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LEGAL SERVICES CORPORATION

Executive Office

BOARD OF DIRECTORS  
PROVISIONS FOR THE DELIVERY OF LEGAL SERVICES  
COMMITTEE MEETING

March 10, 1994

1:20 p.m.

San Francisco Hilton and Towers  
330 O'Farrell Street  
PLAZA BALLROOM  
San Francisco, California 94102

**Diversified Reporting Services, Inc.**

918 16TH STREET, N.W. SUITE 803

WASHINGTON, D.C. 20006

(202) 296-2929

**COMMITTEE MEMBERS PRESENT:**

Hulett H. Askew, Chair  
Nancy H. Rogers  
Edna Fairbanks-Williams  
Douglas S. Eakeley (ex-officio)

**BOARD MEMBERS PRESENT:**

LaVeeda M. Battle  
John G. Brooks  
F. William McCalpin  
Maria L. Mercado  
Thomas F. Smegal, Jr.  
Ernestine P. Watlington

**STAFF PRESENT:**

Alexander D. Forger, President  
Martha Bergmark, Executive Vice President  
Patricia D. Batie, Corporate Secretary  
Edouard Quatrevaux, Inspector General  
Victor Fortuno, General Counsel  
David Richardson, Treasurer & Comptroller  
John Tull, Transition Team

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

1  
2 CHAIR ASKEW: We'll call this meeting to order,  
3 please. Let me note that we have a quorum of the committee  
4 here: Edna Fairbanks-Williams, Nancy Rogers, Doug Eakeley  
5 and myself. All four committee members are here, actually.

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

6  
7 CHAIR ASKEW: Let's start with a request that we  
8 approve the agenda. Before we do that, let me note that  
9 there are two changes in the agenda relating to number 7,  
10 presentations, the last item on the agenda. Jose Padilla  
11 from CRLA will be making the presentation.

12 However, Michael Pfeffer, who is the director of  
13 California Legal Services, will be making a presentation  
14 rather than Mary Trimble-Norris. I've been asked to add  
15 David Lambert from the National Center for Youth Law to that  
16 panel, to that group, who is going to speak to us about  
17 service to the institutionalized.

18 With those changes, can I have a motion that the  
19 agenda be approved?

## M O T I O N

20  
21 MS. FAIRBANKS-WILLIAMS: So moved.

22 CHAIR ASKEW: All those in favor?

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1 (A chorus of ayes.)

2 CHAIR ASKEW: The agenda is approved.

3 APPROVAL OF THE MINUTES OF JANUARY 28, 1994

4 CHAIR ASKEW: Now, for the approval of the minutes  
5 of the January 28th meeting, I have two changes and I  
6 understand another committee member has another change.  
7 Committee members attending were Nancy Rogers, Edna  
8 Fairbanks-Williams and Doug Eakeley. I think Doug's name  
9 should be added as a member rather than an additional Board  
10 member who was there, on page 4.

11 On page 5, at the bottom of the page, it says Mr.  
12 Tull reported that he was working with Mr. Forger and Ms.  
13 Bergmark to develop an oversight role to help programs serve  
14 their clients more effectively. Short terms goals included  
15 limiting monitoring visits to only those programs needing  
16 in-depth reviews. The word "in-depth" should be changed to  
17 "immediate." That more accurately reflects the committee's  
18 discussion.

19 Ms. Rogers, Nancy, you have a change?

20 MS. ROGERS: Yes, on page 7 of the minutes, it  
21 begins "following her report, Ms. Rogers moved to ask staff  
22 to develop and circulate a request for proposals. The RFP

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1 would state the Corporation's intent to give priority to  
2 proposals to fund."

3 I believe that what follows there was the old  
4 resolution and not the one that we presented for approval and  
5 was approved by the committee. Then the 1, 2, and 3 that  
6 were actually moved by the committee and then later moved and  
7 approved by the Board are reflected accurately on page 9 of  
8 the draft minutes of the Board of Director's meeting on March  
9 11, 1994.

10 Therefore, those three items listed on page 9 of  
11 the Board of Director's meeting ought to be substituted for  
12 those that are now listed on page 7 of the committee draft.

13 CHAIR ASKEW: All right, that will be done. Any  
14 other change?

15 (No response.)

16 CHAIR ASKEW: With those amendments, can I have a  
17 motion that the minutes of the January 28th meeting be  
18 approved?

19 M O T I O N

20 MS. ROGERS: So moved.

21 CHAIR ASKEW: Second?

22 MS. FAIRBANKS-WILLIAMS: Second.

1 CHAIR ASKEW: All those in favor?

2 (A chorus of ayes.)

3 CHAIR ASKEW: Opposed?

4 (No response.)

5 CHAIR ASKEW: The minutes are approved as amended.

6 The next item on the agenda is to consider and act upon a  
7 report from the director of the Office of Program Services  
8 and the Office of Program Evaluation, Analysis and Review.  
9 While John is taking a seat, let me make a couple  
10 introductory remarks here.

11 The meeting today is going to continue a practice  
12 that this committee began several meetings ago, which is both  
13 hearing from staff about issues of the Corporation that are  
14 under the jurisdiction of this committee, as well as hearing  
15 from field representatives about issues of concern to the  
16 Board in general, but this committee particularly.

17 Specifically, this afternoon, we're going to hear  
18 from a migrant farm worker program, from a native American  
19 program, from a state support program, and from a program  
20 concerned about representation of the institutionalized.  
21 It's my view, and I think the other committee members agree,  
22 that that's something that this committee needs to continue

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1 doing with all of its meetings.

2 That not only do we need to do the business that  
3 we're required to do, which is to hear from the staff and  
4 make decisions that are the jurisdiction of this committee  
5 and make recommendations to the Board, but we also need to  
6 hear from your program representatives about what it is we're  
7 supposed to be doing and what it is the clients are facing in  
8 our programs we're serving. So I think it's a nice balance  
9 of issues for these meetings.

10 The items that are all here today or the groups  
11 we're hearing from today are mostly a result of the fact that  
12 we're in the bay area and in California. The largest migrant  
13 program in the country is located here and a very effective  
14 "Made in America" program is here. So it was a good idea to  
15 hear from them.

16 We will also be, in the April meeting, setting  
17 aside a good bit of time on the agenda of this committee to  
18 hear from other groups that would like to speak to this  
19 committee about the clients that they serve and the issues  
20 that they're facing.

21 I would encourage any of you who are from groups  
22 and would like to speak to this committee to let me know

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1 because we will be planning the agenda for the next several  
2 committee meetings while we're here in San Francisco. So I'd  
3 like to hear from folks that are interested in speaking to us  
4 about the work that they do.

5 With that, I would introduce John Tull from the  
6 transition team. Before he says anything, thank John for the  
7 work he's been doing for the last several months. It's a  
8 personal sacrifice. It's allowed all of us on the committee  
9 to rest a good bit easier knowing that the work is being done  
10 in Washington very effectively. With that, John, I'm going  
11 to ask you to give us a review of what's happened since the  
12 last committee meeting and where do things stand. Then we  
13 have a decision item to deal with, I think.

14 CONSIDER AND ACT ON REPORT FROM THE DIRECTOR  
15 OF THE OFFICE OF PROGRAM SERVICES  
16 AND PROGRAM EVALUATION, ANALYSIS AND REVIEW

17 MR. TULL: Thank you, Mr. Chairman. Thank you for  
18 your kinds words. It's been an exciting and, I think,  
19 valuable time to be involved. I'm grateful for the  
20 opportunity to be doing what I'm doing.

21 Most of my report is going to be about OPEAR. When  
22 I spoke to the committee last time, I said that the grounding

1 of the approach that we were taking to the issues which were  
2 in front of us brewed in a notion that activities related to  
3 monitoring and evaluation needed to be linked with support.

4 It happens that we've been focusing almost  
5 exclusively for the last month and whatever weeks since the  
6 meeting on the first half of that equation. Soon we'll be  
7 getting involved with the second half. But most of what I'll  
8 talk about will have to do with efforts that we've undertaken  
9 with OPEAR and initiatives which are underway and about to  
10 start, literally, next week with regard to some of the  
11 monitoring and evaluation issues that we talked about before.

12 We've completed an evaluation of the OPEAR staff  
13 about 8 or 10 days ago. We had felt early on that it was  
14 going to be important to have a clear understanding of how  
15 the staff functioned there, who the staff were and how tasks  
16 that are currently being carried out were carried out.

17 It became clear early on that if we were going to  
18 undertake the initiatives that we reported to the Board last  
19 January that we were going to become involved in, we'd have  
20 to have a much clearer understanding of who we have in terms  
21 of abilities, skills, and a much clearer understanding of the  
22 organization and how it was currently set up at that time to

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1 carry out its tasks.

2 So we've undertaken a process of interviewing every  
3 staff member of OPEAR, which is close to 40, interviewed the  
4 managers in order to get a much clearer sense first of who  
5 the folks were who were there and the way they carried out  
6 their work.

7 Based on that evaluation, we've significantly  
8 reorganized the division. The reorganization has involved  
9 two things. We found that the structure of OPEAR was  
10 principally designed, in addition to carrying out ongoing  
11 activities such as responding to requests for approval, which  
12 I'll talk about in a minute, that most of the staff was  
13 organized around the production of reports for monitoring  
14 visits and was set up in a way where people were very much  
15 divided from each other, both in terms of the process of  
16 producing reports.

17 It involved an assembly line approach in which no  
18 one person at any time would particularly have a clear  
19 understanding of what was happening in a program. The  
20 information that OPEAR and the Corporation gets with regards  
21 to programs is very much fragmented, that it was divided up  
22 among each of those divisions.

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1           Our conclusion about that was that in carrying out  
2 the principle which the Board -- it's first dated on December  
3 5th and has been the theme of what we've done for the last  
4 several months. Carrying out the principle of interacting  
5 with programs in a way where we can be supportive and support  
6 their capacity to provide services to clients calls for a  
7 much more holistic -- I hate to use that word but I'm from  
8 Boulder, Colorado, so I will -- a much more holistic approach  
9 to understanding what is going on in a program.

10           Rather than trying to separate information,  
11 convening it together, then keeping people apart in terms of  
12 their understanding of what's going on within a program, to  
13 bring them together so they could use their heads, think,  
14 talk with each other, and develop strategies which would be  
15 designed not to produce reports but to help the programs  
16 improve.

17           So based on that notion, we reorganized the  
18 division into one division. There were a number of managers,  
19 each managing a separate division. We had some departures  
20 based on the reorganization. Four of the managers have left  
21 and some staff members.

22           The notion behind that is that we have some interim

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1 tasks that need to be done, and that the staff size we have  
2 now is appropriate for those. That because the focus of the  
3 division before was almost exclusively on writing reports and  
4 was a very labor intensive process for doing that, that with  
5 a smaller staff in the interim, that we can carry out the  
6 tasks that we need to do.

7 What will happen in the long run when the Board  
8 makes a decision about long-term monitoring policy and  
9 structure, is we'll have to revisit that issue in terms of  
10 what's appropriate for staffing. But for the present we've  
11 got four tasks that need to be done.

12 We're well down the road of finishing a couple of  
13 those and are about to begin the really fun part, which is  
14 figuring out how to make this all work and help create a  
15 policy around monitoring and evaluation, working with you,  
16 which will stand the test of time and will help programs  
17 improve, while making certain we pay attention to our  
18 oversight responsibilities.

19 The first task that is at hand is one that I'm  
20 surprised and pleased to report will actually be done by next  
21 Monday. That is to finish the work that's at hand from the  
22 previous monitoring process. We had 71 final and draft

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1 monitoring reports in the pipeline.

2           Between the time that the evaluation ended and  
3 today, the staff has been organized around two sets of tasks.  
4 One task is to complete those reports and to get them done.  
5 I spoke with the person who I've asked to help carry out sort  
6 of the oversight of finishing those task and help me hurry  
7 that along, Neal Cardona, who has been a staff member there  
8 for some time.

9           I spoke with him this morning and he reported to me  
10 that all 71 reports will be done and on my desk -- I blanch  
11 at the thought because that means I've got to sign them all  
12 or sign off on them, but they will be on my desk when I get  
13 back and will be going out to programs either as a draft or  
14 as a final report.

15           The process of moving them through has involved not  
16 a major rewrite because the judgment we made was we've got  
17 many tasks at hand that we need to focus the staff on getting  
18 the future work done. But what we have done is taken a very  
19 close look at the piece of the reports which involve  
20 corrective action, notices which previously had been a very  
21 large part of the reports, and have put them through a  
22 process of reevaluation to make certain that items which are

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1 identified for corrective action are ones which either  
2 involve a material violation of the acts and regs or audit  
3 guide or involve a material failure on the part of a program  
4 to be able to carry out its ultimate responsibility to  
5 provide high quality service to its clients.

6 Items which previously would have been identified  
7 as a corrective action item that don't measure up against  
8 those two standards will remain in the reports, but only as  
9 items for recommendation that a program address, and will not  
10 invoke the whole process of follow up which has been a part  
11 of the Corporation's policy in the recent past.

12 The second immediate task, which is one which  
13 extends into the future further and really will become a part  
14 of the long-term effort of the Corporation to carry out its  
15 oversight responsibility, is to begin to develop a desk  
16 review process. I referred to it last time I reported to you  
17 as a desk audit.

18 I've since been I wouldn't say chastised, but the  
19 people who are accountants that work for the Corporation and  
20 others keep raising their eyebrows and say, "What do you mean  
21 when you say desk audit"? Apparently it's a term of art and  
22 I was causing others to blanch when I used it. So we're now

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1 referring to them as desk reviews to make certain we don't  
2 confuse two issues.

3 The desk review process is one which the members of  
4 the staff have worked in developing work plans and reviewing  
5 documents, as well as the auditors in OPEAR, are developing a  
6 process for desk review that is to determine the documents  
7 which are necessary to request from programs and to develop a  
8 process for looking at them to satisfy two things.

9 First, for those items where we can, with a  
10 document, can get a determination as to whether or not  
11 there's compliance with a regulation, those pieces of the  
12 regulation which are subject to that kind of review where you  
13 can easily verify that there's compliance or not, such as the  
14 existence of a policy, that one piece of the desk review will  
15 be to satisfy about those.

16 The second will be to look at the material, all of  
17 the material that we get from programs in order to look for  
18 indicia that there may be a reason for further follow up. A  
19 desk review doesn't answer questions; it really raises  
20 questions. Those questions would then feed into a further  
21 process which is the second piece of what we're developing.

22 The reason that a desk audit became an

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1 inappropriate term is that we do have an audit review process  
2 which we engage in. Because of the vagaries of the fiscal  
3 year, we're about to get inundated with 400 audits from  
4 programs that need to be prepared to carry out as well, and  
5 that is an actual review of the audits done by programs.

6 Simultaneous with the development of the desk  
7 review, the staff is relooking at and retooling the audit  
8 review process. It is heretofore, as many of the processes  
9 in OPEAR, it's been a very resource-intensive process with  
10 very long lists, checklists.

11 That's been reviewed by the staff, and Gary Singen  
12 has been helping us out on it, to make certain that we look  
13 at those things which need to be looked at, but don't use  
14 staff resources more than necessary because of the need to be  
15 as efficient as we can in looking at compliance issues while  
16 being satisfied that we're carrying out the stewardship role  
17 that the Corporation has.

18 Then, a third immediate task is to continue the  
19 ongoing responsibilities of the division. We get a number of  
20 complaints, sometimes from clients who have been denied  
21 service, sometimes from clients who are complaining about the  
22 quality of service, sometimes from third parties who are

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1 complaining about the eligibility of a person represented by  
2 a program, sometimes from a program staff or a program Board  
3 member or a client.

