach because I think that these  
6 are things that plague us as board members all the time. Let  
7 me start by saying I assume you know that I was a Reagan  
8 appointee first and served on the only confirmed board in the  
9 past decade, I think it's the only confirmed board in the past  
10 decade, and served for a full term and have been on the board  
11 for a full term.

12 So, a lot of my questions are not just based upon  
13 recent history but on that history, going back to 1984. And  
14 out of that history the word that you referred to on several  
15 occasions was credibility, restore credibility to the Legal  
16 Services Corporation. Obviously that's a very important  
17 concern. I guess the question I have, though, is it seems  
18 that the legal services enterprise has a significant amount of  
19 credibility and it was one of the things that I saw evolve  
20 over my time on the board before.

21 In 1984 I don't think the Legal Services Corporation  
22 had much credibility. But I think that there was an evolution

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1 over the past six or so years where today at least from the  
2 perspective of board members the organized bar certainly seems  
3 to be extremely supportive, both on the ABA level and on the  
4 state level.

5 And from my experiences on the board before, the  
6 Congress apparently feels that the Corporation is credible  
7 because the Congress, as you well know, was extremely  
8 supportive of the Legal Services Corporation and some would  
9 say of the status quo of the Legal Services Corporation  
10 because many of the things that the board I served on  
11 previously in terms of regulations or whatever were in effect  
12 enjoined by Congress, not allowed to go into effect.

13 So, I guess I'd just like for you to help me  
14 understand and kind of clear up whether you think there really  
15 is a credibility crisis for the Legal Services Corporation  
16 still today and where it exists?

17 MR. MCCOLLUM: I think it still exists. I don't  
18 think it is as strong in every quarter as it once was. I  
19 suppose if you had to put it on some kind of a curve you could  
20 see the bottom of that curve coming sometime during the early  
21 1980's. In all of the controversy that surrounded the  
22 corporate board and the conflict in Congress over the whole

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1 issue of where do we go and here is a Reagan -- and the board  
2 you served on that maybe doesn't really want it to continue  
3 even to exist although I think some of the board members you  
4 served with were wrongly labeled in that fashion, but that's  
5 none the less the case.

6 And what we saw after that was a gradual diminution  
7 of some of the more blatant political activity on the part of  
8 some of the recipients and you've now come up from that. I  
9 will once again put on the record, since I've had the occasion  
10 to be here with you of a story that I like to tell that is a  
11 very valid and true personal experience at the depths of what  
12 I perceive this Corporation being, not the board problem but  
13 the LSC lawyer problem.

14 Some of these attorneys are still around, I must  
15 say, who have this attitude but fortunately they're not in  
16 every quarter. And that is a case where we had -- I was on  
17 the executive counsel of the Orange County bar and I was on  
18 the legal aid society directors board down in Orlando when  
19 legal services first came to town or wanted to come to town.

20 I'll never forget the fact that I was told by some  
21 of the staff of the legal aid society and our bar that they  
22 were going to set up an independent entity and that it was not

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1 under the law possible for us to have a merged operation which  
2 seemed to be more efficient, we were talking about efficiency  
3 and so on.

4 So, I looked up the law, being a good lawyer and  
5 being on the counsel I actually went and looked up the statute  
6 and I couldn't find where there was that prohibition. So, I  
7 called the Atlanta regional head offices of legal services at  
8 that time and I said, you know, I don't see why we can't be  
9 together on this, Why should you be out there duplicating  
10 what we're doing. And he said, "Mr. McCollum, you don't  
11 understand, we're not going to be duplicating what you're  
12 doing, as a matter of fact, what we're about is to try to  
13 change the world as far as poverty is concerned.

14 "And the legal services lawyers and what our  
15 corporate entity will be doing in Orlando is to do things that  
16 your local bar would never put up with. We're going to go  
17 down there and we're going to raise enough cain in enough  
18 places that we're going to really make a difference for the  
19 poor.

20 "We're not going to be interested in landlord-tenant  
21 problems and domestic relations and that sort of thing. You  
22 can handle that with your legal aid society local."

