

LEGAL SERVICES CORPORATION

REAUTHORIZATION COMMITTEE HEARING/MEETING

June 24, 1991

9:05 a.m.

MARRIOTT SUITES
801 Asaph Street
Alexandria, Virginia

RETURN TO CORPORATIO
SECRETARY ARCHIVES FIL

Board Members Present:

Basile Uddo, Chairman
George Wittgraf
Howard Dana
William L. Kirk, Jr.
Blakeley Hall
Jo Betts Love
Jeanine E. Wolbeck
Luis Guiot, Jr.

Staff Present:

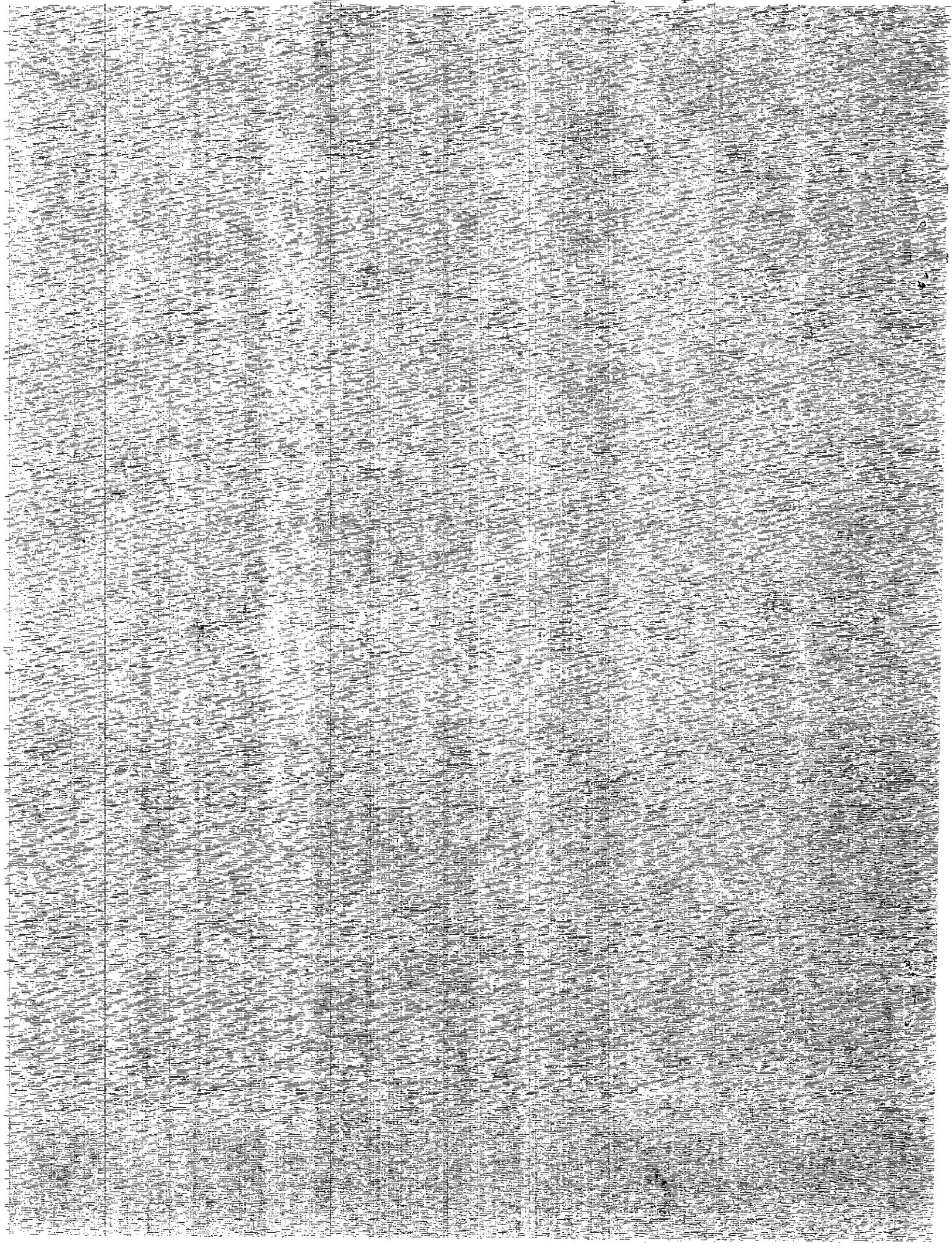
Ken Boehm
Alan Severson
Pat Battie

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P R O C E E D I N G S

1
2 CHAIRMAN UDDO: I'd like to call the meeting to
3 order. This is a meeting of the Legal Services Corporation
4 Reauthorization Committee, one of several that we've held so
5 far, today, again, for the purpose of taking some testimony
6 from the public.

7 The members of the committee that are present are
8 Mr. Dana, Mr. Wittgraf, and Mr. Kirk and myself. In addition,
9 we have board member Blakeley Hall, and President Martin with
10 us. We are expecting other board members to join us later.
11 As I understand it, Ms. Pullen will not be here; is that
12 correct?

13 MR. MARTIN: She will not.

14 CHAIRMAN UDDO: Will not be here, okay.

15 MR. MARTIN: And Mr. Molinari will not, nor
16 Mr. Rath.

17 CHAIRMAN UDDO: Before we get to taking testimony,
18 are there any matters committee members need to have discussed
19 or brought to the attention of the committee?