4 All of those come in at a steady pace, and there's  
5 a system set up for investigating those, which works  
6 relatively well. Now we're continuing in place to make  
7 certain that we respond to those in a timely and appropriate  
8 manner. The division also has a responsibility to approve  
9 consultant contracts and property purchases, both real and  
10 personal property purchases. The system which has been in  
11 place for that will continue to be in place because those  
12 also come in at a regular and steady pace.

13 Then, the final area is to carry out what the chair  
14 corrected in the minutes, which is those programs in need of  
15 immediate review. I just finished a meeting by phone with 10  
16 members of the staff of the division reviewing those programs  
17 which we feel could use some immediate help.

18 When I reported to you last time, I said that I  
19 thought the approach we would use would be very much a  
20 reflection of the past visits, that we wouldn't be able to  
21 retool in time to address those immediate situations using  
22 the new system.

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1           But as we talked about it this morning, it became  
2 clear with at least three of the programs that we were  
3 speaking about that they would benefit from a peer coming,  
4 that what we were in the process of doing is setting up an  
5 intervention in which we will not only use our own staff but  
6 will get some help from some peers.

7           In several of the programs, the programs are open  
8 to and desirous of help. What we want to do is get somebody  
9 on board with us who can help them work through their legal  
10 management systems and give them some advice and do more than  
11 just do a visit to generate a report, but begin the process  
12 of a business to generate program improvement and to have a  
13 strategy designed to accomplish that. That we should begin  
14 as early as next month.

15           We have an obligation to give people proper notice  
16 for those for whom it will be a surprise. Several of the  
17 programs, I think when we contact them, will be -- one, in  
18 fact, to ask for assistance and two, we've got an ongoing  
19 relationship already and will be able, I think, to get  
20 someone down there fairly quickly without going through a  
21 long notice process for them.

22           What will begin next week is the creative piece of

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1 this. That is the working on specific issues that are going  
2 to be a piece of the future monitoring policy that the  
3 Corporation will ultimately work toward. Because there's  
4 decisions not yet made by the Board, these are all in the  
5 process of analysis and development of tests and better  
6 understanding of what the options are that we have to do  
7 compliance review in alternative ways. But while doing it in  
8 alternative ways, make certain that we are carrying out our  
9 stewardship responsibilities appropriately.

10 These are also processes which are very much being  
11 helped by and grow out of not only the efforts of the staff  
12 of the Corporation but also the fuel process which we'll hear  
13 about in a few moments because each of them involves a  
14 complex set of issues and they're ones which the best heads  
15 in the community need to be engaged in, and I'm happy to  
16 report are in a way which I think, as we work through this  
17 process, becomes increasingly effective and increasingly  
18 helpful to all of us.

19 The issues that we'll be working on are to  
20 implement the desk review process which I described, but  
21 that's already being done in terms of design but we'll begin  
22 to work through testing it out and implementing it starting

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1 next week, and have a team of folks assigned to work on that.

2 We'll have a team of folks who will work on  
3 alternative ways of measuring compliance which has several  
4 pieces of it. One is the self-assessment tool and the other  
5 is the local program monitor, use of a local program monitor.  
6 What has come out of the analysis of the meeting which was  
7 held yesterday with the field process and our own thinking  
8 around this is a recognition that there are a variety of ways  
9 in which a local program monitor might be used.

10 It's a more complex issue than simply saying assign  
11 the task to a local program monitor, see if it works, and  
12 then test it out. The question of what they look at is a  
13 complex one. There's a process underway now to review the  
14 regulations, to identify appropriate questions that might be  
15 used, how much is a product of desk review or is focused on  
16 -- comes out of a desk review and how much is done on site by  
17 an auditor is another question.

18 The interface between the fuel process and our  
19 staff and me is going to be an important part of answering  
20 those questions or at least framing the questions in the  
21 appropriate way so that we can set up some studies to test  
22 out what's going to make sense in the long run.

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1 Peer review and performance measures, we're already  
2 going to begin using peers, as I said, with some of the  
3 immediate programs that are in crisis. What we need to do is  
4 to begin the process as well of testing out the use of peer  
5 review.

6 I note that although I describe that process as a  
7 test, that it is, in fact, a carrying out of the oversight  
8 responsibility of the Corporation. That each of those visits  
9 will, in fact, be -- and he said the use of peers will be a  
10 visit to a program which will be a part of the Corporation  
11 carrying out its responsibility.

12 We will have an additional question, obviously, in  
13 each of them as how does it work, is it working right, do we  
14 need to do it differently. It will be scrutinized in a  
15 different way, but it will be a piece of that.

16 Then, the final is the performance measures.  
17 That's a more complex issue because it requires more  
18 deliberation and deliberateness because the degree to which  
19 the performance measures are now in a framework coming out of  
20 the comparative demonstration project and are through with  
21 the review of field folks and the comparative demonstration  
22 projects, the Advisory Committee are going through a redraft

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1 based on that experience as a further step that needs to take  
2 place.

3 That's really engaging the field and looking at  
4 them and pushing this on what the performance measures say  
5 because if they do become, as I think is contemplated, the  
6 standards of the Corporation against which programs are  
7 evaluated in the future, it's important that they be  
8 thorough, complete, well-analyzed and well-massaged.

9 That process involves a degree of fairness that  
10 needs to necessarily be there, that is fairness meaning an  
11 opportunity for people to comment. There's a lot of work  
12 that needs to be done simply in the analysis; that they are  
13 complex, and difficult. That is underway as well.

14 I said at the beginning my report is going to focus  
15 principally on OPEAR and on monitoring and evaluation.  
16 That's not to say exclusively because we are going to  
17 undertake an evaluation of OPS, which is the Office of  
18 Program Services, which has up to now been the place that has  
19 housed the technical assistance and support effort of the  
20 Corporation and also has housed a number of the initiatives  
21 that the Corporation has undertaken: the law school clinical  
22 program, the meritorious and innovative grants, comparative

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1 demonstration projects, timekeeping project, to name just a  
2 couple.

3 We're going to evaluate that division next week in  
4 order to get a clearer sense of what it does and who and how.  
5 While that is going on, there is another field process which  
6 is not disconnected from what's called the PICA process which  
7 is the monitoring review.

8 There is a field process as well to look at the  
9 liberty initiatives which is in the process of coalescing as  
10 we speak. It also reflects some of the more energetic  
11 members of our community and caring members of our community  
12 and folks who are willing to put in a lot of time wrestling  
13 with complex issues.

14 It's designed to be as inclusive of the community  
15 as possible but in a way which really does cover the range of  
16 issues that we need to wrestle with as a staff and the  
17 Corporation, and what you need to wrestle with as a Board,  
18 and the community wrestles with as a group of folks that are  
19 a part of this whole enterprise. That's underway as well.

20 I'm not sure how you want to proceed.

21 CHAIR ASKEW: Just stop there.

22 MR. TULL: Do you want to have the field folks talk

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1 about their piece now before we go to the specific action  
2 item?

3 CHAIR ASKEW: Let's wait and see if any committee  
4 members or Board members have any questions for you. Then  
5 we'll do that. Doug?

6 MR. EAKELEY: John, are you working with any  
7 consultants of the staff of the inspector general in  
8 developing your desk review and your retooling of the audit  
9 review process?

10 MR. TULL: Well, I've met with the inspector  
11 general's staff. I met with them last week. We sort of  
12 kicked off this new stage with reorganization and brought  
13 them up to date on where we were at on that and have spoken  
14 with them several times about the desk review piece of it and  
15 the audit review, and have told them what would be helpful to  
16 us. To me it would be to be able to reflect off of their  
17 staff the thinking that we're evolving toward.

18 My sense has been that the appropriate relationship  
19 probably is one in which we consult with them and let them  
20 react to what we've done. Their own particular  
21 responsibilities, as the inspector generals, is one in which  
22 they are actually being engaged in making policy. It's

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1 probably problematic since then they then have to question it  
2 in carrying out their roles. The short answer is yes, we  
3 have been in contact with them.

4 MR. EAKELEY: There's input that is appropriately  
5 offered or solicited now, I think, that would be welcome from  
6 our perspective, certainly. Second question: Where are you  
7 on performance measures and performance criteria? We're  
8 buying into that in the reauthorization process. How far  
9 away are we from reviewing as a Board the establishment of  
10 the performance or criteria measures?

11 MR. TULL: Well, as soon as you want. There are  
12 some in place that we could start having --

13 MR. EAKELEY: I don't think you want to do it that  
14 way.

15 MR. TULL: The current status of the performance  
16 measures is that the comparative demonstration project  
17 developed a set of measures which were used in that process.  
18 They are quite complete. The degree to which they're  
19 incomplete comes from the fact that having been used, we've  
20 got a better understanding of ways in which they might be  
21 redrafted and restructured. That is what's going on now.

22 The timetable for when they might come to the Board

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1 is a function of that process ending and then in fairness to  
2 what I said a minute ago, the field having a chance to really  
3 relook at them. Even though they were circulated to the  
4 field as a part of the comparative demonstration project,  
5 realistically they weren't looked at very strongly by many  
6 people who saw them as a fairly esoteric issue.

7 MR. EAKELEY: This will be part of the delivery  
8 working group's early mandate?

9 MR. TULL: Yes. Well, it's actually part of the  
10 PICA. It's part of the performance improvement on compliance  
11 and accountability piece of the field process because it  
12 relates to peer review. They have a committee which is  
13 assigned to do that. They include the drafter and members of  
14 the Advisory Committee of the comparative demonstration  
15 project.

16 MR. EAKELEY: To what extent do the performance  
17 measures you're developing now attempt to assess performance  
18 of private attorney involvement?

19 MR. TULL: Well, they include within them in one  
20 section a set of criteria which relate to leveraging of  
21 resources and appropriate use of resources which has a  
22 specific reflection of use of private attorneys. The first

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1 part of the performance measures which is focused on sort of  
2 a broader set of questions, which is does the program have a  
3 clear understanding of what the legal issues are that affect  
4 the clients and does it make appropriate decisions about  
5 which to focus on and allocate resources to them implicitly,  
6 would include the entire way that resources are focused.

7 This would include, to my view, and I'm not sure  
8 they were used this way, frankly, in the comparative  
9 demonstration project, but to my way of thinking, it would  
10 include use of private attorneys because private attorneys  
11 are one of the resources that a program needs to fold into  
12 its entire response to its client's community needs and to  
13 see them as part of a whole.

14 MS. ROGERS: When do you see the first visit under  
15 the new approach?

16 MR. TULL: The first visit of the new approach?  
17 Well, the first visit using peers will be relatively soon,  
18 although the first visit under a retooled use of peers, my  
19 hope would be that we could have a visit on a test basis in  
20 May or June.

21 I think the actual implementation of a full-blown  
22 peer review system involves a set of steps beyond just

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1 analysis. It involves a whole set of work around recruitment  
2 and creation of a system for paying attention to who's got  
3 what skills and where are they located geographically.

4 One of the things that we've learned from the  
5 comparative demonstration project, one of the criticisms of  
6 it by the peers and the programs was its lack of diversity,  
7 both ethnic and geographic. So to respond to what we need to  
8 be able to do in terms of those levels of diversity, let  
9 alone others, is going to take a fair amount of recruitment.

10 That's going to take paying attention to creating a  
11 system where folks won't get lost and where we can identify  
12 easily who's got what skills to respond to a particular issue  
13 in a program. Also, intervening with that is the Board  
14 stepping back and saying, you know, responding to what it is  
15 hearing in terms of direction. But I would think that would  
16 be in the fall before we would be prepared to do that. That  
17 will be a new president and the like at that point.

18 MS. ROGERS: How does that monitoring tie in with  
19 technical assistance? Will there be a tie-in?

20 MR. TULL: That's my vision and my dream. The  
21 technical assistance capacity of the Corporation and of the  
22 legal services system overall is one which is in the highest

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1 state of disrepair, I guess I would say. There is a  
2 technical assistance component within the Corporation.

3 It's a small group of people and have not had a  
4 huge amount of experience in the past few years in actually  
5 delivering real hard-nose, hard core focused technical  
6 assistance. The community itself has developed its own  
7 informal ways of doing it through its other institutionals,  
8 other institutions, NALDA, PAG, and others, MIE.

9 What the system needs to evolve toward, I think,  
10 and what the Board is going to be faced with, having to make  
11 some decisions around down the road, not too far but not  
12 immediately, is what is the most appropriate best way to  
13 create a system for having technical assistance available to  
14 programs to respond to issues which the monitoring and  
15 evaluation process uncovers.

16 Some technical assistance will be more effective if  
17 it comes not directly from the Corporation, because there is  
18 that question of the dual role, and some technical assistance  
19 requires a level of openness and having the persons assisting  
20 you really being your person.

21 Others, the Corporation's provisions of that  
22 technical assistance will be the most effective way. A piece

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1 of what the field group is working with and wrestling with  
2 and what the staff of the Corporation needs to wrestle with  
3 and work with, and the other planning processes which you had  
4 reported to you at the last meeting, those are all wrestling  
5 with that question because it's a very complex one, but the  
6 most important one, I think, in many ways that will come down  
7 the road in terms of how the Corporation carries out its own  
8 responsibility but in a way which reinforces and strengthens  
9 the other institutions of the legal services community in a  
10 way where programs will have a range of options of getting  
11 help and assistance.

12 So your question was not what; it was when. That  
13 when is, I think, probably late summer or fall before you're  
14 really wrestling with those questions. The setting up of it  
15 then depends on what the decision would be as to how best to  
16 do it.

17 CHAIR ASKEW: Are there any other questions for  
18 John?

19 (No response.)

20 CHAIR ASKEW: Thank you, John. You've done a lot,  
21 but there's still a lot to be done, obviously. Obviously,  
22 the committee wants to encourage you to continue working with

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1 the field group that we're going to hear from next and keep  
2 moving along.

3 Your predecessor, I think, had started on the path  
4 of trying to have this committee addressing some of these  
5 issues at the May meeting. It sounds like, from what you're  
6 saying, that that's probably going to be pushed back a little  
7 ways. I'll ask the field working group the same question,  
8 estimates about when we'll be addressing, the Board and this  
9 committee addressing some of these issues about the reforming  
10 of the whole monitoring and evaluation process.

11 But I think, from what I heard you saying, it's  
12 probably going to be the fall before a lot of these issues  
13 come up to us for resolution.

14 MR. TULL: I think in terms of many of the  
15 decisions, it's probably more realistic to think of that time  
16 frame. I think by May we'll certainly be able to report with  
17 much more depth, first of all, what the processes are to  
18 really test out some of the questions that need to be tested  
19 out.

20 We will begin to have some answers that right now  
21 are still just questions. But I think that it has become  
22 clear that the May goal or time table was one which was

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1 probably somewhat arbitrary in terms of the set of tasks that  
2 need to be done and the issues that need to be addressed.

3 But I will say, having said that, that it has been  
4 helpful because there's nothing like having your -- who is  
5 it? Was it Samuel Johnson who said something about a hanging  
6 in two weeks really focuses the mind? I have a feeling that  
7 having to have a bunch of questions answered in two months  
8 focuses the mind as well. Although this will have a happier  
9 ending than Samuel Johnson had in mind, I think.

10 MS. ROGERS: I don't know how the other committee  
11 members feel, but I think there's another thing that enters  
12 into the time line and that is that I'm uncomfortable with  
13 having a very long period of time go by without regular  
14 monitoring.