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1 Well, I got my dander up to say the least and that's  
2 why my interest was triggered in this when I came to Congress.  
3 And I found that that was a common problem throughout the  
4 country among many of these young and I think very well  
5 meaning but overzealous legal services attorneys.

6 I think over time perhaps in part because I'd like  
7 to believe because of the amendments that I proposed allowing  
8 local bars to or requiring local bars to get involved in  
9 gaining control over recipient organizations that that ill  
10 will, that credibility gap that was there has diminished. But  
11 it's like anything else, when you bring it down to the bottom  
12 -- whereas for a group of us who are intimately involved with  
13 it, like you and I are, that it's bottomed out and is coming  
14 up.

15 To a lot of the general public, to the business  
16 community, and to many of my colleagues in Congress it has not  
17 been apparent to them that this bottom has been reached nor is  
18 it apparent to them that if to the degree they do see it the  
19 direction has changed that there is anything to keep the  
20 rudder going in that direction of improvement.

21 So, there is a credibility gap and it does need to  
22 be clarified. And I believe what we propose would be the best

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1 method of doing that.

2 CHAIRMAN UDDO: I think that it's a good  
3 description of why you think there has been this evolution and  
4 I agree with you. I think that when we started in '84 the  
5 attitude that you're talking about was fairly pervasive and  
6 I'll tell you a quick story.

7 I recently appeared on a TV show in New Orleans with  
8 one of the early masterminds of the Legal Services  
9 Corporation, the dean of the Tulane Law School, John Kramer,  
10 and he quite boldly made that statement that the original  
11 conception was to do social engineering. But he went on to  
12 say he doesn't think that that's what's going on any more.

13 I mean, here is a guy who's bemoaning the fact, and  
14 I like John a lot and I consider him a friend, he and I  
15 disagree over that being the main purpose of legal services,  
16 but the point is he was publicly bemoaning the fact that he  
17 doesn't see that that's what legal services is about any more.

18 So, my perception is is that the credibility is back  
19 up because there really has been sort of a purging of that  
20 more extreme attitude.

21 MR. MCCOLLUM: Well, let me respond to that. It is a  
22 very salient point you're making. Here is an attorney would

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1 like to see it back where it was and given the opportunity  
2 there are a lot of attorneys out there who would like to see  
3 it back where it was because that is honest to goodness their  
4 personal belief. I don't quibble with them having that  
5 belief.

6 But if you're going to have credibility continue to  
7 increase -- I don't think you're there, I think you're partway  
8 there -- if you're going to have credibility continue to  
9 increase to the point you can have a really sound program, get  
10 it better funded, then you've got to put in place the kind of  
11 checks that people are generally comfortable with that are  
12 going to make those kinds of funding decisions and those kinds  
13 of hard decisions to support it so that they are confident  
14 that those who believe what that fellow was saying in that  
15 program with you don't get back in power again and don't get  
16 to have their day in court -- I shouldn't say their day in  
17 court but they're the ones running the programs in that  
18 fashion again.

19 CHAIRMAN UDDO: But that sort of leads to my second  
20 question. I think the phrase you used was really the critical  
21 phrase, that is, get back in power again. I mean, it seems  
22 to me that the kind of thing that you're talking about is very

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1 much a reflection of who's in control for the most part.

2 I don't think that your bill forestalls or  
3 forecloses the things that you're concerned about if you have  
4 a board that thinks the other way. In other words, I don't  
5 think that anything in here is going to necessarily prevent  
6 the kinds of things that you're talking about because it's  
7 really a -- as you said, you're trying to return more  
8 authority to the board. Well, if you've got a board that  
9 believes in the social engineering approach to legal services  
10 you've returned more authority to them and you're going to  
11 have the exact opposite situation of what I think that you're  
12 trying to achieve.