20 The schedule, if all goes well, is to take testimony
21 throughout the morning session. There is another committee
22 meeting which is scheduled to begin at noon, the board's

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1 inspector general committee.

2 So we will have a little bit longer break at noon so
3 that that committee can engage in its business, and we will
4 probably try to reconvene this committee somewhere around
5 1:30, maybe as late as 2 o'clock, and in the afternoon, we
6 will complete the testimony, if there are any that we don't
7 get in this morning.

8 In fact, I'm pretty sure that at least one of the
9 folks on the list will not be available until the afternoon
10 session, and after we completed testimony, we will deliberate
11 about what, if anything, the committee wants to do in
12 anticipation of the next board meeting.

13 So with that in mind, I believe that -- also, since
14 I mentioned this to Mr. Dana, we will consider a review of the
15 minutes that we've been given from the last meeting at the
16 portion of the meeting where we begin deliberation so as not
17 to delay the folks who have come here to testify this morning.

18 I might point out that, generally, we've tried to
19 stay to about a 15-minute per person for the testimony, to try
20 to keep us on some kind of a schedule. So I'd ask, if you
21 would, to try to keep your remarks within that time frame,
22 actually, a little less than that, so that we have some time

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1 to ask questions.

2 We have a short enough list today that we can have a
3 little bit more flexibility to it, but we're going to have to
4 adhere to it to some extent to try to get everything done that
5 we want done. So I would ask you to do that.

6 Is Mr. Davidson here yet? Mr. Davidson, if you
7 would come to the table. Mr. Davidson is the chairman of the
8 National Taxpayers Union, and we welcome him to our committee.

9 MR. DAVIDSON: Thank you. You may not feel that way
10 after you've heard what I have to say.

11 CHAIRMAN UDDO: We welcome all comments.

12 PRESENTATION OF JAMES DALE DAVIDSON

13 NATIONAL TAXPAYERS UNION

14 MR. DAVIDSON: Thank you. I represent the 200,000
15 paying members of the National Taxpayers Union. We have
16 hundreds of thousands of additional members, affiliated
17 members, in local organizations around the country, and a lot
18 of the thinking citizens, I think, share our view that the
19 Legal Services Corporation has not, in its history, provided an
20 efficient and responsible use of tax dollars.

21 We think a large part of the budget of this
22 organization is wasted, and we believe indeed that, overall,

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1 the effect of the organization has been to exacerbate the very
2 problem that it was meant to solve in the first place.

3 I have a written statement. I don't know if you
4 have a copy of that. I'll be glad to make it available. The
5 idea of the Legal Services Corporation emerged from the
6 recognition of a real need to secure effective and economical
7 civil legal services for the poor.

8 The LSC, however, is a program that by its very
9 design necessarily reduces pressures for fundamental reform of
10 America's incomparably inefficient and costly legal system.
11 It is this cost and inefficiency within the system which
12 constitute the great real barrier to adequate legal
13 representation generally in America, not merely for poor
14 people but for all people.

15 Merely providing subsidies to lawyers, which I take
16 to be the principal function of this organization, does
17 nothing to remedy the basic problem. Given the performance of
18 the Legal Services Corporation, or lack thereof, since its
19 creation some 25 years ago, we believe this board must address
20 whether or not the program should be reauthorized.

21 The LSC has not come close to achieving its stated
22 goal and has simply added another layer of fat to an already

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1 obese system. We do not believe that it is in the best
2 interest of the American taxpayer or America's poor to fund an
3 organization that actively seeks to add to the glut of
4 litigation in our system, which, by the way, is already an
5 extreme outlier in the whole world.

6 If you look at every legal system in the world, ours
7 is by far the most inefficient. We have the highest density
8 of lawyers per capita or by any rating you would seek, and the
9 costs of most legal services in the United States on a
10 comparative basis are far higher than they are in other
11 countries.

12 For example, it takes 17 times as long to probate an
13 estate in the United States as it does in Great Britain, which
14 has very similar laws. It takes many, many more dollars to do
15 these things.

16 We have 750,000 lawyers in the United States by one
17 accounting, which is far more than any other country. In
18 fact, we have two-thirds to three-quarters of all the lawyers
19 in the world, and our lawyers have much more training than
20 other lawyers. So if we counted other people's lawyers on the
21 same basis that they'd have to achieve accreditation in this
22 country, we'd have even a higher portion of the world's

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1 lawyers.

2 We have four times as many per capita as Great
3 Britain, which, as I said, has a very similar legal system;
4 five times as many as Japan, as Germany; ten times as many as
5 France, and there are more lawyers within the Beltway, where
6 we sit today, than there are in all of Japan, and I think this
7 helps explain a good deal of why the United States has been
8 falling behind in world competition.

9 This combination of vast law firms, litigation for
10 profit, litigation supported by government, suing the
11 government, and obscene costs is regarded by many economists
12 as one of the chief reasons why American industry has ceased
13 to be competitive in many areas.

14 A federally funded agency designed to subsidize this
15 blight on America flies in the face of common sense. When we
16 first examined the Legal Services Corporation, we were shocked
17 by the flagrant abuse of taxpayer money.

18 The original goal of the LSC is not only not being
19 met, but it has been distorted to reflect a particular
20 political agenda. Tax dollars intended to ensure that all
21 members of our society have equal access to adequate legal
22 representation are instead being used to promote this social

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1 reform agenda of the Legal Services attorneys.