15 I think May made me feel more comfortable that we  
16 were talking about a relatively show period of time with no  
17 monitoring. Fall makes me feel very uncomfortable. I don't  
18 know how other committee members feel. I wonder whether it  
19 might be worthwhile to think about an interim set of  
20 guidelines with the understanding and the assurance to the  
21 field that these are going to be reviewed in a few months, if  
22 the Board thinks they are mistaken.

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1           That no individual program would be penalized as a  
2 result of an interim guideline that's later rescinded by the  
3 Board. But at least that permits -- it's only a modification  
4 of your idea to try an experimental use, but it permits some  
5 more regular monitoring to begin as early as May.

6           MR. TULL: Well, my observation when I said that  
7 we've got some testing and some studying and some question  
8 answering to do, my footnote to that -- the reason I stated  
9 the footnote I did is that I think it is important to  
10 recognize that that is a carrying out of the Corporation's  
11 monitoring function.

12           In terms of the approach that we would take to that  
13 in terms of making decisions about whom to visit and under  
14 what circumstances, one of the factors in that would be what  
15 it would be if this were just a continuation of the old  
16 policy which is to pay attention to who has been visited when  
17 and who needs to be visited because it's been some time.

18           It certainly would be a function of issues that we  
19 would uncover in the desk review which will be going on  
20 before May and the desk review itself. The reason that  
21 there's been a greater urgency on my part in pushing the  
22 staff to develop the desk review process is that the desk

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1 review process needs to be real, in my view, and in our view  
2 and needs to be one which meets two criteria.

3 One is that it be efficient in terms of does it  
4 rally use resources well, our resources, in terms of that we  
5 not spend too much time on any one document or ask for  
6 documents which aren't useful. Second is that it be  
7 effective in that we feel comfortable that it does answer  
8 questions about compliance issues and that it will give us  
9 indicia, that flags will go up if a program is struggling so  
10 that we can respond to that.

11 In terms of the structure of the staff that we're  
12 talking about now, we want to keep a capacity to have people  
13 who can go on a very quick basis to programs that we find  
14 through that process or through another process are  
15 struggling.

16 It's both in our needing to make certain we can say  
17 with full confidence to Congress when asked we ain't dropping  
18 the ball on this one and also because if a program is  
19 foundering, it means the clients aren't getting served in  
20 that community and that the responsibility we have to make  
21 certain that clients are well served also pushes us to be  
22 able to respond quickly if we hear that a program is

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1     foundering. So that certainly would go on starting now and  
2     not wait until fall.

3             MS. ROGERS: I guess I'm uncomfortable -- I think I  
4     hear you saying we would still respond to real complaints or  
5     real problems that we see, but we wouldn't begin regular  
6     monitoring until fall. I would be uncomfortable, I think, to  
7     explain to someone why it took us a full year after coming  
8     into office to restart a regular monitoring process. But I  
9     don't know how my fellow committee members feel. I think we  
10    should start a regular monitoring process this spring, even  
11    if it means using interim guidelines.

12            CHAIR ASKEW: John, what do you anticipate in  
13    response to Nancy's concern there in the months of May, June  
14    and July? Do you have any way of anticipating now how many  
15    monitoring visits would be ongoing in the spring and summer?

16            MR. TULL: We are talking about with the programs  
17    that have been identified as needing immediate attention,  
18    five to seven programs which would be during the months of  
19    April and May. The beginning of a process of simultaneously  
20    doing peer review to test it out and to visit programs, that  
21    beginning May and June, we would --

22            I mean, I'm jumping ahead in a guess here because

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1 we haven't designed it, but my assumption would be based on  
2 sort of having the right balance between the issue that you  
3 raise, which is making certain we can answer to Congress that  
4 we're carrying out a responsibility, that the numbers would  
5 need to be in the same range of what we would do with the  
6 regular monitoring process.

7 I may have misspoken myself if the impression you  
8 got is that what we're talking about doing between now and  
9 September is basically only doing a few visits and just, in a  
10 sort of modest way, testing out a few things. The number of  
11 visits which were done under the old monitoring process, had  
12 the Corporation carried out its visits under the process  
13 which was begun under the previous administration, it would  
14 have been 13 programs visited in 3 months during the months  
15 of February, March and April. We're talking about actually  
16 making more visits than that in terms of the numbers.

17 So I would really urge you not to feel a need to  
18 have an ongoing separate process of an old style monitoring  
19 while we're trying to wrestle with doing what is probably a  
20 greater number of visits but under somewhat more complex  
21 circumstances.

22 We're really trying to do two things. One is to

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1 satisfy our responsibility to hold programs accountable to  
2 make certain that we are carrying out the monitoring  
3 function, but at the same time to do it in a way which would  
4 be the most useful and instructive to the Board and to the  
5 Corporation in informing future policy.

6 As it is, that's an enormously ambitious  
7 undertaking to attempt to do both. I think to add to it  
8 creating a whole separate track where we would have to staff  
9 and oversee a process which would run separate would be very  
10 difficult to do.

11 I mean, my sense of our responsibility is that we  
12 need to respond to the concern you raise, which is a concern  
13 Congress will raise and others will raise, but that it is  
14 best done within a managed process of looking at the whole  
15 piece together in the way I just described.

16 MS. ROGERS: I don't want to be misunderstood. I  
17 wouldn't propose at all that we use the old monitoring  
18 system. I propose that we make the best assessment of what a  
19 new monitoring system would be and start it this spring.

20 MR. EAKELEY: I think what John is saying is that  
21 the staff is conducting an ongoing monitoring function  
22 stripped of what's really deemed to be an essential, and

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1 looking to develop as not just a supplement to that but an  
2 evaluation element that has been totally lacking as well.  
3 Between desk reviews, audit reviews, complaint, evaluation  
4 and response, and visitations to programs in trouble, you  
5 have already a large portion of a coherent and effective  
6 monitoring program.

7 So I think it's the other elements that require a  
8 lot more time, the performance criteria and standards, the  
9 peer element of the review process, the response from the  
10 field.

11 MS. ROGERS: Let me ask, because maybe I did  
12 misunderstand, will these visits that you've scheduled, the  
13 six, seven, eight, ten over the summer, will they include the  
14 peer review in compliance with interim standards?

15 MR. TULL: Oh, yes, absolutely, yes.

16 CHAIR ASKEW: The real question is, are we meeting  
17 our accountability responsibilities? I think the clear  
18 answer, and I certainly feel comfortable, is the answer  
19 that's yes. Then the second issue is, as we go through  
20 reforming this process, are we continuing to do on-site  
21 visits, and the answer to that is yes. In fact, we may be  
22 doing more than would have been done under the old system.

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1           But while we're doing that, we're trying out these  
2 new approaches at the same time. So during the summer, June,  
3 July and August, we will be doing program visits using these  
4 new approaches but evaluating them, as well, while we're  
5 doing that to make sure that's what we want to permanently  
6 adopt, hopefully, as we go through it.

7           But we're not standing still and not doing any  
8 on-site visits while that's underway. The best way to test  
9 it, obviously, is to put it out in the field and try it and  
10 see how it works.

11           MR. TULL: Right.

12           CHAIR ASKEW: Thank you, John. Let's go ahead and  
13 deal with the one decision item you've raised with us and  
14 then I'll ask the field group to speak to us. Can you give  
15 us a quick overview of the January 29, 1988, Board resolution  
16 and why you feel it should be rescinded?

17           MR. TULL: Yes. This is really, I think, just  
18 cleaning up something that it's helpful to do now. In  
19 January of 1988, the Board adopted a policy that a recipient  
20 that refused to produce material that's asked by the  
21 Corporation or to negotiate around that would relatively  
22 automatically be subject to suspension under 45 CFR 1623. It

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1 was a policy which came out of some of the darker days of the  
2 monitoring policy.

3 The recommendation here is that that policy be  
4 rescinded now so that, among other things, as we're going  
5 through a process of working through with programs, setting  
6 some of these things underway, that don't have sort of  
7 sitting behind it what is a Board policy, which is, if a  
8 program were to say to us this ain't a great time for us to  
9 be involved in this test of peer review, we really don't want  
10 to do it, that technically that might be viewed as a failure  
11 to negotiate, failure to provide materials.

12 The policy would suggest that somehow we have to  
13 take a step to sanction them, when clearly that's not what  
14 we're about here. So the recommendation is that that simply  
15 be rescinded.

16 M O T I O N

17 MS. ROGERS: So moved.

18 MS. FAIRBANKS-WILLIAMS: Second.

19 MR. EAKELEY: This is the recommendation to the  
20 full Board, to rescind this?

21 CHAIR ASKEW: That's for this committee to vote to  
22 make a recommendation to the full Board. Let me make one

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1 comment, that in the materials, the discussion at the prior  
2 Board meeting when this policy was adopted, pieces of that  
3 were included.

4 I noticed that Mr. Smegal opposed adoption of this  
5 resolution at the time, and I think this was about the time  
6 that he had generated four votes in opposition of things.  
7 When he started with one and he only had four, I think it was  
8 passed over his strong objections. He asked the president at  
9 the time, Mr. Bayly, do you really need this. I think the  
10 answer Mr. Bayly gave was no, we don't really need it. The  
11 Board adopted it anyway. We still don't need it. It's my  
12 opinion.

13 Alex, did you want to say something?

14 MR. FORGER: No. I was going to observe how much  
15 foresight Mr. Smegal had.

16 CHAIR ASKEW: Maybe we should make Mr. Smegal a  
17 member of this committee for this one vote.

18 MR. SMEGAL: Mr. Chairman, I was looking at the  
19 materials in the Board book or the committee book and I  
20 noticed that the Board vote was not in here at that time. I  
21 thought maybe I voted the wrong way and you brought that up  
22 for that reason.

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1 CHAIR ASKEW: You never voted the wrong way. You  
2 brought more people with you towards 1988. We have a motion  
3 and it's been seconded. All those in favor say aye.

4 (A chorus of ayes.)

5 CHAIR ASKEW: Opposed?

6 (No response.)

7 CHAIR ASKEW: Motion is passed. We'll recommend to  
8 the Board that this policy be rescinded. I understand we're  
9 now going to move on to the next item and Ramon Arias and Ann  
10 Bailey are going to speak to us on behalf of the PICA  
11 Committee. I'll ask you both to introduce yourselves to the  
12 committee for the record and then make your presentation  
13 however you see fit.

14 CONSIDERATION OF AND POSSIBLE ACTION ON 1/28/88, BOARD  
15 RESOLUTION ADOPTING CORPORATE POLICY REGARDING INDIVIDUAL  
16 GRANTEES' FAILURE TO PRODUCE MATERIALS REQUESTED

17 MR. ARIAS: My name is Ramon Arias, and I work at  
18 San Francisco Neighborhood Legal Assistance Foundation, and I  
19 have the privilege of serving as its executive director.

20 MS. BAILEY: My name is Ann Bailey. I'm from  
21 Springfield, Massachusetts, and I'm a client representative.

22 MR. ARIAS: Before moving to our very brief report,

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1 I needed to seize this opportunity since I do have the mike  
2 and welcome you to San Francisco. You may or may not have  
3 noticed that San Francisco is home to one of the leading  
4 national support centers, the National Center for Youth Law.  
5 It's the home of one of the leading rural programs,  
6 California Rural Legal Assistance.

7 It's the home of one of the leading pro bono  
8 programs supported by LSC, the Volunteer Legal Services  
9 Program of the Bar Association of San Francisco. It's the  
10 home, finally, of a program that I hope will be one of the  
11 leading field programs in the country, San Francisco  
12 Neighborhood Legal Assistance.

13 The name of our committee actually captures what  
14 our objective is, and the name of this committee is the  
15 Program Improvement Compliance and Accountability. You've  
16 probably already heard reports about who we are, but for the  
17 audience I wanted to explain that we are a committee that  
18 grew out of the regulations a working group process.

19 Our committee includes people who were involved in  
20 a regs working group dealing with monitoring and compliance,  
21 but it also includes folks who were on the Advisory Committee  
22 to LSC's comparative demonstration project, and we also

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1 recruited folks who were on neither committee but who were  
2 people with an interest in or knowledge of how to measure  
3 program performance.

4 Before turning the mike over to Ann, I wanted to  
5 directly respond to the Chair's question about whether or not  
6 the current draft of the performance criteria include some  
7 measurement of the effectiveness of how a program uses  
8 private attorneys, and the answer is a very definite yes.

9 The second cluster of issues that the CDB criteria  
10 focuses on is the effectiveness of the legal work or legal  
11 representation and other activities undertaken by a program.  
12 Included in that measure of effectiveness or in the criteria  
13 is how well a program manages or utilizes the resources of  
14 the private bar in its community.

15 MS. BAILEY: We have decided to break into  
16 committees around clusters of issues. There are four  
17 subcommittees of the PICA group, and they are monitoring-  
18 compliance, evaluation-peer review, enforcement, and  
19 technical assistance, which includes program improvement.

20 We met yesterday, the full committee, and we  
21 concentrated on the first two of these. Under monitoring, we  
22 talked about methodologies that we would recommend. Under

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1 evaluation, we set goals that we thought would fit the  
2 evaluation as we would like to see them.

3 We will be working through conference calls and the  
4 subcommittees through the rest of March. We have a meeting  
5 planned for April 4th where we hope to get a draft together,  
6 which we will then send out to the field for comment. We are  
7 aspiring to have a final report for the May Board meeting.  
8 We're aspiring. Don't hold us to that but that's what we're  
9 really trying to do.

10 I just want to say, in terms of this committee,  
11 that I've been very pleased with the quality of client  
12 participation, not only in the meetings themselves but in the  
13 plans that we have for monitoring and evaluation. That's our  
14 short speech.

15 MR. ARIAS: Actually, this morning, when we met to  
16 prepare a few remarks, we debated whether to go into the  
17 detail of our deliberations and decided that because we do  
18 have scheduled an April 4 meeting with the entire committee,  
19 and before then each subcommittee will meet by conference  
20 call, we decided basically to give you an interim report on  
21 our progress, status report of where we are, and then answer  
22 any questions that you might have.

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1 CHAIR ASKEW: Any questions?

2 MS. ROGERS: What's the difference between  
3 monitoring and evaluation?

4 MR. ARIAS: Well, actually, we decided to use those  
5 words to differentiate between two sets of issues. We are  
6 using the word compliance to address those regulatory  
7 requirements that lend themselves to quick review; for  
8 example, things that are objectively verifiable. An example  
9 is the requirement that a Board of Directors meet four times  
10 a year.

11 Our intent is to come up with a plan that would  
12 allow the Corporation to check for compliance in an efficient  
13 way, an efficient use of resources both for the Corporation  
14 and for the local program that is being monitored.

15 Evaluation is the word that we are using for the  
16 purpose that we think is central to the mission of the  
17 Corporation, and that is the provision of high quality, legal  
18 assistance. It's evaluating that that is what John was  
19 talking about when he was saying that it's a big task. Of  
20 course, one reason is that the Corporation, at least in our  
21 view, did no work on that part of our mission for the last 12  
22 years.

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1 MS. ROGERS: Thank you.

2 CHAIR ASKEW: Do you intend to come back to this  
3 committee at the April meeting with any sort of report or  
4 presentation or are you going to wait until the May meeting?

5 MR. ARIAS: We didn't discuss that, and I suppose  
6 that will depend on what happens on April 4.

7 CHAIR ASKEW: The staff of the Corporation has been  
8 involved with you in these meetings; is that right?

9 MR. ARIAS: Yes. It's been a collaborative  
10 process. I'm sorry that we forgot to mention that. The  
11 Corporation staff have attended the meetings with us.