13 MR. MCCOLLUM: Well, let me respond. You are right  
14 to an extent on policy of course but there is a mitigating  
15 factor in what we're proposing, the very restrictions we're  
16 putting in here on redistricting, on lobbying on all of those  
17 types of things, those are going to be there regardless of who  
18 the board is.

19 Of course, if the board is more of a mind to do  
20 these types of things that you're describing then there will  
21 be some circumvention of this and it will be again a problem  
22 in the eyes of many. But it will not be as severe a problem.

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1 And there will be a structure here to check that, a mitigation  
2 of it, and that's really what we're saying, plus the fairness  
3 part of this.

4 We've got -- if we have a fund in here for  
5 consultation of Rule 11 and harassment cases maybe they won't  
6 always use it but at least it's there, there is a mechanism,  
7 there is a sense that the structure is there albeit at a given  
8 time the board could go more liberally or more conservative.

9 CHAIRMAN UDDO: That's sort of my second point  
10 because you talked about the history of harassment and then I  
11 think in response to one of the questions you said that you  
12 felt that that was something over the past five years has  
13 really declined from when you first began to get involved in  
14 this and heard the complaints and at a time when you think you  
15 could detail -- what I think everybody would admit was a  
16 period in legal services where there were very serious  
17 problems with the way legal services operated.

18 My concern is if that's something that is pretty  
19 much in the past does it make sense to try to create in a  
20 reauthorization act mechanisms for sanctioning or doing things  
21 that put an awful lot of authority and power in the hands of  
22 the president and, you know, we've had a checkered history of

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1 success with presidents in this Corporation, or in the hands  
2 of what is basically a politically appointed board.

3 I mean, is it a good idea to be putting into the  
4 hands of the board and the president tools which are probably  
5 better exercised by the local board, which is something that  
6 you can rightfully take credit for in terms of policing their  
7 organizations, and in the hands of judges who have the Rule 11  
8 tools and most states have similar tools for sanctioning  
9 activity that is inappropriate.

10 I mean, I'm very concerned about sort of going  
11 around the structure that's there that seems to be the one  
12 that will work the best and be the least political then  
13 putting it into the hands of say the president of the  
14 Corporation.

15 MR. MCCOLLUM: Well, let me respond on two levels.  
16 One by telling you while overall I think there has been a  
17 diminishment of the harassment I think in the agricultural  
18 area there has not been a complete diminishment or I don't  
19 even know how to grade that, I still see a lot of that and I  
20 think you're going to see that -- I hope we were able to  
21 present that to you as I said in another fashion.

22 But beyond that question, just getting to the

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1 fundamentals of this -- what you were presenting is much like  
2 the argument that is against the line item for the president.  
3 I have a good friend and colleague from Oklahoma who I'm sure  
4 won't mind being cited in this, Mickey Edwards, who serves  
5 with me in Republican leadership and Mickey is adamant, by  
6 golly, we shouldn't give the president a line item veto  
7 because some day he'll be a democrat and look what he'll do to  
8 the defense budget of this country or something with line item  
9 veto, gosh knows.

10 My judgment is what's good for the goose is good for  
11 the gander. And I happen to think that this particular  
12 proposal is good for the goose and the gander. And it may be  
13 that at times I won't agree with a president's decision about  
14 some compensation under this fund but that's the only power  
15 we've given to the president and it is a power that would be  
16 narrow, it would be a power which would only be exercised when  
17 there is no court process for doing this. He wouldn't have  
18 the power to do anything more than submit the check after a  
19 court made a ruling wherever the court had this kind of power.

20 CHAIRMAN UDDO: Now there are sort of three specific  
21 things, two dealing with some of the particulars that you've  
22 mentioned. I'm both glad and disappointed that you focus on

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1 competition as so important. I'm glad because all the way  
2 back to '84 I think that I can say that competition is  
3 something that has much more support than people think. And I  
4 think it's a fairly broad based support and I think that most  
5 people, grantees, board, Congressmen, whatever, do see  
6 competition as a good thing.

7 It's ingrained in our society and it is a good  
8 thing. The problem is, and the thing that gives me concern  
9 is, I don't think anyone has really gotten to the point of  
10 figuring out how to use competition in this context.