2 This political activism comes at the expense of
3 those the program was intended to serve: America's poor. In
4 fact, by some estimates, only 20 percent of those eligible
5 individuals seeking legal assistance from the LSC are being
6 served. Meanwhile, we have a great deal of money which is
7 being devoted to programs which expressly are prohibited by
8 the Legal Services Act, the original authorizing legislation.

9 If this program is to be foisted upon the backs of
10 taxpayers, the government must, at a minimum, enforce the
11 regulations designed to ensure a fair, nonpolitical program
12 aimed at the legal needs of the individuals, instead of
13 subsidizing the radical social reform agenda of Legal Services
14 attorneys who may otherwise be unemployable.

15 MR. KIRK: Mr. Davidson?

16 MR. DAVIDSON: Yes.

17 MR. KIRK: Would you tell me what you're talking
18 about that's not been followed by the enabling legislation?

19 MR. DAVIDSON: Yes. As I understand it, and our
20 researchers have provided this backup to me, that we have
21 soliciting cases, which is prohibited by the original
22 legislation. We have lobbying, and we also have mirror

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1 operations, which have been set up to seek funding, and all of
2 these things were prohibited by the original authorizing
3 legislation, as we understand it.

4 MR. KIRK: Can I ask you one other question?

5 MR. DAVIDSON: Surely.

6 MR. KIRK: I reviewed your writing, here. Is it
7 your basic contention that Legal Services ought to be just
8 outlawed or reformed? I see some pieces of both of them in
9 your --

10 MR. DAVIDSON: Well, I have, like everybody, I
11 suppose, I wouldn't want to have the best become the enemy of
12 the good. I believe that if we were starting afresh, or if it
13 were possible to convince the majority of members of Congress
14 to do away with a government program, which is practically
15 impossible, I would say that this program is right at the top
16 of the list of those which richly deserves to be done away
17 with, because it actually stands in the way of enabling this
18 country to be able to get a grip on its very high legal costs.

19 I think that one of the first principles that we see
20 when a program like this is enacted, is that it removes some
21 of the pressure which ought to exist to reduce our costs to an
22 internationally competitive level.

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1 In other words, if the costs are too high for some
2 poor people to get service, we say "Fine, we'll subsidize a
3 group of excess lawyers to provide that service."

4 MR. KIRK: Just one comment. I think that my
5 understanding is that Congress overwhelmingly has supported
6 continuing the Legal Services Corporation's program.

7 MR. DAVIDSON: I'm sure they're overwhelmingly in
8 support of continuing everything that they do, and that is the
9 big problem. So if you're wondering about detentions in my
10 testimony between my desire to have the thing completely deep
11 sixed and the suggestions for more modest reform, may arise
12 from the recognition of some political reality that Congress
13 will never, except under extreme duress, defund anything,
14 however incompetent its operation or however small the
15 benefits of it might provide.

16 But, in any event, we believe that public funds are
17 unnecessary to ensure that the legal needs of the poor are
18 met. Funding from private organizations and state bar
19 associations as well as tax incentives or organizations and
20 normal legal firms that choose to represent low income clients
21 would do much more to address the need for individual client
22 services than the current federal program.

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1 But barring the total defunding of this subsidy
2 program, there are some fundamental changes that need to be
3 made to improve the services and practices of the LSC. The
4 use of private local mediation boards should be encouraged by
5 the LSC and the states over the use of the court system.

6 Mediation boards represent an attractive alternative
7 to litigation for low income individuals. These boards are
8 much less expensive than traditional legal services and
9 typically provide better access to legal help. The use of
10 mediation boards also serves to reduce the amount of cases
11 thrust upon our already swamped court system.

12 This achievement by itself should warrant increased
13 reliance on and expansion of the mediation system of conflict
14 resolution. A good illustration of the success of this system
15 can be seen in the performance of the community boards in San
16 Francisco.

17 This group has handled roughly 3,000 disputes for
18 low and middle income individuals. The services were provided
19 at little or no cost to the litigants and an estimated one-
20 fifth of the average cost of the LSC community board mediators
21 now resolve more cases in San Francisco than jury trials at a
22 substantial savings to the taxpayer and to the entire

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1 community, and I might add, to the great benefit of these
2 people involved, these processes take much less time.

3 It seems patently obvious that this system of
4 conflict resolution is superior in every way except in the
5 payment of attorney's fees to the current LSC system. The
6 potential savings to the taxpayer and improvement in services
7 to the poor people provide compelling reasons to eliminate the
8 LSC program entirely or significantly reduce its funding.

9 At a minimum, we believe competitive bidding for
10 federal grants should be instituted to ensure that the
11 agencies vying for federal funds are providing the best
12 service as possible. As with most services, competition
13 provides an impetus for improved performance at low cost.

14 Ironically, this is or should be the goal of
15 federally funded services. Basic field programs, the private
16 not-for-profit law offices that provide direct services to
17 eligible poor clients currently receive refunding
18 automatically. This method of refunding excludes other
19 potential providers of legal services to the detriment of the
20 client base.

21 This practice also exacerbates the entrenchment of
22 agencies focused on social reform and publicly funded lobbying

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1 rather than client services. Significant changes must also be
2 made in the manner in which the funds for the LSC are
3 distributed within the organization.