12 CHAIR ASKEW: Well, thank you. This is very  
13 important to us. ramon, the introduction you gave about the  
14 entities that exist here in California certainly were quite  
15 accurate. As a matter of full disclosure, I wish you had  
16 added that this is also the home of the National League West  
17 second best team, baseball team. I thought that's where you  
18 were leading with this.

19 MR. ARIAS: I'm waiting until we're the best. I  
20 need to correct the Chair. I was only mentioning programs in  
21 San Francisco. Tomorrow you will about programs throughout  
22 the State of California and Nevada.

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1 CHAIR ASKEW: Thank you both very much. The next  
2 item on the agenda is consider and act on options available  
3 to the Corporation with regard to the National Community  
4 Services Act. John, Don Saunders, and Kathleen Welch is here  
5 from NAPIL. Kathleen spoke to us earlier so you need no  
6 introduction to this committee or Board.

7 At the last meeting, we authorized the staff to go  
8 forward with looking into the possibility of the Corporation  
9 actually making a proposal under the National Community  
10 Services Act for a grant. a lot of work has gone on in the  
11 interim, and we'd like to hear a report from you about where  
12 that stands and what you'd like for this committee to do.

13 CONSIDER AND ACT ON OPTIONS AVAILABLE TO THE CORPORATION  
14 WITH REGARD TO THE NATIONAL COMMUNITY SERVICES ACT

15 MR. TULL: I will start, but I will start by saying  
16 that a huge amount of work has been done and it's been done  
17 by the two persons on my right. So they will report to you  
18 on the details of that. There are several collaborative  
19 efforts underway here, and certainly one is this one.

20 It's been presented to you as that, which is an  
21 opportunity which has existed, continues to exist, but puts a  
22 lot of pressure on us to engage in the initiative of the

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1 Clinton Administration under the National Community Services  
2 Act, and to have that program be available to us and to the  
3 clients we serve by having lawyer be participants in that.

4 They're on a short time frame, which is pushing us  
5 enormously. It's led to two things. One is, we've been in  
6 conversations both, as you know, because of the reports to  
7 the Board from Kathleen and Don that we have been working  
8 with them and thinking through what is really a new  
9 initiative, not only initiative but that that corporation,  
10 which unfortunately calls itself the Corporation.

11 So I should warn you we're going to be treated to a  
12 series of conversations where we talk about the Corporation's  
13 response to the Corporation, the Corporation's regulations  
14 and which ones apply. It's going to be very hard. It's  
15 going to be metaphysical at best.

16 CHAIR ASKEW: Speaking to someone from Boulder.

17 MR. TULL: Thank you, Mr. Chairman. But in  
18 response to that time frame, we really have worked together  
19 very much to try to first work through a set of questions  
20 around what is the best way to approach AmeriCorps in terms  
21 of an actual application. It's one of the things that will  
22 be before you for action, which I'll explain in a minute.

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1           The second one, which Kathleen and Don will speak  
2 to, is how to create a proposal which reflects the best  
3 capacity we have to serve our clients effectively through  
4 this project, that this is a challenge, but it's also an  
5 opportunity.

6           The opportunity is to think through how  
7 participants that become available can best serve clients and  
8 can interface with programs in a way where we really get the  
9 best possible use out of the project for the clients that we  
10 serve.

11           That, because of the short time frame, is what has  
12 really pushed these two folks to really work enormously hard  
13 in order to get from the field, their best thinking, and to  
14 get people engaged so that as we present a proposal to  
15 AmeriCorps, it does get the job done that we need to get  
16 done.

17           Let me highlight just the question that is before  
18 you and then perhaps it makes sense for Kathleen and Don to  
19 explain to you the details of what we've done and then to  
20 come back to the question, which is what action needs to be  
21 taken immediately by the Board in order to permit us to go  
22 forward.

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1           The question that underlies what I just said a  
2 minute ago in terms of collaboration and the need to do this  
3 in the best way possible is who becomes the applicant to  
4 AmeriCorps for a project which would place participants in  
5 programs.

6           We've had several meetings and have talked about  
7 that question. This is a collaboration which involves the  
8 Corporation, it involves NAPIL which Kathleen represents,  
9 which is the National Association of Public Interest Lawyers.  
10 It involves NLADA. Those three organizations have been  
11 talking together about the collaboration question.

12           It's been our judgment as a matter of policy, that  
13 is as to who is the best organization to actually submit the  
14 application, that there are upsides and downsides with any,  
15 but that it would appear to be the most useful for the Legal  
16 Services Corporation to be the actual applicants to  
17 AmeriCorps for the monies.

18           It's an opportunity for us to participate with the  
19 administration initiative, to use participants, what some  
20 people call volunteers -- they're not really because they do  
21 receive some pay -- in a way which is very consistent with  
22 the responsibilities and the purposes and the challenges that

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1 the Legal Services Corporation has by statute.

2 That raises some legal questions which we can come  
3 back t in a moment after they've described what they've been  
4 doing. But what is before the committee is we're all victims  
5 of the same time pressure and that is that the application  
6 needs to be submitted to AmeriCorps by April 15th.

7 The Board will meet before that, but right before  
8 that. We need to have resolved the question of who the  
9 applicant is well before that. So what is before you, and  
10 I'll explain in a little more detail after they finish, is  
11 the question of authorization for the Corporation as the  
12 applicant.

13 MR. SAUNDERS: Good afternoon. My name is Don  
14 Saunders. I work on government relations and congressional  
15 affairs for PAG and NLADA. Other than to remind the Chair  
16 that they've realigned the National League, I'm going to very  
17 briefly, basically, cover the bill --

18 CHAIR ASKEW: Times up, Don.

19 MR. SAUNDERS: I'm going to cover the bill  
20 perspective very briefly because I think you do need to get  
21 to John's questions and basically, you've heard from Kathleen  
22 and I before.

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1           As you know, the field has worked very closely with  
2 NAPIL and recently with the Corporation from the beginning in  
3 Congress and through the regulatory process to make this  
4 program work, both at the state level and at the national  
5 level for the public interest practice of law, and  
6 particularly for legal services programs.

7           It has been, at best, a very difficult process  
8 because from the beginning, the proponents of national  
9 service never viewed lawyers as a key component. As we have  
10 educated them and as they have begun to look for results,  
11 they have come around a great bit on that.

12           They really are interested, I think, now in our  
13 collaborative proposal. We are hesitant to come to you with  
14 a lot of unanswered questions, but everyone that is going  
15 through this process currently has a number of unanswered  
16 questions.

17           From the field perspective, a number of us harken  
18 back to the pre-Reagan days when vistas and other kinds of  
19 volunteers were actively engaged in the legal services  
20 practice. Many of us started there or have great experiences  
21 there. This program is clearly going to be the major  
22 national initiative to pretty much replace the vista kind of

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1 approach. We really want to be in at the ground level.

2 The response from the field to the communications  
3 that the Legal Services Corporation has sent out has been  
4 overwhelming. Kathleen is going to go through some of the  
5 specifics. John, did they get the RFP?

6 MR. TULL: Yes.

7 MR. SAUNDERS: So Kathleen will very briefly run  
8 through the RFP with you. I just wanted to sort of give you  
9 our perspective on it. There are a lot of places that we're  
10 trying to fit a round peg into a square hole, but we're  
11 working very hard to work that out.

12 We view this, particularly the first year, as a  
13 demonstration both of a collaborative relationship with the  
14 field, with NAPIL, and the Corporation, but also to get LSC  
15 and field programs into this from the beginning. We think it  
16 is very important to do that and to establish that  
17 relationship.

18 So we would not view any decision that the Board  
19 would make today or in the future as binding as far as a  
20 future application, a future process or anything like that.  
21 We just have been operating under such a tight deadline that  
22 we put together, particularly folks at NAPIL have put

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1 together the best process and the best materials that we  
2 could put together.

3 I think in our interaction with the field we've had  
4 a very positive response, even though it may not be the model  
5 that you would want to follow in the future for getting a  
6 program going. We just have not had control of that process.  
7 But I think we had 140 responses from programs to the initial  
8 request for statements of interest. So there certainly is a  
9 strong feeling in the field from both the state process and  
10 the national process.

11 Finally, for your consideration as this committee  
12 moves forward and I think the more difficult questions of  
13 recruitment, bringing minorities into legal services, loan  
14 forgiveness and those sorts of questions, and this is the  
15 last time I will say this to you, this is not an answer to  
16 that. This is a very targeted, specific program that goes  
17 into communities with a targeted approach and would provide  
18 some assistance where it's a good fit with the program. It  
19 is not a cure-all for loan forgiveness. It is not going to  
20 bring huge numbers of lawyers, at least at the current level  
21 of funding.

22 I really don't think you should view it that way.

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1 Obviously, it is one step with some very attractive loan  
2 forgiveness components to this program, but it's only one  
3 piece in a very complicated puzzle.

4 MS. WELCH: Thanks, Don. My name is Kathleen  
5 Welch. I'm the executive director of the National  
6 Association for Public Interest Law. Thank you for having me  
7 once again to talk on this topic. I have only a couple  
8 things to add to what Don presented, but I would like to  
9 underscore the last thing he said.

10 As someone who spends an awful lot of time with law  
11 students and recent graduates who are struggling to find  
12 legal services jobs or public interest jobs, more broadly,  
13 and certainly not only to get the jobs but to pay their debts  
14 at the same time, I can only underscore that this isn't the  
15 answer too that, but it is a unique opportunity.

16 I'm excited that we've moved as far as we have  
17 since when I first started talking about this issue, which is  
18 when our now president was on the campaign trail talking  
19 about national service and I started talking about how  
20 lawyers can play a positive role in that program. I think  
21 we're at a point now where there is a real interest in  
22 sending some of these resources to lawyers.

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1           The Corporation for National Service is trying to  
2 spend \$153 million very quickly. We are facing a tough time  
3 line. I learned about an hour ago that April 15th may no  
4 longer be the deadline. We may have a couple more weeks  
5 because the final regulations and applications from the  
6 Corporation for National Service are still not back from OMB.  
7 So the unanswered questions are being faced by lots of folks.

8           Just a couple of specifics on the process. When we  
9 first talked to you back in December at your first official  
10 meeting about this and about the possibility of working with  
11 legal services programs, I left that meeting with a great  
12 deal of enthusiasm about this opportunity and went straight  
13 to -- actually, during the meeting -- to my foundation  
14 officer at the Ford Foundation and said we need some help  
15 developing proposals.

16           We were successful in getting some resources and  
17 brought on a staff person at NAPIL who has been spending day  
18 in and day out on the phone with local legal services  
19 programs about this project. I give Michael most of the  
20 credit for developing both the memo and the background  
21 information that went out to programs.

22           As Don said, we got over 140 responses. We talked

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1 a lot with folks about what they were looking for. We talked  
2 with your staff who have been extremely helpful. We talked  
3 with NLADA, and we sent a lot of information out to both  
4 legal services programs, deans, clinicians, law students and  
5 public interest groups more generally.

6 The draft RFP was reviewed by a number of people in  
7 the field last week. It was finalized the day we spoke to  
8 them. It went out overnight mail on March 4th. The word  
9 from my folks back home are that our phones are ringing off  
10 the hook today with programs who are interested in  
11 participating and trying to wade through the details.

12 Basically, the three roles that we see in terms of  
13 partnerships, and I say this very broadly, is that the  
14 Corporation, the Legal Services Corporation, would hopefully  
15 take the primary role as the lead applicant and serving in an  
16 administrative capacity, fiscal agent, evaluation and  
17 monitoring.

18 NAPIL and NLADA would hopefully play a role in  
19 providing support in terms of outreach, recruitment,  
20 promotion, developing training, and possibly running a  
21 fundraising campaign to supplement some of the benefits of  
22 the programs.

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1           As you probably know from looking at the materials,  
2 the bulk of the work, the projects themselves, would be done  
3 on the local level by local offices. They would design the  
4 programs, implement them, and actually make the decisions on  
5 what volunteers they will bring on to do the projects.

6           That's about all I have to add. I have more  
7 information than you probably need in terms of details, and  
8 I'm happy to answer any questions. I'm extremely excited  
9 about working with you. I think we have a lot of work to do  
10 in a short period of time, not only in clarifying and  
11 defining the roles of the different partners should you  
12 decide to go ahead, but also in designing a selection project  
13 and a proposal that will hopefully get funded. Thank you.

14           CHAIR ASKEW: I share your enthusiasm about this.  
15 I'm pleased that you brought this to our attention and that  
16 we got this going. I'm very pleased with all of you that  
17 you were able to do as much as you've done in the short  
18 period of time you've had. Hopefully, you will get those  
19 extra two weeks.

20           This committee and the Board will be meeting in  
21 mid-April. What I would hope is the committee and the Board  
22 will give you authorization to go forward today, but I think

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1 I'd like to ask you to come back before us in April and tell  
2 us where things stand, not so much for authorization or any  
3 sort of approval but just what the response has been and how  
4 this is all going to work out.

5 I've got a lot of questions about it that you  
6 probably can't even answer now. We don't have time anyway.  
7 But I'd like to know more about it and how this is all going  
8 to work out with field programs. April would be a good time  
9 to hear about that. Other questions?

10 (No response.)

11 CHAIR ASKEW: John, we have some action we need to  
12 take today?

13 MR. TULL: The action is this: There are some  
14 questions which were still checking out, legal questions as  
15 to the impact of the Corporation being the applicant and  
16 therefore the recipient and therefore the administrator of  
17 the funds. The questions are three.

18 The first is the degree to which the AmeriCorps  
19 funds would be subject to the restrictions of the Legal  
20 Service Corporation Act. The second is the degree to which  
21 the grant assurances from AmeriCorps, which is a fairly long  
22 laundry list would apply to us and to our funds. The third

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1 is there is a requirement of a non-federal match in order for  
2 the program to go forward.

3 The question which we need to resolve with  
4 AmeriCorps is whether or not the matching fund requirement  
5 can be pushed down to programs who are parts of a project  
6 because the Corporation has no funds other than the little  
7 Corporation funds.

8 The first legal question is whether LSC funds would  
9 satisfy the match. The indication, early on at least, was it  
10 probably would not. So that if they are not, then the  
11 question is they have to be pushed -- the match requirement  
12 needs to be able to be pushed down to a program level in  
13 order for them to use non-federal, non-LSC funds to match.

14 The Office of General Counsel has looked at this  
15 issue, worked very hard this week. Suzanne Glasow and John  
16 Pensinger spent a lot of time both researching the question  
17 and talking with the general counsel and others at the  
18 Corporation, the other Corporation, and have communicated  
19 with Victor about their initial findings on these questions.

20 It would appear thus far that there are no  
21 impediments to us going forward, although we still need to  
22 check out several things. The question of whether or not the

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1 Legal Service Corporation restrictions would apply to these  
2 funds, it's, as one might guess in these things, not an open  
3 and shut question, not absolutely clear.

4 The monies which the Corporation is authorized  
5 under the Act, according to the research done by the general  
6 counsel's office, is authorized to get other funds. There's  
7 no prohibition against us applying for the funds. The funds  
8 we receive need to be used in furtherance of the purposes of  
9 the act. The question that raises is whether or not that  
10 means that the restrictions come with.

11 There are some restrictions which are stated in the  
12 act, one being a restriction of any funds given to a grantee  
13 by the Legal Service Corporation have X, Y, Z restriction and  
14 those would appear to take with them whatever the source of  
15 the funds. The restriction would attend to that.

16 As a policy matter, and we've talked about this at  
17 a policy level independent of the legal questions, at least  
18 in the initial stages, it strikes us that whatever the  
19 outcome of this question, it's not an impediment to the  
20 Corporation getting the funds. If the restrictions apply,  
21 they apply and our funds are already restricted as they are.