11 Let me take the example of what you said. You  
12 referred to the grantee as having a franchise and I think you  
13 made the statement that every so often they should be subject  
14 to having someone seek to get the franchise from them, if  
15 someone successfully gets the franchise at one point then at  
16 some point someone else should be able to seek to get the  
17 franchise.

18 In Chicago Professor Cox testified before this  
19 committee and Professor Cox, I don't know if you are familiar  
20 with him, he did one of the major competition studies. And  
21 the most impressive part of his testimony was that he thought  
22 that precisely the kinds of competition you're talking about

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1 would be a mistake.

2 His view of competition is it has to be constant  
3 competition, there has to be more than one grantee providing  
4 the services so that the consumer of the legal services has a  
5 choice and will be able to pick this grantee over that grantee  
6 so that the good one, the efficient one, is going to end up  
7 being the one that gets most of the poor people coming for  
8 legal services, roughly, I think that's what he's saying.

9 He was very much critical of the idea that you  
10 switch from one monopoly to another monopoly. I don't want to  
11 debate which one is better all I'm saying is I think that the  
12 position that this committee originally took, that is, that we  
13 ought to have the authority to implement competition and that  
14 we support competition but we don't know exactly how to  
15 implement it is really the appropriate way to go with  
16 competition because I don't think anyone really knows the best  
17 way to try to make this work for the poor folks.

18 MR. MCCOLLUM: Well, let me say that having two--  
19 if you can sustain two, if it's feasible and economically  
20 practical in a given geographical area to sustain two  
21 overlapping competitive board recipients out there I think  
22 that's a great idea. I'm sure in some areas of the country

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1 where the poor numbers are great enough, in metropolitan areas  
2 particularly, you can do that. But I'm also equally confident  
3 that there are those areas where you still have to give the  
4 exclusive franchise. I think that's up to your board. I  
5 think you actually are giving your board too little credit.

6 Most agencies of the government Congress cannot  
7 dictate, wouldn't begin to,- the actual process you go by to  
8 figure out how you're going to implement something like this.  
9 We want you to be creative, we want you to do that. It's a  
10 great challenge for your board to decide which avenue and  
11 which way to go, left or right or down the middle or whatever.

12 I think that's what it's all about. And the reason  
13 it hasn't been put in the law or effected yet is simply  
14 because nobody trusted the members of this board to make those  
15 decisions. I happen to trust this board. I'm ready to see it  
16 happen. It might not come out the way I wanted it. You can  
17 change it. If I put it in the statute and I say okay, it's  
18 going to be this way, this is -- we're going to do all these  
19 studies first -- we'll be forever getting there if we do that,  
20 we won't have competition ten years from now, I guarantee you,  
21 if we wait on a study we'll be waiting a long time.

22 Or if I decide -- now, I could do that, I could sit

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1 down and give you a preconceived notion of what I think  
2 competition ought to be and define it in the statute. We've  
3 certainly thought about doing that. But if I did that then  
4 I've taken away your flexibility and I think that you should  
5 have a lot of a flexibility. I think that as much as we are  
6 putting restrictions and so forth in here it's unfortunate  
7 we're doing as much of it as we feel we have to do. I think  
8 there is a balance again. And balance comes down here in this  
9 case of giving your board the power to make those kinds of  
10 decisions.

11 CHAIRMAN UDDO: Well, I would agree with you but I'm  
12 afraid that you are wording and your act or at least in your  
13 bill is being interpreted as not giving us flexibility. It's  
14 being interpreted as a mandate to compete all grants. That's  
15 not much flexibility that's saying that when this goes into  
16 law suddenly the whole structure of legal services is going to  
17 change and all grants must be placed on a competitive basis.  
18 We don't know how to do that.