4 From an economic standpoint, the current operational
5 structure of the LSC makes little sense. Presumably, the
6 federal government endeavors to maximize the utility of any
7 taxpayer funded service. In the case of the Legal Services
8 Corporation, the goal ostensibly is to provide legal aid to as
9 many qualifying individuals as possible.

10 This, however, does not seem to be the goal of the
11 LSC attorneys. Testifying to this is the fact that a
12 significant portion of LSC funding goes to functions unrelated
13 to client services. For example, in 1989, roughly \$44 million
14 of a \$320 million appropriation went to fund programs such as
15 national and state support centers, which are essentially
16 lobbying vehicles.

17 These support centers or think tanks are directly
18 involved in special interest, legal, and social research.
19 These activities take place at the expense of eligible clients
20 seeking legal assistance. Their actions reflect a disregard
21 for the lobbying restrictions in the LSC act, as well as a
22 distortion of priorities.

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1 We find it unsatisfactory, to say the least, that
2 taxpayer money is being used to promote a particular political
3 agenda at the expense of the poor. There are innumerable
4 private organizations committed to forwarding particular
5 social causes. We see no reason why those Legal Services
6 lawyers who feel that they should be in that business don't
7 just strike out on their own and do so without funding from
8 the citizenry at large.

9 The funding for these support centers, as I say, as
10 well as other programs not directly related to client
11 services, should be cut or allocated to the basic field
12 program.

13 In conclusion, we believe that the LSC program
14 should be entirely defunded. However, we also understand how
15 loath the Congress is to eliminate inefficient, ineffectual
16 programs in favor of common sense low cost approaches. With
17 this in mind, we believe that the reforms contained in the
18 McCollum/Stenholm proposal H.R. 1345, have an opportunity of
19 effecting some marginal change in the program.

20 It is our hope that the Congress and this board will
21 look favorably upon such changes, both for the sake of the
22 taxpayer as well as America's poor whose legal needs are not

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1 being met under the current system.

2 CHAIRMAN UDDO: I thank you, Mr. Davidson.
3 Questions from the committee. We'll start with Mr. Kirk.

4 MR. KIRK: Mr. Davidson, you make kind of a
5 conclusion regarding the support centers involved in special
6 interest, legal, and social research. What are you talking
7 about?

8 MR. DAVIDSON: Well, I'm talking about the fact that
9 these groups basically -- I don't know. I think it would be
10 very useful. And I'd love to see a study that could be done
11 that could put a value or a cost on the total cost that has
12 come from society because of the special interest lobbying
13 which has been done and litigation that originated with the
14 LSC that has raised the costs of the government in many areas.

15 We have case after case where LSC sponsored lawyers
16 are suing the government to increase the costs of various
17 types of programs which are not at all within the range of
18 what one would contemplate in terms of access to the courts.

19 I mean, we're talking about access to the courts.
20 It's not that a poor person simply can't find money to pay a
21 lawyer to perform a legal service, which is required in the
22 course of his life. We have, instead, situations where LSC

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1 lawyers are standing around thinking up schemes that they can
2 use to sue the government to create broader funding for
3 various programs, to require that more money be spent in one
4 place or another. I mean, we have example after example of
5 that.

6 MR. KIRK: Is that what you mean by special
7 interest, legal, and social research?

8 MR. DAVIDSON: Well, it certainly fits my definition
9 of special interest research. I mean, these are things that
10 -- people who have proposed additional funding for certain
11 programs in the political process have been thwarted by the
12 democratic representatives in the country, but they find a way
13 to guarantee this by using litigation as a social, as a means
14 of social activism.

15 There are many different law firms that are
16 organized as socially active law firms. There are legal
17 foundations on all sides of the spectrum that do this type of
18 research. The American Civil Liberties Union is such an
19 organization that sues people for a variety of reasons and
20 takes up the support of people who it feels are ill-served by
21 the legal process.

22 But they also are definitely pushing a political

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1 agenda, and my fault with the LSC is that it is also pushing a
2 political agenda. It is not merely providing law services to
3 people who find that they don't have the money to pay for it.

4 MR. KIRK: I guess I have nothing else.

5 CHAIRMAN UDDO: Mr. Wittgraf?

6 MR. WITTGRAF: Thank you, Mr. Chairman. Mr.
7 Davidson, it's difficult for me to know where to begin. I
8 guess, on the one hand, I certainly sympathize with the
9 concept you've endorsed of forms of alternative dispute
10 resolution, and you've cited an example of how that's worked
11 particularly effectively, apparently, in the San Francisco
12 area.

13 I'm not sure how universally applicable that is
14 across the geography across the country, and those kinds of
15 resources that exist in San Francisco don't typically exist in
16 most parts of the country, but beyond that, I fear that your
17 knowledge of what the Legal Services Corporation and its
18 grantees do is woefully slim.

19 I look particularly at the second page of your
20 statement, and I think you read this second paragraph there,
21 two-thirds of the way through, that you indicate that much of
22 the funding for the Legal Services Corporation is being

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1 channeled into programs intended solely for political
2 activism.

3 I guess, as I have visited with some Legal Services
4 projects around the country, the recipients of most of the
5 Legal Services Corporation funds, I haven't had occasion to
6 reach that conclusion. I'm wondering if you got any specific
7 examples or specific data to support that conclusion.