22 The types of activities that would be a part of the

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1 project are not ones which would be inconsistent with the act  
2 anyway. We wouldn't politically suggest it would be wise to  
3 do that, even if it were permitted. So the policy, in  
4 working with the other collaborators in this project, would  
5 be to urge the use of these funds and projects which are  
6 consistent with what we're doing for our clients already. So  
7 there's a legal question which at some point becomes more  
8 academic than real. But legal questions often do that.

9 The harder question is the degree to which the  
10 grant assurances of AmeriCorps would apply to the  
11 Corporation. I have this notion of this whole private funds  
12 question coming back around in a completely odd way. What we  
13 understand from AmeriCorps is that their grant assurances  
14 would apply only to activities funded by them.

15 So that while there are grant assurances that they  
16 would not -- the real question, the real concern is whether  
17 or not those grant assurances would bleed out and would  
18 affect either what the Corporation could do or what one of  
19 our recipients could do because of having gotten a tiny bit  
20 of money from AmeriCorps.

21 The answer to that question is that the  
22 restrictions would not affect other funds, would not affect

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1 the Legal Services Corporation's other funds nor would it  
2 effect recipients of our funds as to LSC funds, but that the  
3 restrictions would travel with the dollars to the recipient,  
4 that is the AmeriCorps restrictions would.

5 The major issue on a policy level we were concerned  
6 about was the degree to which the Hatch Act might apply  
7 because the assurances do include the Hatch Act, but the  
8 answer to that is the Hatch Act applies to federal employees.  
9 By definition, these persons are not federal employees. So  
10 it's not a problem.

11 But the question, in terms of the authorization  
12 that's appropriate from the Board, we need to look more  
13 closely at all of the grant assurances. It is a laundry  
14 list. We need to look more closely at all the grant  
15 assurances which are coming with AmeriCorps.

16 They are still resolving some questions themselves  
17 as they're working out these programs. There are regulations  
18 and there is processing of all this. We need to take a hard  
19 look at them and make certain that we're not buying a pig in  
20 a poke.

21 Then, the final question on the matching, it  
22 appears that that's going to be resolved in a way which does

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1 allow us to get the monies. That's really their issue not  
2 ours.

3 MR. EAKELEY: I thought you said at the beginning,  
4 John, that there was a possibility that a match could be or  
5 would be with LSC funds. I wanted some clarification about  
6 whether or not there's a commitment of resources beyond the  
7 administration of a grant that comes with a decision to  
8 participate in the national demonstration project proposal.

9 MR. TULL: Do you want to answer the question?

10 MS. WELCH: The question of whether or not LSC  
11 funds can be used or any other federal funds can based on the  
12 match I think has been resolved. I've asked this question of  
13 the Corporation for National Service no less than three times  
14 and gotten three different answers.

15 Last night John Pensinger talked with the general  
16 counsel at the Corporation for National Service again. I  
17 think it's quite clear that other federal funds, including  
18 LSC funds, cannot be used to provide the match for the living  
19 allowance which is where the most substantial piece of the  
20 match would be. So on that question I think we do have an  
21 answer.

22 MR. EAKELEY: I was asking a slightly different

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1 one, Kathleen, because I agree that we should be  
2 participating at the ground floor in whatever way is feasible  
3 with building or implementing the National Community Services  
4 Act.

5 I'd like to find a way for the Board to create the  
6 greatest flexibility possible for the Corporation to  
7 participate with other members of the community in developing  
8 strategies as we go forward. My concern, though, was that in  
9 doing that, we somehow unintentionally or inadvertently might  
10 be obligating resources of the Corporation without really  
11 knowing fully what that commitment would do.

12 That's the only assurance I was sort of looking  
13 for. If we had the discretion and could decide later on  
14 whether to commit funds, that's a different matter. As long  
15 as we're not being asked to obligate funds or commit  
16 resources of the Corporation, now that's --

17 MR. TULL: Let me answer the question from what I  
18 understand it to be the way it will work and why I think that  
19 will not be a problem for us. Kathleen and Don can correct  
20 me if I'm wrong. The match which would be provided by a  
21 local program would be essentially paying some of the  
22 expenses of a person who would become an advocate in their

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1 program funded in part through this act.

2 That person would be acting on a project which that  
3 program would have said we want to do this because it serves  
4 our clients. So it really becomes another body, another  
5 advocate that they can use to carry out their priorities and  
6 presumably would not undertake it unless they felt it was  
7 consistent with carrying out their responsibilities to their  
8 clients.

9 So the match would be resources that they decide  
10 that they want to spend from their funds, and they can either  
11 do it from IOLTA or they could do it from the Corporation, if  
12 it's permitted, which is the legal question. We would not be  
13 obligated, that is the Legal Services Corporation would not  
14 be obligated to kick in funds independent of what we're  
15 already providing a program through its grant.

16 MS. BATTLE: I was just going to follow up, John,  
17 with one question about the grant assurances issue that you  
18 raised just a moment ago. If, in fact, there are grant  
19 assurance questions that come with use of these funds, would  
20 the monitoring be done by us as to whether those are met once  
21 those funds flow through to the various grantees?

22 MR. TULL: The answer is yes. One of the reasons

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1 on a policy level why it appears appropriate for us to be the  
2 recipient and administrator is that we also have the capacity  
3 to meet AmeriCorps responsibility to monitor. The degree to  
4 which we would be monitoring for compliance with assurances  
5 which are not ours is one of the things that we need to look  
6 at.

7 What we need to ask for from you is authority to  
8 proceed but to proceed assuming that we're satisfied that we  
9 are not taking on an obligation to monitor a whole set of  
10 issues we have no expertise to do or we'll have to spend an  
11 enormous amount of resources or incur some liability if we  
12 don't do it in a proper way.

13 That's why a much harder look at that set of grant  
14 assurances, so that we're satisfied that this isn't the  
15 camel's nose under the tents, or whatever the metaphor is. I  
16 never got that one right.

17 CHAIR ASKEW: There aren't too many camels in  
18 Boulder.

19 MR. SAUNDERS: I just wanted to add to both Mr.  
20 Eakeley and Ms. Battle's question. We would anticipate LSC  
21 performing, as the RFP makes clear, monitoring functions and  
22 the fiscal accounting functions. The national service

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1 program would provide administrative reimbursement should you  
2 choose to seek it. So there is a resource commitment that  
3 we're asking you for.

4 I think one of the things we have to balance is  
5 they are also looking for in-kind contributions in their  
6 proposals. So there is a provision that would allow for you  
7 to reimburse whatever cost you would experience in the  
8 monitoring process.

9 We would need to discuss that further with your  
10 staff and possibly with the Board as to whether or not you  
11 would seek reimbursement for that. But as far as any cash  
12 contributions, there's certainly no contemplation of that.

13 CHAIR ASKEW: I think I misspoke earlier when you  
14 asked if the RFP had been sent to us, and it hasn't been. I  
15 think your initial field solicitation, the memo from Michael  
16 was sent to us but not the RFP. It might be helpful if you  
17 send us all the RFPs so we could see that.

18 Let me see if I can state what you're seeking from  
19 us, John. You're seeking authorization from the staff to  
20 proceed with the preparation of an application, funding  
21 application from AmeriCorps to the Legal Services  
22 Corporation, while at the same time you're investigating the

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1 application of these grant assurances or the implications of  
2 these grant assurances for this program.

3 But the staff would be authorized to proceed ahead  
4 with the understanding that assuming those issues can be  
5 resolved to the satisfaction of the staff and the general  
6 counsel, that they're not going to be a problem and that we  
7 go forward with an application to AmeriCorps. Is that right?

8 MR. TULL: That's correct.

9 M O T I O N

10 CHAIR ASKEW: I'll make that in the form of a  
11 motion.

12 MS. ROGERS: Second.

13 CHAIR ASKEW: Have a second. Members of the  
14 committee, all those in favor?

15 (A chorus of ayes.)

16 CHAIR ASKEW: Any opposed?

17 (No response.)

18 CHAIR ASKEW: We will expect you back at the April  
19 14th, whatever day we set for the provisions committee, it's  
20 most likely going to be the 14th, to come back and bring us  
21 up to date on where things stand at that point. Hopefully,  
22 you'll still have until May to get your application in.

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1 Thank you both very much.

2 John, one more item for you, status of the law  
3 school clinic.

4 MR. TULL: Which could be a brief report in order  
5 to get us almost back on track.

6 REPORT ON THE REQUEST FOR PROPOSALS FOR FUNDING OF LAW  
7 SCHOOL CLINICAL PROGRAMS PURSUANT TO THE RESOLUTION  
8 ADOPTED BY THE BOARD OF DIRECTORS ON JANUARY 28, 1994

9 MR. TULL: The grant application, the request for  
10 proposals went out on the 28th of February. What I do want  
11 to report is just what has been set in motion to carry out  
12 the piece of the Board's resolution which had to do with  
13 authorizing and encouraging the staff to create a process for  
14 encouraging communication between the law school community  
15 and the legal services community around the issues which the  
16 request for proposal circles.

17 The proposal itself was one which was reviewed by a  
18 group of individuals both from the legal services, from field  
19 programs as well as from the law school community, in order  
20 to allow them to get engaged in what we were trying to  
21 accomplish here as a precursor to a meeting which will be  
22 held on the 23rd of March of representatives of the law

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1 school community and the legal services programs.

2 The goal of that meeting is really three-fold. One  
3 is to talk about this proposal specifically which has three  
4 components to it consistent with the resolution of the Board  
5 at the last meeting; to talk about the kinds of projects  
6 which are consistent with the priorities; and to begin the  
7 process of people thinking creatively and innovatively about  
8 what they might seek to do consistent with those, and  
9 particularly consistent with the portion of the resolution  
10 which had to do with collaboration between legal services  
11 programs and law school clinical programs.

12 The second thing we would do at that meeting is to  
13 begin to define and design a peer review process for the  
14 selection of the final grantees and to both make certain we  
15 make the right choices and second to further the process of  
16 communication interchange among those two communities around  
17 which building bridges, I think, was very important.

18 The third is to begin to talk about some long-range  
19 initiatives to try to do that. At the last meeting, the  
20 presentations which the committee received from both field  
21 representatives and from law school representatives, they  
22 made several points, one of which was that there is two time

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1 frames here that matter.

2 One is what's done with the \$1.4 million which is  
3 immediately available, and that that be used wisely and well,  
4 but also that it not be seen as the final answer to the  
5 question of what are the ways that law schools and legal  
6 services programs can work together.

7 The process of thinking through and encouraging the  
8 development of bridges around much more collaboration between  
9 the two is one which does involve other initiatives and other  
10 thoughts and other approaches. This really has become an  
11 opportunity and stands as an opportunity for us to begin  
12 those communications, begin building those bridges, and that  
13 March 23rd meeting is really a step along the way in doing  
14 that.

15 The grant proposals are due April 18th. We will  
16 proceed at a pace after that in order to move as quickly as  
17 we can to get these under way.

18 MS. ROGERS: Have you learned whether the summer  
19 program will go this summer or --

20 MR. TULL: Well, we don't have an applicant yet,  
21 although I've had conversations with some organizations that  
22 might be interested, and have expressed to them in those

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1 conversations your desire to move as quickly as possible. I  
2 would say the response was a wince and a maybe, the wince  
3 being that it's a very tight time frame but that there's a  
4 recognition of the value of getting started early and that  
5 there's a real interest in trying to make that happen.

6 CHAIR ASKEW: Great. Any other questions?

7 (No response.)

8 CHAIR ASKEW: Thank you, John. You're now off the  
9 hot seat. The last item on the agenda is to hear from some  
10 field program representatives about specific issues. As I  
11 mentioned at the beginning of this meeting, these are very  
12 important presentations for this committee.

13 I will note that we are approximately 15 minutes  
14 behind schedule, which, in the legal services community,  
15 means we're way ahead of schedule. I'm going to ask the  
16 forbearance of the Audit and Appropriations Committee Chair  
17 that we're probably going to go at least 15 minutes overtime  
18 with this committee meeting.

19 The first presentation for us is from Jose Padilla,  
20 executive director of California Rural Legal Assistance.  
21 I'll ask Jose to come forward. Jose is serving on the  
22 Advisory Committee in the presidential search process, so

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1 he's well known to the Board members. But I'm going to ask  
2 him to introduce himself for the record anyway.

3 PRESENTATION OF JOSE PADILLA

4 MR. PADILLA: Good afternoon. I actually would  
5 like to introduce myself with a quote. Mother Theresa wrote  
6 in her book of "Gift for God" prayers and meditations: "If  
7 sometimes our poor people have had to die of starvation, it  
8 is not because God didn't care for them, but because you and  
9 I didn't give them that bread, give them that clothing,  
10 because we did not recognize him when once more Christ came  
11 in distressing disguise in the hungry man, in the lonely man,  
12 in the homeless child and seeking for shelter."

13 I'd like to welcome you to the state. Thank you,  
14 Provisions Chairperson Askew, Chairperson Eakeley, Acting  
15 President Folger, and distinguished Board members. I'd like  
16 to say before I begin that as project directors we really do  
17 appreciate it and acknowledge this goodwill that you have  
18 engendered by allowing us, the projects, to present to you  
19 our clients. I wanted to say that in reaction to you  
20 explaining that you institutionalized this.

21 But I'd like to thank you for this moment to share  
22 with you images of our clients for a chance to share with you

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1 the distressing disguises worn today by California farm  
2 workers. Despite the quote "I'm not here to talk about  
3 religion, nor statistics, nor reports, nor even really to  
4 orient you but only to remind all of us that the folk we call  
5 clients have faces, they have homes, they have children, they  
6 have families. Believe it or not, they have hope and faith.

7 So at this client presentation, client focus has  
8 two purposes, both of which are very self-serving. One is to  
9 remind us that your immediate predecessors for the last 12  
10 years forgot that our work as legal service and justice  
11 providers was about real people who supported a very real and  
12 deep commitment within all of us that we, as providers, might  
13 promote, maybe even think that we could create a more just  
14 way somewhere.

15 Like LSC, as originally conceived, we believe that  
16 we can make a difference in people's lives, sometimes even  
17 profoundly. Because for those 12 years this original vision  
18 was forgotten, that Board, notwithstanding the courage and  
19 the powers of Board Member Smegal, that Board failed to be a  
20 voice for the poor. In that way, it failed in its  
21 responsibility as a caretaker for this resources, the  
22 client's resource which is now in your care.

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1 I have to confess that these images that you see  
2 around you, these images were what gave us strength, CRLA, to  
3 push forward in the hardest of those times during those 12  
4 years. They are the images that continue to feed our own  
5 resolution to make a difference in a farm worker's life.

6 But the second purpose is that we realize that as  
7 you struggle with our common responsibility to the poor, that  
8 as you struggle asking about what the new right course might  
9 be and as you deliberate, even you may come to lack the  
10 clarity of vision in your decisions. Even you may doubt  
11 about how best to meet that higher justice purpose that has  
12 brought us all here today.

13 So today we, on behalf of National Farm worker  
14 Projects, wish to leave you with one image, not any one image  
15 that we are going to prescribe but perhaps an image that you  
16 will choose to remember, a face you might see here or a voice  
17 that you will hear.

18 I think that so long as you can remember that your  
19 most simple purpose is to act so that your decision will help  
20 that face or correct that deplorable image of condition, I  
21 think then perhaps the doubts that may come to you with the  
22 task of making hard decisions, perhaps that doubt may come to

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1 fade away and allow your decision making to become more  
2 impactful on the life of someone who is poor.