19 MR. MCCOLLUM: Well, let me say to you if you want  
20 to make it real simple all you've got to do is to advertise.  
21 You set up some criteria of rules of how you're going to--  
22 you know, what is it going to take to qualify for a grant and

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1 set up a structure down there where it's going to be in a  
2 geographical area or however you want to decide to do that and  
3 then you publish in the Federal Register with appropriate  
4 notice for any organization that meets the standards you've  
5 set up to apply then you make the decisions.

6 I mean, that would be the simplest way. You could  
7 make it more complicated. You could refine it, you could do  
8 all kinds of things with it but that would meet the standard  
9 of doing it.

10 CHAIRMAN UDDO: What though, and again, taking you  
11 at your word that you trust this board, what would be wrong  
12 with giving the board the authority to say compete grants in  
13 rural areas only to start with to see if it works, to see if  
14 that's a feasible mechanism or to compete them in urban areas  
15 of certain sizes? I guess what I'm saying is I don't think  
16 that you've given us much flexibility with the language in  
17 your bill.

18 MR. MCCOLLUM: I wouldn't give you any flexibility  
19 and I don't believe you ought to have it with the idea of  
20 having competition. I think how the competition is, how its  
21 structured -- I can give you all kinds of flexibility. You  
22 might do it differently in the rural area, you might do it

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1 differently in the city area, you might do it differently with  
2 certain type of grantees than with other types of grantees,  
3 you've got all kinds of flexibility.

4 But the idea of competition, the idea of some kind  
5 of competitive level, which I think you'll find courts would  
6 interpret just as broadly as you are, you've got all kinds of  
7 room to play with it.

8 But the idea of having competition, period, I think  
9 Congress ought to dictate to you, there ought to be that  
10 structure and that is the single, as I said earlier, most  
11 important change in the law is requiring that competition.

12 CHAIRMAN UDDO: I'm being told that I've had 15  
13 minutes but by my watch I've got just a couple of more seconds  
14 and I'm going to take them. The reason I'm going to do this  
15 is because I've got to ask this question because this is  
16 another one that's plagued me over five or six years.

17 It seems to me that much of the criticism of legal  
18 services is not really of legal services but of the federal  
19 laws that they try to enforce as attorneys. Most of what they  
20 do is enforce federal laws, whether it's entitlements or  
21 migrant workers or housing it's generally the enforcement of  
22 federal laws.

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1           It seems to me that that is really where the  
2 criticism ought to be leveled. And I would probably support  
3 many changes in substantive federal law because, forgive me,  
4 but some of your colleagues have enacted some very dumb laws  
5 over the years and some bad laws and some laws that could be  
6 changed and some that could be repealed. That's really though  
7 what people are complaining about, that legal services lawyers  
8 are successfully enforcing laws that Congress has put on the  
9 books.

10           And that concerns me because it seems that what  
11 we're doing in restricting the legal services lawyers is in a  
12 sense a back door repeal of federal laws by limiting access to  
13 lawyers to enforce those laws. And that's plagued me for five  
14 or six years now that many of these restrictions are not  
15 really focused at the lawyers who are abusing something but  
16 are focused at lawyers who are being successful in enforcing  
17 laws that Congress has put on the books.

18           MR. MCCOLLUM: Mr. Uddo, I have no desire nor do I  
19 think my colleague Mr. Stenholm has any desire to see those  
20 laws that are on the books not enforced. If they are bad laws  
21 then we ought to suffer along till we get them changed. And  
22 there are, as you say, some bad laws.

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1           But the object here is in a process that's perceived  
2 to be fair, a process that is appropriate and should allow us  
3 to get out from under some of the politics that are involved.  
4 And what are we doing in the way of restrictions here. I  
5 mean, it sounds like from the comment you just made it could  
6 interpret it as though the reforms you proposed are going to  
7 plethora restrictions on what these attorneys can do; really  
8 not much at all.