8 MR. DAVIDSON: Yes. We would be glad to provide for
9 the record, for this board, illustrations of the specific
10 abuses that we believe are entailed in this, including such
11 things as imposing quotas of various kinds that have been
12 promoted by the Legal Services lawyers, and as I said, we'll
13 be glad to give you a long list.

14 CHAIRMAN UDDO: I have to intervene just a second
15 here, Mr. Davidson. I was kind of hoping you'd bring that
16 with you, because the committee is deliberating this
17 afternoon. This is our fourth in a series of hearings on this
18 question, and if your list is going to be helpful to us, we
19 really need it before this afternoon.

20 MR. DAVIDSON: Well, we'll try to have it
21 messengered over to you by the close of business today.

22 CHAIRMAN UDDO: We're going to need it earlier than

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1 that. We're deliberating this afternoon.

2 MR. DAVIDSON: There's no problem. We can get it to
3 you earlier than that.

4 CHAIRMAN UDDO: Okay. I'm sorry, Mr. Wittgraf.

5 MR. WITTGRAF: I guess, when I see a statement that
6 says "much of the funding," I don't know if that means a
7 majority or not. I assume it's a substantial portion, in any
8 case. You're alleging that you have data that suggests that a
9 substantial portion of the Legal Services Corporation funds in
10 a given fiscal year are used solely for political activism?

11 MR. DAVIDSON: I think it's common knowledge. I'm
12 surprised that you're surprised, actually, Mr. Wittgraf.

13 MR. WITTGRAF: I am surprised, and it is not common
14 knowledge to me, and it could be a reflection of my woeful
15 ignorance rather than yours, but I'm wondering, as Mr. Uddo
16 suggested, that if you've got that kind of data that
17 substantiates that, we'd certainly like to have it.

18 MR. DAVIDSON: You will have it today.

19 MR. WITTGRAF: Perhaps you and I have a different
20 view of what political activism is. Maybe if you made just a
21 comment about what you intended by the term there, "political
22 activism," maybe that would narrow the differences between us.

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1 MR. DAVIDSON: Well, let me put it this way. I
2 think if you and I decided today, granted that we could agree
3 on something, that we were going to start an organization to
4 pursue any type of purpose, there would be a whole range of
5 particular steps that we could take to try to get those views
6 implemented into law, to make them effective in the political
7 process, which could include such things as sending people
8 door-to-door; it could include putting out press releases; it
9 could include funding research that could be useful to people
10 in either lobbying or litigation. It could include this whole
11 broad range of things.

12 Now, political lobbying, as you know, is a very
13 subtle process. It involves lots of different steps over a
14 broad sweep of human activities, and I think that it is beyond
15 question that a large part of what is done at the support
16 centers that you fund is political lobbying and special
17 interest agitation.

18 MR. WITTGRAF: Okay. Now, you referred there to the
19 support centers, and as you indicated in your one example
20 going back to 1989, it's only a small fraction of the Legal
21 Services Corporation.

22 MR. DAVIDSON: More than 10 percent.

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1 MR. WITTGRAF: Right, but that's a small fraction.
2 I mean, a tenth, to my mind, is a small fraction.

3 MR. DAVIDSON: Well, at \$44 million, it's a
4 tremendous amount of money. If you took all the money that is
5 contributed voluntarily to Common Cause, the National
6 Taxpayers Union, Citizens for a Sound Economy, and the other
7 leading public citizens organizations, they would come to less
8 than you're spending.

9 So that is a substantial amount of money as a
10 proportion of the total amount that is spent in voluntary
11 citizen activity in this country.

12 MR. WITTGRAF: Being from a small town in the middle
13 of the country, to me, \$40-some million is a lot, certainly,
14 but what I'm wondering is, you start off by saying much of the
15 funding for the corporation. We now come back to this 10 or
16 11 or 12 percent of the funding that has to do with the
17 national and the state support centers.

18 I'm wondering if you could be a little more specific
19 about what it is the support centers do that represents
20 lobbying or political activism. To my understanding, they do
21 research, and they share information regarding pending
22 litigation, and they encourage certain litigation, and

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1 certainly I'd agree with you that they have sued many
2 government entities; federal, state, and local. Is that
3 political activism?

4 MR. DAVIDSON: Sure it is. Sure it is. I mean, if
5 you gave me \$44 million and a battery of lawyers to go out and
6 sue government agencies in order to achieve the changes that I
7 believe ought to be made in the law, I could assure you that
8 we would have some effect in making the government more
9 efficient than it is.

10 Unfortunately, the thrust of the litigation that
11 comes from your shop is almost entirely to make it less
12 efficient, and that is one of the things that I object to. I
13 don't see why, as a taxpayer, and I speak, I think, with the
14 wholehearted empathy of great many people in this country, we
15 should be forced to pay through our tax money to have people
16 lobbying to raise our total costs.

17 If you look at what happens in Washington, one of
18 the things that you do, and I don't think this is unique to
19 your organization, and, in fact, it's symptomatic of what
20 happens in this country; 140 different representations are
21 made in the halls of Congress to raise government spending for
22 every single representation that is made to curtail costs and

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1 improve efficiency, and a great portion of that, about 60
2 percent of those representations, are funded by the citizens
3 who are obliged to pay people to come forward to make the case
4 for more funding for their agency, and that is certainly true
5 of the Legal Services Corporation.