3 So today we want to present you with four images of  
4 poverty. The first one is the Rancho de Cuevas (phonetic),  
5 the Caves, the ranch caves behind you where you see photos of  
6 a farm worker condition. You see homes in color, different  
7 from yours and mine. Those homes exist in ex-congressman  
8 Leon Panetta's county, Monterrey. Although we won this case  
9 some six years ago, a little over a year ago we encountered  
10 them again there outside the town of Prunedale.

11 Let me describe very briefly as we described to the  
12 state legislature when we used those photos. These are  
13 photos of a strawberry ranch in Salinas, California. We sued  
14 a grower who housed his workers in tractor sheds, in vans, in  
15 abandoned outhouses, the second photo, and in caves, the  
16 first photo.

17 The grower was also sued by the district attorney.  
18 He completed a 40-day jail term for maintaining an illegal  
19 labor camp. Believe it or not, some 100 farm workers lived  
20 in these caves at one time, some for as long as seven years.  
21 That first photo is of the large hand-dug cave in Salinas.

22 Up to four farm workers lived there. Workers were

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1 charged 50 cents an hour out of their wages to live in this  
2 and other caves. A four-person cave could bring the grower  
3 as much as \$400 per month in rent.

4 Let me take you to our second image. These same  
5 homes that you see here were encountered again in North  
6 County San Diego. That led CRLA to both open an office in  
7 Oceanside, of all places, a migrant office in 1987. That  
8 encounter also allowed us to begin to serve a new community  
9 that we have found in rural California, a community of farm  
10 workers we found residing in the ravines and hills of San  
11 Diego, the Misteco Sapoteco (phonetic) farm worker, an  
12 indigenous farm worker coming from the state of Oaxaca.

13 That state is adjacent to the state that you've  
14 been reading about very recently in Mexico, Chiappas, where  
15 you read about the Sapatesta (phonetic) Rebellion. Chiappas  
16 is right next to that state and it's very similar in  
17 indigenous population and in poverty conditions that are  
18 found there. So the housing images that you see are repeated  
19 today 100 times in north county San Diego. That's our second  
20 image.

21 So, for a few minutes, we'd like to present you  
22 with a video that was taken, I believe, last year where farm

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1 workers speak about how they managed their existence almost  
2 invisibly in the affluent communities of San Diego County.

3 (A video tape was shown.)

4 MR. PADILLA: In due consideration of your time, I  
5 will stop the video here. What you saw there is the reason  
6 why we opened the Oceanside office in 1987 because I had been  
7 up in those hills with a community worker who showed me that  
8 difference in poverty and affluence. Even though we were  
9 investigated by the federal government for having opened that  
10 office, you see the reason why CRLA had to be there.

11 The third image we want to leave you with, and it's  
12 the second to the last, is actually some testimony from Mr.  
13 Noel Juarez who is a client in a second CRLA case called the  
14 Somis (phonetic) Ranch case. He is Sapoteco (phonetic)  
15 Indian from Sierra Santa Anna Yarani Oaxaca (phonetic).

16 Not only do he and hundreds of fellow farm workers  
17 live in these conditions, but they were literally, he and 160  
18 others literally enslaved by a grower who, in the end, was  
19 forced to make restitution of some \$1.25 million and who was  
20 sentenced for three years last September for a number of  
21 labor and immigration law violations.

22 Before he speaks, I want to add that this case that

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1 we did was litigated as a private attorney involvement case.  
2 We did it with the Los Angeles law firm of Munger, Tolls and  
3 Olsen through the NLADA law firm resources project. I wanted  
4 to add that we believe that this type of co-counsel is the  
5 best way to leverage the strength of the law firm on behalf  
6 of our poor clients.

7 As an aside, I wanted to note that we have left  
8 some calendars in your chairs just to show how we've also  
9 leveraged PG&E and how they have provided for us those  
10 calendars the farm workers use in order to document their  
11 time and hours. That's just in passing, if you were  
12 wondering what that's all about.

13 Anyway, I would like to introduce Mr. Noel Juarez  
14 who wants to share a few minutes with you. The translation  
15 will be provided by senior attorney Claudia Smith who is our  
16 senior counsel there in the Oceanside office.

17 MS. SMITH: I'm Claudia Smith from California Rural  
18 Legal Assistance in that Oceanside Office which is where the  
19 third world and first world come head to head and where  
20 immigrant feelings, anti-immigrant feelings are so raw that  
21 you can taste them. There are people like Noel Juarez that  
22 feel the repercussions of that.

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1 At that point, we tried to bust the place open, figuratively  
2 not literally.

3 We filed suit on behalf of 29 workers that decided  
4 to come forward at a lot of personal risk, and we also went  
5 to the U.S. attorney and asked that they file charges. The  
6 situation was one akin to peonage. They were able t get a  
7 very large fine.

8 Now we are in the process of ensuring that several  
9 hundred workers participate in the fund that was leveraged.  
10 Our suit was a confidential settlement on behalf of 29  
11 workers, and it was a considerable sum.

12 CHAIR ASKEW: Claudia, let me ask you about  
13 language. You've seen more clients, migrant farmworkers  
14 speaking languages. What's happening with that?

15 MS. SMITH: Well, it's a very humbling experience  
16 for those of that never thought we'd need a translator to  
17 talk to our clients. So what we did was we started an  
18 indigenous project. Among other things, we're hiring  
19 community workers from the indigenous communities themselves.  
20 It's a project that's very near and dear to me.

21 I come from Guatemala which is a country that has  
22 22 languages. Frankly, we have a lot of cultural and

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1 linguistic gaps that need to be bridged. All of us who work  
2 with the old tribe and true migrant screens haven't quite  
3 made all the adjustments.

4 So we're trying to do it. It's an incredibly labor-  
5 intensive community. I have never in 20 years, over 20 years  
6 with CRLA, worked with such a marginalized and abused group.

7 CHAIR ASKEW: How big is your Oceanside office?

8 MS. SMITH: Two attorneys, two community workers.  
9 I'm based out of there. I'm regional counsel and cover  
10 several offices.

11 CHAIR ASKEW: Just on a personal note, however, the  
12 new United States attorney for the southern district of  
13 California is a former partner of Munger Tolls and actually  
14 somebody whom I recruited to join that firm many years ago.

15 MS. SMITH: Alan Person. I've talked to him, yes.  
16 But in San Diego County we have about 10,000 farmworkers year  
17 round and about 7,000 of them at least are indigenous people.  
18 We have to deal in languages like Trike, Saboteco, Misteco,  
19 Concorili, Echec, Catchitel (phonetic). I could go on. It's  
20 daunting.

21 MR. BRODERICK: Could I ask you what role the  
22 federal government is playing, if any, in dealing with the

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1 rather serious problems that you're talking about? Is the  
2 Department of Labor or other federal agency departments  
3 getting involved in those problems?

4 MS. SMITH: At the state level it's rather dismal.  
5 The agencies in charge of monitoring these kinds of  
6 violations have undergone budget starvation and we have an  
7 administration that warms more to agri-business than to the  
8 workers themselves. As far as DOL goes, the transition has  
9 yet been slow. So we really haven't seen it.

10 One of the things that you might not pick up from  
11 the file that is very daunting, which is very different from  
12 anything you'll see, is that what's terribly labor intensive  
13 is for us to keep track of our clients because they don't  
14 live in any type of conventional housing. Virtually all of  
15 our clients in San Diego are homeless. So we have an 800  
16 number. They just call us.

17 They are instructed to call us every week just to  
18 say hi, if nothing else, if we don't have another message, or  
19 we have to remember what corner they stand out on, what  
20 morning, what their nickname is, where they come from and try  
21 and track them that way. It's very time consuming.

22 MS. MERCADO: Ms. Smith, I was very curious about

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1 what kind of efforts, if any, are there as far as building  
2 housing in that area, whether it be by HUD or Farmers Home or  
3 any of those other agencies.

4 MS. SMITH: Just in the next month there's going to  
5 be ground breaking on the first farmworker housing project in  
6 San Diego County. We started working on that bill in 1987,  
7 and it took us until 1989 to even get the fund through. But  
8 little by little we've worked on a number of other  
9 collaborative efforts with the county to provide incentives  
10 for even growers to provide housing. They're all drops in  
11 the bucket, but it's just becoming immobilized as an  
12 indulgence that one can't afford.

13 MR. PADILLA: Thank you.

14 CHAIR ASKEW: Thank you very much for sharing with  
15 us.

16 (Applause.)

17 MR. PADILLA: I finally end with this image. I  
18 left the black and white photos there until last. We wanted  
19 to present each of you with our 25th anniversary  
20 commemorative book called "Organizing for Our Lives." Some  
21 of the photographs that are in that book are exhibited here.  
22 It was an effort for us to celebrate our clients.

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1 I want to leave you with these two things. One,  
2 just as I did with Mr. Jack O'Hara, I wanted to invite Board  
3 Chairperson Doug Eakeley to actually have us tour him in  
4 north San Diego next month to have him meet the farmworkers  
5 of Chapter III entitled the "Culture of Survival." I leave  
6 you with those numerous faces of hope that you will find  
7 described in those stories of our clients.

8 But I would like to end with the words of one of  
9 those clients on page 57 because I believe that his words of  
10 supreme hope speak for themselves. They tell us and show us  
11 that in his daily struggle to live in the rural hills of  
12 southern California that in the hope that he has, he is truly  
13 undefeated. Ruiz Miguel Rodriguez told us this: "I have  
14 three brothers and sisters. I'm the middle child. My father  
15 is a school teacher.

16 "Before I left for the United States, my father  
17 gave me a Spanish-English dictionary. I look up every word I  
18 don't know. I'm always using it. When I arrived, I had no  
19 money. People fed me. I looked for work and collected tin  
20 cans and sold them to get money to buy beans and tortillas.  
21 Then I got a job in the tomato fields.

22 "I built my shack out of debris from the camp

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1 garbage pile. I keep myself in good shape. I'm very  
2 religious. I read scripture. I play soccer. We don't have  
3 water in the camp so twice a day I fill us two buckets and  
4 carry them half a mile from a nursery to my home.

5 "Back in Oaxaca, I was a bantam weight boxer. I  
6 had 12 professional fights. I'm undefeated. My goal is to  
7 go to New York and box. I want to be champion of the world."  
8 Thank you very much.

9 (Applause.)

10 CHAIR ASKEW: Thank you very much, Jose. At our  
11 first Board meeting, your brother Ramon Arias brought us a  
12 very powerful message and you brought us a powerful message  
13 here today. We're very much appreciative of you for doing  
14 this, reminding us why we're here.

15 Jose honored me a year ago, I think, by sending me  
16 this book and other materials. I've read it and I encourage  
17 each of you to read it. It's a very powerful statement of  
18 what this program has meant in the lives of its clients.  
19 When I joined legal services in 1969 as a 12-year-old staff  
20 attorney, I heard about CRLA and read about it. The names of  
21 people back then are still some of the people that I admire  
22 the most and honor the most in our community. Your work is

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1 still as important as it ever was and still as daunting as it  
2 ever was. We wish you the best in what you're doing. I  
3 can't speak for Doug about whether he'll be out here.

4 MR. EAKELEY: I will. We'll talk about that. That  
5 will be a very welcome invitation.

6 MR. PADILLA: Again, thank you very much for this  
7 moment. It was very important for us to share our clients  
8 with you. Thank you.

9 CHAIR ASKEW: Thank you, Jose.

10 MR. EAKELEY: Could I just say one thing about  
11 this? I think that we've got to find a way to learn and  
12 study and become better acquainted with the faces of poverty  
13 around the country as we go forward on a regular basis. I  
14 think the lesson of never forgetting that clients have bases  
15 and homes and hearts and families is a very important one.  
16 Talking about institutionalizing things, I think that this is  
17 something that we should be endeavoring to build upon as we  
18 go forward on an absolutely regular basis.

19 CHAIR ASKEW: I agree. Thank you again. Michael  
20 Pfeffer from California Indian Legal Services. You have a  
21 tough job, Michael.

22 PRESENTATION OF MICHAEL PFEFFER

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1           MR. PFEFFER: My name is Mike Pfeffer. For most of  
2 the past 12 years, I've served as executive director of the  
3 California Indian Legal Services. Before my appointment to  
4 that position, I served as a managing attorney and staff  
5 attorney in our Eureka field office.

6           During the past 12 years, I've had more  
7 opportunities to speak to new LSC Board members than I can  
8 remember or care to. However, it is with particular pleasure  
9 that I address this Board. I hope my appearance today marks  
10 a renewal of interest and understanding by the Corporation in  
11 its most and least understood field component.

12           There is no way in the time available today to  
13 present anything other than a brief glimpse of what it is  
14 that makes native American programs different. In fact,  
15 there is such a tremendous variation among native American  
16 programs, I'm at some risk at all trying to, even with my  
17 cohorts in the other programs, appear here today.

18           But I would like to briefly describe some of the  
19 unique attributes I think all native American programs share.  
20 As I make my presentation, feel free to interrupt and ask me  
21 any questions or make any comments you feel appropriate.

22           Indian legal services programs, despite the

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1 relatively small amount of funding they receive, play a  
2 crucial part in the overall range of programs that Congress  
3 has factioned and funded to meet the special trust obligation  
4 the federal government owes to native Americans and Indian  
5 tribes.

6 Since the time of Columbus and extending to the  
7 present day, European and New World governments have relied  
8 on what is known as this trust doctrine as the foundation for  
9 their relationship with native peoples. The trust doctrine  
10 provides a justification, on one hand, for the usurpation of  
11 tribal lands, for the diminishment of tribal sovereignty.  
12 But on the other hand, exempts various statutes and laws  
13 meant to benefit Indians along from traditional equal  
14 protection analysis and challenge.

15 Native Americans unique among all members of  
16 American society are dealt with separately under our federal  
17 system and are uniquely dealt with in the Constitution.  
18 Unfortunately, the trust obligation that is owed to native  
19 peoples is often forgotten or ignored.

20 When that happens, Indian Legal Services fulfills  
21 its most critical position in the federal scheme. Most of  
22 the federal agencies that have been created to administer

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1 trust programs are notorious for their longstanding  
2 incompetence, misuse of power and bureaucratic insensitivity.  
3 I think that was a Freudian slip.

4 Moreover, often the agencies commission with  
5 carrying out the trust responsibility have engaged in serious  
6 systematic defrauding of native Americans. I would like to  
7 say that things have improved since the days of manifest  
8 destiny, but in many ways they have not.

9 Just a few years ago, the Bureau of Indian Affairs  
10 admitted that it could not locate \$100 million of its annual  
11 appropriation of over \$1 billion. That, I submit, is a  
12 staggering loss. Shortly after this surprising announcement,  
13 it then revealed that a far greater amount of individual  
14 Indian and tribal trust monies, over \$160 million, was  
15 missing and could not be accounted for.

16 Just a few months after this president announced a  
17 new effort at reforming the federal government, the Bureau of  
18 Indian Affairs proudly announced that fully 10 years after  
19 passage of amendments to the Indian self-determination act an  
20 act aimed at reducing the power of the Bureau of Indian  
21 Affairs, 10 years after passage of the amendments, draft  
22 regulations implementing the changes were being published.

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1 It only took them 10 years to do that.

2 They also proudly announce that these draft  
3 regulations were 391 pages long and would weigh over 6  
4 pounds. As absurd as these stories are, you must remember  
5 this is the one agency that has as its sole mission helping  
6 native Americans.

7 Many other government agencies, whether federal,  
8 state or local, take positions that range from indifference  
9 to open hostility to native American rights. Most individual  
10 Indians and most tribal governments cannot afford private  
11 counsel and must rely on Indian legal services programs to  
12 protect those core rights that only native Americans possess.