9           And they still bring class action suits and if it  
10 doesn't involve a government entity they don't have to have  
11 local board approval and they're probably going to get it from  
12 local boards when they bring it up anyway on any subject. And  
13 the only thing we're restricting them from doing is getting  
14 involved in lobbying legislators, lobbying for legislative  
15 changes, if you will, rule making changes -- nothing to keep  
16 them from representing -- the point Mr. Kirk was trying to  
17 make with me earlier -- nothing to keep them from getting  
18 involved in the specifics of an application of a particular  
19 zoning or ruling or whatever that might be out there. But I'd  
20 rather to change the overall structure and rule making.

21           And the other thing is that we're trying to force  
22 people out of redistricting and out of abortion. After you

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1 get out of that what else do you have, I mean, there is a free  
2 hand in everything, you can get involved in anything you want  
3 to get involved in. Really, the idea that the proposals we're  
4 making somehow is going to tie their hands, get them out of  
5 the business is simply not true, we're not trying to do that  
6 and I don't think we're doing it.

7 CHAIRMAN UDDO: Well, I'm out of time so what we'll  
8 do is see -- do you have anymore time left?

9 MR. MCCOLLUM: I think we're having votes about  
10 4:00. I'll give you just as long as I have.

11 CHAIRMAN UDDO: I usually give the other board  
12 members, non-committee members just a chance if they've got a  
13 couple of quick questions.

14 MR. HALL: I'll defer to Howard.

15 CHAIRMAN UDDO: Mr. Rath?

16 MR. RATH: Why don't I defer to the committee first.

17 CHAIRMAN UDDO: The committee, I think, is through.

18 MR. DANA: No.

19 CHAIRMAN UDDO: Ms. Wolbeck?

20 MR. MCCOLLUM: I was going to say, I've just been  
21 told my staff that we probably need to leave here in about  
22 five minutes.

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1 CHAIRMAN UDDO: I don't think there are --

2 MR. MCCOLLUM: I'll be glad to pursue another five  
3 minutes.

4 MR. DANA: I have something.

5 CHAIRMAN UDDO: Everyone has deferred to the  
6 committee so Mr. Dana if you want to take another few minutes.

7 MR. DANA: I'll be quick.

8 CHAIRMAN UDDO: Excuse me, Ms. Betts.

9 MR. WITTGRAF: Ms. Love.

10 CHAIRMAN UDDO: I'm sorry, Ms. Love.

11 MS. LOVE: First of all I'm happy that you made it.  
12 I'm also happy to know that you are not comparing this new  
13 board with the past. So, thank you for coming.

14 MR. MCCOLLUM: Well, I appreciate that. I'm happy  
15 to be here and I'm happy this board is where it is. I think  
16 you've got an interesting well balanced board, I really do.

17 CHAIRMAN UDDO: Howard?

18 MR. DANA: I've got even less time.

19 MR. MCCOLLUM: Even less time, that's right. I just  
20 had my beeper go off. Go ahead, one more quick question.

21 MR. DANA: Maybe a more appropriate way of doing  
22 this would be to try and get the Congressman back when the

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1 other people --

2 CHAIRMAN UDDO: That's up to the Congressman.

3 MR. MCCOLLUM: I don't know what date or if the  
4 schedule will permit. If you've got something I can answer in  
5 one or two minutes I will but I've got to get back down to the  
6 Hill.

7 MR. DANA: Are you troubled, Congressman, by the  
8 notion that if I read your bill correctly, and I may not be,  
9 that legal services attorneys are a class of Americans that  
10 cannot testify in response to requests from congressmen or  
11 state legislatures?

12 MR. MCCOLLUM: Oh, no, I don't think that's true. I  
13 think they can testify. I think there is a question of  
14 whether they're going to be able to come in and do what maybe  
15 they were doing on the issue of the question of the big  
16 immigration bill when they were providing the primary support  
17 for many of my colleagues.

18 I question whether they should be doing that but I  
19 don't think they're restricted from doing it.

20 MR. DANA: And so if people are interpreting your  
21 bill as doing that they are reading it incorrectly or it needs  
22 to be refined?