6 If we had an offsetting group whose only job it was
7 is to look at the waste and incompetence and unpleasant
8 effects that arise from various government programs and then
9 stand up and lobby and have a huge battery of lawyers to file
10 lawsuits, we'd have a much different political composition in
11 this country than we do.

12 MR. WITTGRAF: Mr. Uddo, rather than --

13 MR. KIRK: May I ask a specific question?

14 MR. WITTGRAF: Do you want to defer some of yours?

15 CHAIRMAN UDDO: We're short on time. Mr. Kirk?

16 MR. KIRK: In my local office, Mr. Davidson, they
17 sued Social Security because they weren't getting out the
18 checks within a certain amount of time that they were supposed
19 to, and people were not being able to pay their rent and all.
20 Is that the kind of suit against the government that you'd
21 like to restrict?

22 MR. DAVIDSON: Well, listen, I think, obviously,

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1 Social Security should send its checks out on time. However,
2 I think that if it doesn't send its checks out on time, that
3 is a job for our elected representatives and the organization
4 of the Social Security Administration. It is not a job for a
5 group of gadflies spunded by the government to go in, because
6 you could sue them for any other sort of thing, and you have
7 sued a lot of agencies in ways that raise the costs of doing
8 business in this country.

9 The other point that I'd like to make, and this is
10 something that I noticed that none of you had so far deigned
11 to pick up on. Why is it that this country is such an outlier
12 in terms of costs, legal costs, as compared to our
13 competitors?

14 Why is it that the Japanese can do business with a
15 fair chemical trace of a legal expense that we have that this
16 country has to not only have this huge blight of lawyers that
17 plagues our society, but that we have to subsidize it and to
18 employ otherwise unemployable lawyers in avocations, which is
19 what it amounts to.

20 MR. KIRK: I agree with you, but I'm not sure the
21 Legal Services Corporation can solve that issue.

22 MR. DAVIDSON: Well, what percentage of the total

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1 litigation in this country do you believe the Legal Services
2 Administration is involved in? Do you have any figures on
3 that?

4 MR. KIRK: I'm sure it's less than 1 percent.

5 MR. DAVIDSON: Are you sure?

6 MR. KIRK: Yes. I'm certainly as sure as you are of
7 many of the statements you've made in your prepared remarks.

8 CHAIRMAN UDDO: Okay. Let me see if --

9 MR. DAVIDSON: Well, if you can find an error of
10 fact in my statements, I'll gladly retract anything I've said,
11 but we're not talking about facts, we're talking about
12 interpretation, and I have as much right to interpret as you
13 do.

14 MR. KIRK: Certainly, certainly. I don't find any
15 error of facts. I'm hoping to find some facts, and that seems
16 to be the problem, and if we could have some facts, it would
17 be very helpful. If there are the abuses to which you've
18 alluded in general terms, we'd like to have the specific
19 examples of those abuses, certainly.

20 CHAIRMAN UDDO: Let me go to Mr. Dana, then.

21 MR. DAVIDSON: Well, you will have them.

22 CHAIRMAN UDDO: Mr. Dana.

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1 MR. DANA: Mr. Davidson, I understand that your
2 organization supports the McCollum/Stenholm legislation as an
3 alternative to actually doing away with the corporation.

4 MR. DAVIDSON: Yes, we do.

5 MR. DANA: Because your view is that it's a waste of
6 the taxpayers' money, if I read you correctly.

7 MR. DAVIDSON: I do believe that. I think it's not
8 only a waste of taxpayers' money, but I think that in the long
9 term that it rebounds to the detriment of the poor, whom it is
10 meant to serve, because it subsidizes this gigantic
11 hypertrophy of legal process, which, if it were not there, we
12 would have greater pressures to reform the legal process where
13 it needs reforming, which is in ways that reduce the costs of
14 access to the legal system.

15 It seems to me that it's just as if we had an
16 automobile industry which was so inefficient that a car costs
17 \$100,000, and then we had a lot of people complaining that the
18 poor have to go afoot, and so the way to so far that problem
19 is to create an automobile services corporation to subsidize
20 that provision of \$100,000 cars to poor people.

21 That is not the solution. The solution is to reduce
22 the costs, and that can only be done if we reform this

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1 process, the legal process in this country, and make it at
2 least competitive with those of our other western countries
3 that we compete with in the world market.

4 MR. DANA: Do you join with others who are
5 supporting this legislation because they argue that if it's
6 passed, that Congress will spend more money on the Legal
7 Services Corporation?

8 MR. DAVIDSON: No. I don't support it for that
9 reason. I think that there are good reasons for supporting
10 it, including the much stricter regulation of nonexistent
11 lobbying that Mr. Wittgraf can't find evidence of.

12 The authors of this legislation certainly believe
13 that there is a portion of the Legal Services Corporation
14 which is devoted to lobbying and agitation, which we would
15 like to see curtailed, and I think that any effective
16 curtailment of that function of the Legal Services Corporation
17 would be more than offset, would more than offset any increase
18 in funding that might arise as a result.

19 My basic view is that we've got to reform this whole
20 process, and the Legal Services Corporation, just like the
21 Automotive Services Corporation, is going in the wrong
22 direction. It is subsidizing high costs rather than trying to

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1 reduce them.