13 In my remaining time, I'd like to share with you  
14 how California Indian Legal Services tends to meet that  
15 challenge. California Indian Legal Services began as a  
16 project of CRLA. I don't know if Jose is still here or not.  
17 In 1965, when CRLA opened up its Santa Rosa, California,  
18 office, they had a relatively young, relatively inexperienced  
19 attorney who had received training in poverty law.

20 He was sent off to this, at that time, relatively  
21 rural section of northern California. Shortly after opening  
22 the Santa Rosa office, various clients came seeking legal

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1 assistance on matters that he was ill-prepared and totally  
2 uneducated to address or redress.

3           These were native Americans whose reservations had  
4 been recently terminated by the federal government. During  
5 the 50s and 60s, the policy of the federal government was one  
6 of termination. It was to end the trust responsibility owed  
7 by the federal government to its Indian wards, to terminate  
8 the individual Indian status of Native Americans, to  
9 eliminate reservations and, wherever possible, relocate  
10 native Americans to urban centers. This is a continuing  
11 chapter in American history as the pendulum swings between  
12 determination, assimilation and hopefully back to self-  
13 determination for native peoples.

14           Many of the tribes in northern California and many  
15 of its small reservations throughout California were enticed  
16 to vote for termination. The California Rancheria Acts which  
17 authorized termination of the trust responsibility provided  
18 that it would be voluntary. Each of the adult members of  
19 each of these Indian tribes were allowed to vote.

20           In secret documents that were later revealed i the  
21 course of litigation, it came to light that Congress was  
22 concerned that in terminating reservations, it would incur

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1 large responsibilities for bringing housing and sanitation up  
2 to local standards. On most of these rancherias, the housing  
3 was not too dissimilar from the pictures you see behind you.  
4 Rather than being temporary, though, people had lived in  
5 these conditions for at least 70 years and in some cases for  
6 hundreds of years.

7 In any event, Congress was very much concerned  
8 about the cost of enticing California Indians and voting for  
9 termination. Under the California Rancheria Act, over \$1  
10 million was authorized to bring housing and sanitation and  
11 other systems up to local codes, but the Bureau of Indian  
12 Affairs promised the congressional committees that it would  
13 never seek an appropriate under the Act to bring this up.

14 The California office of the BIA was undesignated  
15 to go to each of the reservations and promised that if they  
16 voted to terminate, a new dawn would appear. Forty such  
17 rancherias who did not have any access to legal counsel voted  
18 to terminate. In their defense, they had no choice.

19 They lived in unsanitary conditions. They dealt  
20 with an uncaring and insensitive federal bureaucracy. They  
21 had no control over their lives. They had no control over  
22 their houses. The Bureau of Indian Affairs went out and said

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1 vote for termination and we will improve your housing. We  
2 will put in water systems. We will put in sanitation systems  
3 and so on and so forth.

4 None of those systems ever went into place. As far  
5 as we can tell, not one dollar was ever spent improving  
6 California rancherias that voted for termination. These are  
7 the people that that young attorney saw come into his Santa  
8 Rosa office.

9 There was no private bar. There was no public bar  
10 that had any experience dealing with these problems. It is  
11 from that point forward that modern Indian law is develops.  
12 CRLA started the Indian project of CRLA opening offices in  
13 Escandito some years before it opened up it's own migrant  
14 office in Escandito or northern San Diego County, opening up  
15 offices in the Bay area, northern California and eastern  
16 California.

17 In 1967, we became separately incorporated and  
18 received separate funding from the Office of Economic  
19 Opportunity. Since 1965 and on, we have fought the  
20 untermination battles. Those cases are still proceeding.  
21 Fully, 29 years after filing, some cases are still  
22 unresolved. They are still being bitterly disputed by the

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1 federal government.

2 One such case that settled last year was 19 years  
3 in litigation. Literally, on the date of trial, the federal  
4 government made an offer of settlement. That offer of  
5 settlement was in excess of what we asked for in our  
6 complaint. It restored the rancheria, it restored the  
7 reservation, it restored the trust status of the Indian lands  
8 within the boundaries of that reservation.

9 It made the members of that reservation Indians  
10 again. They had lost their status under the federal system  
11 for 29 years. It provided for sanitation, for housing, for  
12 water supplies. That settlement was agreed to since it far  
13 exceeded what we thought we could get at trial.

14 Immediately what the Bureau of Indian Affairs did  
15 was there were 29 houses that had to be constructed, it  
16 knocked 29 people who were waiting for housing off of its  
17 housing list, did not allocate one red center of additional  
18 money for housing. Now we're suing them. We represent the  
19 29 people who were removed from the rolls.

20 Dealing with Indian Affairs tends to be  
21 complicated, tends to be long and drawn out, and tends to be  
22 expensive, not just because we're fighting essential

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1 questions of sovereignty with state and federal governments  
2 and those questions are never resolved likely or easily, but  
3 simply because we're dealing with bureaucracies that win by  
4 procrastination and delay.

5 Jose earlier talked about securing the assistance  
6 of private law firms in large cases. We occasionally do  
7 that. But as often as not, I am approached by large firms  
8 that have occasionally entered into the fray and have taken  
9 on some of these cases as pro bono.

10 I won't embarrass any of the large San Francisco  
11 firms by mentioning them, but there is one particularly that  
12 has now invested over \$7 million in a case it filed in 1963  
13 and would like to get the heck out of that case and has asked  
14 me time and again whether we'd be willing to take it on.

15 The oldest case in the northern district of  
16 California is one of our cases. The oldest case in the  
17 eastern district is one of our cases. The oldest case in the  
18 Court of Claims is one of our cases. In the 1980s, we  
19 accounted for something approaching 10 percent of all the  
20 Supreme Court decisions involving Indian Law for California  
21 Indian Legal Services cases.

22 We have four offices. Each of our offices is

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1 responsible for covering approximately 40,000 square miles,  
2 for providing services to 25,000 individuals on matters that  
3 involve uniquely native American issues, and for being  
4 primary legal counsel to over 30 tribal governments. That's  
5 each office. Again, that's one of the ways that makes us  
6 different.

7           We represent more governments than any other law  
8 firm in the United States. I think that's a safe assumption.  
9 I'm not aware of anybody else who has 130 governments.  
10 Though many of these tribes are small with little in the way  
11 of land base and little in the way of populations, anytime  
12 you represent a governmental agency, it doesn't matter  
13 whether they're a small town or a large town, there's an  
14 awful lot of work involved.

15           To accomplish that work we receive \$900,000 a year  
16 approximately from the legal Services Corporation and a much  
17 smaller grant from the state bar of California. We think we  
18 do a pretty good job. Obviously, we'd like a lot more  
19 resources to do that in, but so would everybody else in this  
20 room.

21           That's just one program. We represent a large  
22 state. We represent lots of native American governments. We

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1 represent lots of individuals. We have cases in Los Angeles,  
2 San Francisco, as well as in the most remote corners of the  
3 state, whether that's Ft. Budwell Indian Reservation, which  
4 is in the most northeastern corner of the state, as one of  
5 our clients or the Quechan Tribe which is near Yuma, Arizona,  
6 also one of our clients. They are in the far southeast  
7 corner of the state.

8 We represent the Smith River Rancheria, which is  
9 the most northern community, northwestern community in the  
10 State of California, and we represent something on the order  
11 of 25 reservations in southern California, most of whom are  
12 in San Diego.

13 Again, my only attempt is to try to give you a  
14 brief glimpse. I'm sure you'll hear from other native  
15 American programs during your tenure. Each one is different,  
16 but as a group, what makes us separate is the fact that  
17 without Indian Legal Services, there is no protection and no  
18 enforcement of the trust obligation. Thank you.

19 CHAIR ASKEW: Thank you, Michael. Let me give you  
20 a message that you may want to take back to your colleagues  
21 in the Native American Indian Legal Services community. This  
22 is just a brief glimpse, obviously, of what you do. We have

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1 scheduled a meeting in Albuquerque for the fall with the goal  
2 of hopefully hearing from and maybe even seeing the native  
3 American program while we're there.

4 I hope you'll encourage your colleagues to be  
5 prepared to make a further presentation to us and better  
6 educate us about the work that you do and the clients that  
7 you serve. It's something that I'm sure we're all going to  
8 be very interested in and look forward to hearing from you  
9 about. We're sorry we're over time and wish we could --

10 MR. EAKELEY: I was going to ask a question anyway.

11 CHAIR ASKEW: Go ahead.

12 MR. EAKELEY: What percentage of the legal needs of  
13 your community that you serve are presented by nonfeasance or  
14 misfeasance of the federal government?

15 MR. PFEFFER: I would say roughly 60 percent.

16 MR. EAKELEY: Do you mind a follow up?

17 CHAIR ASKEW: No.

18 MR. EAKELEY: We're going to be testifying before  
19 the Congress shortly for an increased budget. Last year's  
20 testimony made it very clear that at least two members of the  
21 appropriations subcommittee were skeptical that there were  
22 unmet legal needs rather than unmet legal wants in our

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1 various communities. What would you estimate to be the unmet  
2 legal needs, not wants, of your community?

3 MR. PFEFFER: I can't speak for the entire  
4 community, but at least given the large number of government  
5 agencies that were there, our estimates are that roughly you  
6 need an attorney for about every four tribal governments for  
7 them to have any meaningful continuous representation.

8 One of the major difficulties in the way legal  
9 services is funded, and it has to be that way, and the way we  
10 have to operate, is that when a tribe comes to us with a  
11 legal problem, they only get help on that problem. They  
12 don't get to sign up for general counsel services, which is  
13 what communities, whether they're organized in the form of  
14 governments or not, require. The reason we have to do that  
15 on a case-by-case basis is otherwise the first 10 clients or  
16 10 tribes that approach us for services would monopolize all  
17 of our resources forever.

18 So people come in and they may have a case  
19 involving a dam against the Federal Energy Regulatory  
20 Commission. That's the type of case we might get involved  
21 in. We can provide help on that, but we can't provide  
22 continuous ongoing legal assistance. Otherwise, they shut

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1 out the rest of the clients.

2 MR. EAKELEY: So what percentage of the need do you  
3 estimate you're actually able to represent?

4 MR. PFEFFER: I would say roughly -- we have 12  
5 attorneys. It's roughly about 10 percent in this state.

6 MR. EAKELEY: Jose, I forgot to ask you the same  
7 question. I wanted to do that. I thank you. We'll get back  
8 to asking for your estimates of the extent to which your  
9 services or CRLA services are directed to helping the federal  
10 government live up to its obligations and responsibilities.  
11 Then, the second question was: What's your best estimate of  
12 the unmet legal needs in your community? Actually, can we  
13 just do this right now?

14 CHAIR ASKEW: Sure, yes.

15 MR. PADILLA: I can answer that by example. As far  
16 as our own need, over the last 12 years we have lost a third  
17 of our attorney personnel, attorney staff and our personnel.  
18 We, in the last 70s, had 75 attorneys. That averaged out to  
19 about four or five attorneys per field office. We have 15  
20 field offices. I have a feeling that we're pretty near to  
21 the standard that had been established at that time for equal  
22 access, and that amount is 75.

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1           We, in the early 80s, lost 25 lawyers. We lost  
2 approximately 12 community worker paralegals, and then we  
3 lost about another 10 to 15 clerical staff and have, in the  
4 last 8 to 9 years, stayed around 50 lawyers. So, to that  
5 extent, as far as our own organization, being able to get  
6 back to our full strength, which was essentially near equal  
7 access, we would take that if anything is done in the next  
8 three years that would try to bring us back to that equity  
9 that existed at that time.

10           As far as unmet legal need, again by example, we  
11 have estimated -- well, in the last census, we increased 50  
12 percent. We went from 210,000 clients that we're supposed to  
13 be serving to 310,000 clients. Yet, because of the way the  
14 funding structure currently exists, we're not going to see  
15 any dollar increase in our program until you hit \$450  
16 million. That's when we're going to start seeing something,  
17 even though we've seen that kind of an increase.

18           So I guess from a staffing side and then from that  
19 increase in the census side, I guess that could describe sort  
20 of where we're at.

21           MR. EAKELEY: But in terms of the unmet legal needs  
22 in your community, how much of the legal needs of your

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1 community are being served now with the resources you have?

2 MR. PADILLA: Well, that's a very hard one for us  
3 to judge. We have not consciously gone forward with that,  
4 but I would venture to assume that about maybe a third of our  
5 -- and I only say that because of the fact that in the loss  
6 of that staffing, that's the only indicator that we, I guess  
7 at this time, would use.

8 MR. EAKELEY: What about the degree to which you  
9 have to devote resources to remedying defects in delivery or  
10 other actions by the federal government?

11 MR. PADILLA: I don't understand the question.

12 MR. EAKELEY: Well, it's a little easier with Mike  
13 when we were talking about the Bureau of Indian Affairs and  
14 trying to hold the Bureau of Indian Affairs accountable to  
15 live up to its trusts. I'm just thinking about impact  
16 litigation where there are cutoffs of entitlements or --

17 MR. PADILLA: When we look towards the government,  
18 we have to include both state government and federal  
19 government when we address the inability for government to  
20 really address basic problems of our clients. The  
21 enforcement agencies in the last 10 years within the state  
22 government have been gutted.

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1           There have been a number of reports that have come  
2 out statewide, particularly in labor, that talk about the  
3 fact that there is no money to spend on investigators and  
4 that you find that in urban areas, that there are not enough  
5 investigators to make the law worth the paper that it's  
6 written on. So there really is no enforcement coming out of  
7 any of the labor departments in this state.

8           When you look at the farmworker, clearly the  
9 unionization effort and the unionization promise that was  
10 made by California to farmworkers in the 70s has been totally  
11 -- that promise has been broken. It was broken 10 years ago.  
12 The Agricultural Labor Relations Act has not worked for  
13 farmworkers for 10 years. They are just as effective as  
14 working to decertify unions out in rural California as they  
15 are to representing farmworker rights out there in rural  
16 California.

17           So we cannot depend on ALRA to do anything with  
18 farmworkers. It's very difficult for us. We have had to sue  
19 very recently the Division of Industrial Relations because  
20 they don't provide any bilingual investigators to go out  
21 there to talk to workers who can't communicate very well in  
22 Spanish.

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1           So neither at the state level or at the federal  
2 level can we rely on any enforcement agencies to provide any  
3 kind of enforcement of worker rights.

4           MR. EAKELEY: Thank you. Bucky, I'm sorry.

5           CHAIR ASKEW: It's okay.

6           MR. BRODERICK: Mr. Chairman, just one question if  
7 I could.

8           CHAIR ASKEW: Yes, sure.

9           MR. BRODERICK: I'd like to ask each of you in your  
10 own day-to-day activities, what role, if any, either state or  
11 national support centers play in the delivery of legal  
12 services to your clients? How valuable are they to your  
13 efforts and how might they be more valuable to your efforts?

14           MR. PFEFFER: For us again, we're probably somewhat  
15 in a different perspective. The national support center on  
16 Indian issues was, as Jose is my figurative daddy, we're the  
17 daddy of the national support center. We created the native  
18 American rights fund in 1970 as a spinoff of CILS.

19           We've had close relationships that go beyond the  
20 national support center and we rely on each other in many  
21 ways, but we don't view them as having any special and higher  
22 expertise than we do in native American issues. We rely on

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1 the other national support centers occasionally. We will  
2 have a consumer law problem that has an Indian law overlay or  
3 a child care issue and so on.