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1 MR. MCCOLLUM: Well, that's my impression. We would  
2 like very much to keep them out of the business of lobbying.  
3 If I'm up here as a person whose been requested to come up  
4 here it's very difficult to prohibit that from occurring. As  
5 far as actually testifying. As far as coming up here and  
6 being activity involved in trying to make changes, act as a  
7 staff member to do something of that nature. Yes, we have,  
8 you know, we've kind of crossed that area, where is it you're  
9 involved in lobbying and rule making and legislative, and I  
10 think we've been pretty clear we don't want you doing that.

11 But as a witness specifically requested to come up  
12 here for a specific purpose it's quite possible that could  
13 occur in front of a committee. That's different from going by  
14 and seeing me in my office and initiating it yourself to go by  
15 and see me.

16 MR. DANA: One final quick one. I come from a state  
17 or a town that is sometimes described as having more lawyers  
18 per capita than every place in this country except Washington  
19 D.C. With respect to those lawyers in this town who work for  
20 the government do you know how many of them fill out time  
21 sheets?

22 MR. MCCOLLUM: I don't know how many of them in

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1 number but I know there are a lot of them who do. I used to  
2 fill out time sheets.

3 MR. DANA: In this town?

4 MR. MCCOLLUM: I used to do it in Orlando, I didn't  
5 do it in Washington.

6 MR. DANA: No, I mean lawyers who work for the  
7 government. You're talking about federal lawyers--  
8 characterizing legal services attorneys as federal lawyers.

9 MR. MCCOLLUM: I have no idea who fills them out in  
10 the federal government system. I've never done a survey on  
11 that. I haven't asked anybody and I have no idea and I don't  
12 think it's relevant to this because I think legal services  
13 lawyers are unique in the sense that they're out there in a  
14 way that needs to be accountable and they're competing with  
15 the private bar in everyday things representing.

16 They're the largest law firm in the country, 6,800  
17 lawyers you've got here.

18 MR. DANA: How many?

19 MR. MCCOLLUM: I think it's 6,800, close to that.

20 MR. DANA: Two or three times that.

21 CHAIRMAN UDDO: I have to interrupt just a second  
22 because Mr. Rath did have one quick question. That will be

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1 it.

2 MR. RATH: Well, I, first of all, want to echo  
3 everyone in terms of thank you for your time. I know you're  
4 pressed now. The one question I have is more sort of  
5 contextual for this board as to where we're headed on your  
6 legislation.

7 I'd like to hear from you as a sponsor, Congressman,  
8 as to what impact, political impact or otherwise, policy  
9 impact, a statement one way or the other by this board on this  
10 legislation would have to a progress through the Congress?

11 MR. MCCOLLUM: Well, certainly encouragement of this  
12 as we had done last time would be helpful to us in specific  
13 areas. We do not envision, the authors, that this will be a  
14 product that will go through in toto if the reauthorization  
15 process proceeds that all of hope that it will, in an orderly  
16 fashion.

17 It will be a process where we will use this bill as  
18 a standard and the provisions in it to go forward and seek  
19 specific changes in whatever reauthorization bill emerges from  
20 committee structure.

21 So, to the degree that the board can support it we  
22 would encourage in some of these that would be very helpful to

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1 us. Obviously if you chose to oppose it I'm sure in some  
2 quarters that would be used the opposite way. I guess I have  
3 to be very honest I would prefer you to support it and to vote  
4 for it if you're in favor of it. If you don't have a majority  
5 I'd rather you didn't. I guess that's a real politic way of  
6 putting it.

7 MR. RATH: And you don't have any problem with this  
8 board going through this exercise and taking a position on it  
9 one way or the other?

10 MR. MCCOLLUM: I don't have a problem with that.

11 MR. RATH: You think that's appropriate?

12 MR. MCCOLLUM: I have no problem with it at all.

13 MR. RATH: Fine.

14 MR. MCCOLLUM: You are an instrument that we've  
15 created that we put in the hands of making decisions like that  
16 and policy decisions.

17 MR. KIRK: Suppose we just came ---

18 CHAIRMAN UDDO: That was going to be the last  
19 question unless you're going to let your constituent ask one  
20 quickly?