2 MR. DANA: Would you help me to understand why it is
3 that denying poor people the representation that they get
4 through the Legal Services Corporation is going to help reform
5 the system? Did I read you correctly that the reason that it
6 will help it is that it would build up such a pressure for
7 reform because these people will be denied representation that
8 some change may come out of that explosion of the population
9 that results? Is that your --

10 MR. DAVIDSON: Well, let me see if I can put it in a
11 way that will be satisfactory to you and explain also to
12 anybody who is curious what I'm really thinking about.

13 We have, in this country, a great surplus of
14 lawyers. By any cross-national comparison, we have plenty of
15 lawyers. There are plenty of lawyers available. There are
16 many, many law firms. In the past, professionals have
17 provided gratis or pro bono service as part of their
18 operation.

19 Now, we have, in the centers of many big cities
20 today, law firms going out of business. Webster and Sheffield
21 which John Lindsay was a member of, a big, old line law firm
22 in New York has just gone under within a few months.

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1 Other big law firms are going under. There are too
2 many lawyers by a long shot. There are very many ways that we
3 can provide lower cost legal services, including pro bono
4 work, which could be subsidize through the tax process, as I
5 indicated. I talked about the national --

6 MR. DANA: Excuse me. What I don't understand is
7 why it is that doing away with funding for lawyers for poor
8 people is going to help change the American legal system.

9 MR. DAVIDSON: It's going to help in several ways,
10 as I indicated. For example, the alternative process, which
11 is already taking place in spite of the Legal Services
12 Corporation, which we see working in San Francisco, is
13 producing better results for the poor people who are the
14 ostensible clients for this agency.

15 It costs the litigants nothing or almost nothing in
16 most cases. The total costs are a fifth of the LSC costs.
17 Now, we're talking, again, about a tremendous multiple of
18 costs. Now, that ought to be something that would attract
19 attention. Why can't we do more of that, instead of having
20 the government suing the government through this process?

21 You can look at what you're doing in a number of
22 ways. One thing you can certainly say is this organization,

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1 the Legal Services Corporation, employs a lot of lawyers who
2 would otherwise not be employed, many of them, and if they
3 were not employed, that would drive down the cost of the legal
4 system.

5 Because you basically have a situation where if you
6 have a lawyer who is employed -- unlike in most types of
7 enterprise, where if you have a lot of people involved in a
8 process, you have more competition, if you have a lot of
9 lawyers employed, and somebody will hire a bunch of lawyers to
10 sue somebody else, you suddenly employ two lawyers.

11 For every lawyer who is employed, there's at least
12 another one on the other side of the case who is being sued
13 for something, and we think that this process has gone far too
14 far. It's an extreme that has never been seen in the history
15 of the world, and the best way to resolve the problem is to
16 begin to make the reforms that are necessary to lower the cost
17 of legal services.

18 If these centers in San Francisco, the community
19 boards and the mediation processes, can resolve these problems
20 faster, cheaper, more satisfactorily, why don't we depend on
21 those solutions, rather than hiring expensive lawyers to sue
22 other lawyers and a much more protracted process, which also

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1 involves the complications which many citizens have a right to
2 find distasteful, which are people paid by the taxpayer
3 lobbying against the taxpayers' interest proposing social
4 views and political activism which those who have paid for
5 that policy may themselves dislike?

6 CHAIRMAN UDDO: Thank you. I'm going to forego
7 other board members, because we went a little bit over time
8 there. Mr. Davidson, two things: I'd just like to point out
9 to you that the corporation has supported alternative dispute
10 resolution.

11 In fact, this committee, as one of its resolutions,
12 in its process, has, in the reauthorization process,
13 recommended continued support and development of alternative
14 dispute resolution.

15 MR. DAVIDSON: Well, you have my support in that,
16 and congratulations. I think that is a step in the right
17 direction.

18 CHAIRMAN UDDO: Second thing, if we are going to be
19 able to consider the specifics that you have, we really need
20 them probably before about 2 o'clock.

21 MR. DAVIDSON: All right. We will see that you get
22 a specific list.

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1 CHAIRMAN UDDO: Thank you very much, Mr. Davidson.
2 Our next witness is Mr. Mike Gempler, the Washington Growers
3 League. Mr. Gempler, welcome to the committee.

4 PRESENTATION OF MIKE GEMPLER

5 NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

6 MR. GEMPLER: Thank you for allowing me to come here
7 and speak to you today. I have some handouts, and literature
8 that Mr. Boehm will distribute to you after he makes enough
9 copies for everyone, probably after this hearing.

10 My name is Mike Gempler, I'm manager of Washington
11 Growers League. We're headquartered in Yakima, Washington,
12 and it's in central Washington. It's an agricultural area
13 where we, obviously, grow a lot of apples, asparagus, hops,
14 vegetables. It's like a little California, basically. We
15 represent farmers all over the state, the berry farmers in the
16 northwest, oyster farmers, cranberry farmers; it's a great
17 diversity.

18 Our purpose, our organization's purpose, is to
19 provide information and representation to farmers on labor
20 issues, and we began about four years ago. In 1987, the
21 Immigration Reform and Control Act was a major catalyst in our
22 formation, along with the development of quite a few other

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1 regulations.

2 So we published a lot of educational literature for
3 farmers, all on labor issues, and we get involved in all the
4 labor issues that impact our members. I personally live out
5 in an orchard and am involved in the farming of wine grapes,
6 and I have a first-hand view of what's going on.