4 Very important to us is the state support in this  
5 state. We get involved in things that most legal services  
6 programs don't, but occasionally we do get involved in basic  
7 field issues and without the assistance of a state support  
8 unit that knows California poverty law. We would  
9 occasionally be well lost in that area.

10 MR. PADILLA: National support centers are very  
11 important to our work and very important both to the extent  
12 that they provide substantive law, information and training,  
13 because we do have significant turnover, even though we have  
14 seen a lot of our staffing sort of stabilize over the last 10  
15 to 15 years.

16 In other words, whereas lawyers maybe 10 or 15  
17 years ago would spend maybe three years with us and then go  
18 on to more lucrative things, we now find lawyers sticking  
19 around 7, 8, 9, 10 years with us, some of them a lot more  
20 than that. We still have turnover.

21 We still have young lawyers coming in. It's very  
22 difficult for us, given our loss of resources, to be able to

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1 develop within our own infrastructure some kind of a training  
2 component and capability. So the training information,  
3 litigation, documents, examples of litigation that's been  
4 brought in other parts of the country, all of that is very  
5 critical to our work.

6 I think just as importantly -- in that we do a lot  
7 of housing. As you can tell, that's one of our priorities.  
8 The housing law center has been very critical to our work.  
9 We do a lot of education work. Sometimes we do with the  
10 National Center for Youth Law. More important at this point  
11 in time, the national economic development law project has  
12 been very important and will continue to be more important  
13 because we recognize that with the current administration,  
14 there is going to be an economic development opportunity I  
15 think a lot of legal services programs have not grasped yet.  
16 We have to be taking advantage of that particular law center.

17 Let me say one final thing about support centers.  
18 Maybe at the risk of offending some people, I think we need  
19 another support center. I think we need a support center  
20 that will help develop our own clients and develop their own  
21 capabilities to work more effectively with us, but to work  
22 more effectively to community.

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1 I think a lot of us have always said that the human  
2 development that should be part of our work has been  
3 something where perhaps we have lacked and have been lacking.  
4 I think that we should seriously consider the possibility  
5 that perhaps there should be a center that would allow us to  
6 deal more effectively with our clients and to actually even  
7 think that we could provide them skills that will allow them  
8 to more effectively self-help themselves.

9 It was something that I floated at the recent  
10 retreat that was held in Virginia. I think that if we  
11 believe in the development of our clients in human  
12 development as part of our work, that we ought to be thinking  
13 of a support center that will allow us to work better with  
14 the client community.

15 CHAIR ASKEW: Thank you both very much. That's a  
16 nice segue into our next presentation because Mary Burdick  
17 from Western Center Law and Poverty is going to be our next  
18 speaker. Before Mary starts, let me make one agenda  
19 announcement.

20 David Lambert from the Youth Law Center was going  
21 to make a presentation to us this afternoon on the  
22 institutionalized. I've spoken to David and he and I both

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1 agreed that probably the April meeting might be a better time  
2 for him to make this presentation because we'd have more  
3 time. This is a much more complex issue than I think five  
4 minutes will allow.

5 In the meantime, David is going to send each Board  
6 member some materials about this topic and then we will  
7 schedule at the April provisions committee meeting time for  
8 the institutionalized legal services issue to be raised with  
9 our committee. Thank you, David, for that.

10 Mary Burdick, the director of the Western Center  
11 Law -- we've heard a lot about California today and how  
12 diverse and complex, large, a state this is. Being a support  
13 director must be a daunting task also. Why don't you tell us  
14 something about your work in the Western Center's work and  
15 fill us in?

16 PRESENTATION OF MARY BURDICK

17 MS. BURDICK: Thank you, Bucky. Good afternoon.  
18 It's a pleasure to be here today. I'm Mary Burdick. I'm the  
19 director of California's state support center, the western  
20 center on law and poverty. I've been working at that program  
21 for 19 years, 10 years as its executive director.

22 During the last decade, like Mike Pfeffer before

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1 me, I've spoken to more meetings of the Board of Directors of  
2 the Legal Services Corporation than I can recall or want to  
3 recall. Back then, I and other members of the support  
4 community were here countering the accusation that support  
5 centers were ivory towers inhabited by wild-eyed radicals who  
6 were bent on social engineering and didn't know a thing about  
7 client needs and didn't care about them.

8           Those conversations were an uphill battle, but I  
9 have to tell you I really look forward to talking to you  
10 today. It's an honor and a pleasure and kind of a kick to  
11 talk to people who want to listen. In some ways, though, I  
12 should explain at the outset that Western Center is not  
13 necessarily a typical support center.

14           For one thing, our size sets us apart from the  
15 support centers in other states, whom you will probably talk  
16 to as you move through the country having your meetings. We  
17 receive a grant from the Legal Services Corporation in excess  
18 of \$1 million. This is substantially larger than the grants  
19 that you give to any other state support center. On the  
20 other hand, there are more poor people, more local programs  
21 and more local program advocates than we have to support than  
22 I believe exist in any other state in the union.

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1           The Center is also one of the oldest state support  
2 centers in the legal services delivery system. We were  
3 founded in the 60s as an OEO special litigation unit. This,  
4 too, sets us apart from some of the other support centers in  
5 that we put heavy emphasis on litigation, although we try to  
6 fulfill all of the core functions of state support.

7           Although our size, our age and our history set us  
8 apart from some other support centers, we all share a common  
9 goal. That is to ensure that local programs can deliver the  
10 best, highest quality legal services to their clients and  
11 that we make the delivery system efficient by fostering the  
12 kind of high quality advocacy that reaches large numbers of  
13 clients in the fastest way possible.

14           We do that in several ways. First we co-counsel  
15 with local legal services programs on those cases that impact  
16 many clients. This helps the local program because many  
17 local programs, unlike those you've heard from today, are  
18 very small and may only have one or two staff attorneys and  
19 can't develop an internal support system.

20           This co-counseling also, of course, benefits the  
21 client community. Broad-based advocacy is at the heart of  
22 Western Center. Our attorneys, almost all of them, average

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1 between 15 and 25 years of professional experience in poverty  
2 law. I feel that my staff is an asset that I hold in  
3 stewardship for the entire legal services community of this  
4 state.

5 Second, we deliver a formal curriculum of training  
6 and substantive law and in skills. We offer every year  
7 poverty law programs in basic housing and in public benefits  
8 and, in alternate years, advanced programs in these areas in  
9 subjects such as AFDC, welfare fraud, work fair, housing code  
10 enforcement.

11 We offer these events in partnership with the  
12 Benchmark Institute, a non-LSC-funded IOLTA program in  
13 California which also offers skills training. Western Center  
14 pays scholarships to ensure that legal services attorneys in  
15 California can attend these skills events. Every year  
16 there's a basic trial advocacy skills program called the  
17 College of Advocacy.

18 Most years there's trial advocacy skills training.  
19 In alternating years we ensure free training for legal  
20 service lawyers in federal practice, administrative hearing  
21 skills, legal analysis in writing, and other areas.

22 Third, we operate statewide task forces for local

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1 program advocates in health, housing and welfare. The task  
2 force mailings which go to over 400 people every month are  
3 the primary vehicle for getting the word out on the  
4 developments in poverty law in California and on reoccurring  
5 problems that we're seeing in the client community.

6 The meetings are the primary vehicle by which local  
7 program attorneys can meet face to face with our advocates,  
8 both our litigation advocates and our Sacramento staff to  
9 identify and develop strategies to resolve recurring client  
10 problems that are causing systemic problems in the community.

11 Fourth, we operate a state capital office and have  
12 done so since 1972. There are advocates, co-counsel with  
13 local legal service programs, and accept clients on referral  
14 to represent clients before administrative agencies and the  
15 legislature in the state capital. For more than a decade, we  
16 funded this last activity entirely with non-LSC funds because  
17 of the animosity of your predecessors for this kind of work.

18 I'd like to tell you a story about a problem that  
19 we helped solve in California in partnership with local  
20 programs that I think will give you an idea of how all these  
21 pieces of state support and local program delivery can fit  
22 together. This is the story of the homeless assistance

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1 program.

2 Local legal services attorneys came to our task  
3 forces and they started telling us common stories. That was  
4 that in their counties, homeless families were told that  
5 their children could get shelter, but only if the parents  
6 gave up custody of the children to the counties.

7 This was happening everywhere. So Western Center  
8 attorneys start investigating what was the underlying  
9 rationale or the law which was causing this problem which  
10 required homeless families to decide for their children do  
11 they need their parents or do they need a roof over their  
12 head.

13 We found that it was a state agency interpretation  
14 of a long-time California statute and we thought that  
15 interpretation was wrong and we tried to negotiate with the  
16 state, but they would not change their mind. Eventually,  
17 nine local service programs, Western Center advocates, filed  
18 a suit called Hanson v. McMahon on behalf of more than a  
19 dozen individual clients and on behalf of a statewide class  
20 of homeless families.

21 Western Center developed the legal argument, and we  
22 filed this suit and we won rather easily a preliminary

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1 injunction from a judge who heard testimony about the  
2 physical and psychological trauma that these children  
3 suffered, including testimony from experts about the high  
4 rates of thoughts of suicide among children of eight years  
5 old.

6           Unfortunately, it was a difficult case procedurally  
7 because the state wouldn't capitulate. At one point an  
8 overwrought trial judge ordered the head of the State  
9 Department of Welfare to appear with her suitcase for  
10 sentencing.

11           Nonetheless, we won and we proceeded to prevail on  
12 appeal. The ink was barely dry on the court of appeal  
13 decision when state officials went to the state legislature  
14 and sought to amend the statute that was the basis of our  
15 victory. At this point, Western Center's welfare lobbyists  
16 also hit the legislature. We came out of there with a  
17 compromise with the state, with local legal service attorneys  
18 and with our own clients.

19           AB 1733 provided homeless emergency assistance  
20 benefits to house homeless families in tact and it provided  
21 first and last month rent and security deposit payments which  
22 allowed homeless families to finally get over the hurdle of

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1 having enough cash to get beyond a month-to-month leasing  
2 situation.

3           Unfortunately, passage of that bill didn't end the  
4 story either. The federal Department of Health and Human  
5 Services, under the previous administration, decided not to  
6 give approval to California's implementation of this program.  
7 At this point, the state officials who had been our former  
8 adversaries and were now our allies went to Washington.

9           Armed with declarations from our clients, they  
10 gathered by local legal aid attorneys. They were able to  
11 convince 39 of the 45 members of the California delegation  
12 and both senators to join them in urging HHS to change its  
13 position. HHS did so and then the law went into effect.

14           As soon as the U.S. Department of Agriculture got  
15 wind of this, they decided to reduce food stamp allotments to  
16 of set the value of homeless assistance benefits. Again, a  
17 group of legal services attorneys joined with Western Center  
18 and we took the lead on a case called Hamilton v. Madigan in  
19 which we sued the U.S. Department of Agriculture.

20           We won at trial. We won on appeal and we obtained  
21 a 9th Circuit decision which not only provided both food and  
22 shelter for our clients, but set the precedent that food

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1 stamps can't be reduced to offset similar benefits for  
2 shelter.

3           Virtually every year since this saga ended, we have  
4 gone back to the legislature to ensure that budget cutters  
5 don't eliminate homeless assistance as a way to balance the  
6 California budget. Also, every year we ensure that our  
7 training events include information on the homeless  
8 assistance program so that legal services attorneys have the  
9 tools to get their clients into this program.

10           Although the funds for the homeless assistance  
11 program have been chiseled away during the recession, I still  
12 consider this story a victory. I think it has a few lessons  
13 in it about a complex delivery system and what a support  
14 center can do.

15           First, statewide litigation can achieve substantial  
16 gains for large numbers of clients. Class action litigation  
17 is not a bad word. These are good cases. They are efficient  
18 cases when they're grounded in real client needs and local  
19 program requests for assistance. State support centers  
20 should bring these cases and they should be able to do so  
21 with the support and encouragement of the Legal Services  
22 Corporation.

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1           Second, task forces and other coordination  
2 mechanisms are good ways to find out about systemic problems  
3 occurring across a state and to develop community-wide  
4 approaches and strategies to resolve these problems.  
5 Coordination mechanisms should be undertaken by state support  
6 centers with the encouragement of the Legal Services  
7 Corporation.

8           Third, legislative and administrative advocacy is a  
9 legitimate and professional service which legal services  
10 attorneys, just like private advocates, should be able to  
11 provide to their clients. I believe that state support  
12 centers working with local programs representing real clients  
13 should be able to provide this kind of service so that court  
14 victories aren't undone in the halls of the legislature.

15           Finally, I think the legal services delivery system  
16 benefits from the existence of support centers which provide  
17 a sanctuary where experienced advocates can take the time for  
18 contemplative work and put in the hard grinding hours that  
19 are necessary to persevere on complex cases from beginning to  
20 the end and make sure that the relief actually gets to the  
21 clients.

22           I don't want to leave you with the impression,

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1     though, that Western Center is about class action litigation  
2     and walking around the halls of the Congress. Our program  
3     responds to about 2,000 requests a year from local legal aid  
4     attorneys, mostly in small programs, who have a client with a  
5     problem and they want our help.

6             An important part of our work is answering every  
7     one of these calls. These requests keep us grounded in  
8     client needs and local program needs. I think they are what  
9     make state support strong.

10            I really appreciate the chance to talk to you  
11     today. Like Jose, I've brought our 25th anniversary brochure  
12     for all of you. It includes a chronicle of our litigation  
13     highlights since the 60s and also has a little pull-out sheet  
14     that gives you the background of our staff and some of the  
15     achievements of our alumni.

16            I'm very proud of my staff and I hope that you will  
17     all have a chance to read this on the airplane along with the  
18     other 20 pounds of stuff you've got in your briefcase. I'd  
19     be happy to answer any questions.

20            MR. EAKELEY: I just have a response. I am a firm  
21     believer in state support, but I hope we're going to disabuse  
22     the community and the Congress of any notions that class

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1 actions aren't an effective and efficient way to address  
2 systemic problems affecting lots of people, and also that  
3 legislative and administrative advocacy are very important  
4 elements in an overall delivery system that's aimed at  
5 attempting to seek equal justice for everyone.

6 MS. BURDICK: Thank you. It really heartens me to  
7 hear that because we've been harassed for both those  
8 activities. I think they're the strongest part of our  
9 delivery system in state support. They're the things that  
10 make us work well for clients.

11 CHAIR ASKEW: Thank you, Mary. I know you're  
12 active nationally with the state support planning process.  
13 So we look forward to hearing from that group in the future.

14 MS. BURDICK: You won't be able to stop me.

15 CHAIR ASKEW: We're not going to try. The Western  
16 Center, like CRLA, is one of those programs that was signaled  
17 out in the early 80s for particular attention and attack from  
18 the Corporation. It's a badge of honor. You do wonderful  
19 work. I know the work of some of your alumni. Keep up the  
20 good work. Thank you for coming today.

21 MS. BURDICK: Thank you.

22 CHAIR ASKEW: Is there any more business before the

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1 committee?

2 (No response.)

3 CHAIR ASKEW: If not, I'll entertain a motion to  
4 adjourn.

5 M O T I O N

6 MS. EDNA FAIRBANKS-WILLIAMS: So moved.

7 CHAIR ASKEW: Do I have a second?

8 MS. ROGERS: Second.

9 CHAIR ASKEW: All those in favor say aye.

10 (A chorus of ayes.)

11 CHAIR ASKEW: Opposed?

12 (No response.)

13 CHAIR ASKEW: This meeting is adjourned. Thank  
14 you.

15 (Whereupon, at 4:05 p.m., the meeting was  
16 adjourned.)

17 \* \* \* \* \*

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