21 MR. MCCOLLUM: He can make a speech or ask me  
22 elsewhere, I guess. I don't want to be the one to cut him off

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1 but I really do have to go.

2 CHAIRMAN UDDO: Okay, thank you very much,  
3 Congressman McCollum, we really appreciate your coming.

4 As far as I know there is no one else here who is  
5 here to testify, is that correct? Ken, is Ken Boehm here?

6 MR. BOEHM: Not unless there is somebody who's felt  
7 the urge.

8 CHAIRMAN UDDO: I think most everyone is starting to  
9 rush toward their appointed departures.

10 MR. WITTGRAF: I think it would be helpful for at  
11 least the eight of us who are present here still to talk a  
12 little bit about our upcoming schedules as committee members  
13 and as board members.

14 On the one hand the IG committee will be needing to  
15 interview candidates for that position within the weeks to  
16 come so that we can present candidates to the board later this  
17 summer. I think based upon my conversations, as I've  
18 indicated, with Mr. McCollum and with Mr. Uddo, we'll also be  
19 having at least a part of a day of a hearing devoted to the  
20 receipt of additional information on the reauthorization  
21 issues and we do need to have a board meeting to consider the  
22 reauthorization issues and I think to receive from our staff

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1 what ideas they've put together regarding competitive bidding  
2 and perhaps our experimenting in that area at once, not in the  
3 sense of defunding but rather in the sense of providing  
4 alternative means of delivering legal services.

5 To focus us on some specific dates I would suggest  
6 that the reauthorization committee and the inspector general  
7 oversight committee could look at meeting again on some  
8 combination of June 23 and 24, a Sunday and a Monday and then  
9 that the board -- and to the extent necessary either or both  
10 of those committees could meet again on July 7 or 8.

11 Is anybody here able to speak for himself or herself  
12 I guess those who aren't here are going to be subject to the  
13 whims of those of us who are here; if we have any particular  
14 problems.

15 I've already gone over Mr. Guinot's schedule with  
16 him and those dates work quite well for him. Ms. Love, Mr.  
17 Kirk, Ms. Wolbeck, Mr. Uddo?

18 MR. MARTIN: Mr. Chairman, Penny Pullen, board  
19 member Pullen, called to tell me that she wouldn't be here  
20 today. She also said that the legislative schedule in  
21 Illinois was very busy for the balance of June and that she  
22 would have difficulty making any meetings in the month of

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1 June.

2 MR. WITTGRAF: Mr. Kirk?

3 MR. KIRK: I don't have my July schedule. I don't  
4 know at this time if there is anything on July 7th. I would  
5 have to call my office. I've got June and the 23rd and 25th  
6 are okay.

7 MR. WITTGRAF: Anybody else?

8 CHAIRMAN UDDO: The 23rd and 24th are not good for  
9 Jeanine.

10 MR. RATH: I guess if we could do it later in July  
11 rather than earlier. I know that gets tougher.

12 MR. WITTGRAF: We lose Mr. Guinot for the balance of  
13 July come the 10th of July. He will be presiding over the  
14 interviews the of candidates.

15 Let's focus then on Monday, June 24th as the  
16 occasion for the reauthorization committee to receive further  
17 information and to deliberate further and then on some  
18 combination of July 6th, 7th and 8th for the inspector general  
19 committee to have interviews with prospective candidates and  
20 then for the board to meeting on Monday, July 8th. I guess  
21 that's the broadest date and the most important date, Monday,  
22 July 8th. Thank you, Mr. Uddo.

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1           CHAIRMAN UDDO: Any other questions or comments from  
2 members of the committee?

3           Hearing none I'll entertain a motion to adjourn.

4           MR. WITTGRAF: So moved.

5           MS. LOVE: Second.

6           CHAIRMAN UDDO: We stand adjourned. I'm sure  
7 everyone agrees with that.

8           (Whereupon, at 3:45 p.m., the reauthorization  
9 committee meeting was adjourned.)

10                           \* \* \* \* \*

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