7 Most of my friends are involved in production
8 agricultural. I represent hundreds, hopefully soon to be
9 thousands, of farmers who meet major payrolls every week.
10 What I hear is that here in Washington, D.C., people in charge
11 of the Legal Services Corporation don't believe that there is
12 any sort of problem that exists in agricultural, and it's my
13 objective today to convince you that indeed we see some very
14 substantial problems with the way the Legal Service
15 Corporation carries out its duties in agricultural litigation.

16 I think there are some solutions, and I think
17 substantial reform in certain areas is the solution, and I'm
18 hoping to convince you to support that kind of reform. The
19 major problem, as I see it, is unmeritorious litigation.

20 Claims are made that simply don't have merit or
21 very, very little merit, maybe a minor technical violation.
22 And the way it typically unfolds is that a client, a seasonal

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1 agricultural employee, feels that he's been wronged, and maybe
2 he justifiably feels he's been wronged.

3 There's miscommunication, maybe there was an honest
4 mistake in a count of how many bins of apples the particular
5 person picked, or maybe they were actually ripped off. I
6 mean, that happens, too. But in any case, if that person
7 seeks representation, that person doesn't always get involved
8 in the case and doesn't really follow the case.

9 There's no incentive for that employee, who is that
10 plaintiff, to really make sure that his claim has merit.
11 There's no incentive for anybody to make sure that claim has
12 merit, the attorney included. So the case takes off, and it
13 has to go through discovery, and particularly, when you have
14 agricultural employers who have hundreds of employees for a
15 short period of time, you end up with a lot of plaintiffs.

16 If you have to depose, say, 40 plaintiffs in a case
17 on a minor technical violation, and they all need translators,
18 you're looking at deposition costs maybe \$5,000 a day, and you
19 have Joe Orchardist with 50 acres of apple trees, that stacks
20 up pretty fast.

21 If he wants to go through the discovery period to
22 prove his innocence, I mean, he's going to have to incur that

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1 liability, and potentially, if he loses, he's going to have to
2 pay that. Hopefully, the system would bear out that this is
3 an unmeritorious case, and you could have it thrown out on
4 summary judgment.

5 I'm not a lawyer, I'm not a technical expert, but it
6 never works that way. Apparently, there are barriers that
7 don't let that happen, and clearly these cases are not
8 meritorious cases. Most of them would not be taken by lawyers
9 who are not funded publicly, who are not essentially free
10 lawyers.

11 CHAIRMAN UDDO: Mr. Gempler, I'm going to interrupt
12 you just for a second early on, because I can see the same
13 question is going to develop. Did you bring anything with
14 you? I mean, you got some things about specific cases that we
15 can look at?

16 MR. GEMPLER: Yes, right now.

17 CHAIRMAN UDDO: Good.

18 MR. GEMPLER: That was the warm-up period.

19 CHAIRMAN UDDO: All right.

20 MR. GEMPLER: I have some case descriptions here,
21 and I'll go through them, and I'll try and make it very quick.
22 The names have been removed more anonymity's sake.

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1 Case No. 1: In this case, many of the plaintiffs,
2 at least ten out of the 40 did not know that they were named
3 as plaintiffs in the case. There were also at least five
4 plaintiffs named who had never been employed by the defendant.

5 The case was a "nuisance value" case, in which the
6 original cause for suit, which was an alleged Migrant Seasonal
7 Worker Protection Act violation was a minor claim, but it
8 resulted in legal fees of over \$40,000 in a settlement that
9 was disproportionately small, \$7,000.

10 Case No. 2: Another so-called "nuisance value"
11 case, in which claims of multiple MSWPA violations led to --

12 MR. WITTGRAF: Can I interrupt, Mr. Chairman.

13 CHAIRMAN UDDO: Sure.

14 MR. WITTGRAF: Let's go back to case No. 1 for just
15 a moment. Now, how many plaintiffs were there originally?

16 MR. GEMPLER: Forty.

17 MR. WITTGRAF: And there were some, you say, who did
18 not know they were plaintiffs?

19 MR. GEMPLER: Correct.

20 MR. WITTGRAF: Okay. That was about ten?

21 MR. GEMPLER: Correct.

22 MR. WITTGRAF: And there was an additional five who

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1 couldn't be found to exist?

2 MR. GEMPLER: No. They existed. They were named,
3 but they had never been employed by the farmer.

4 MR. WITTGRAF: Okay. So that's five in addition to
5 ten. That's 15 out of 40?

6 MR. GEMPLER: Right.

7 MR. WITTGRAF: The 25 remaining, then, apparently
8 did get some kind of what you called "nuisance value"
9 settlement, I think.

10 MR. GEMPLER: Correct.

11 MR. WITTGRAF: Were the claims, then, of those 25,
12 so far as you know, legitimate claims?

13 MR. GEMPLER: It was a technical violation of the
14 Migrant Seasonal Worker Protection Act that within the scope
15 of that law were legitimate to be brought.

16 MR. WITTGRAF: Thank you.

17 MR. GEMPLER: Yes. But my point here is that the
18 amount of money that it took to resolve this case was very
19 disproportionate to the amount of damages. If we went into
20 detail, I think you would see it was a very minor thing.
21 There was no dishonesty involved.

22 MR. KIRK: How much did you spend on attorney's

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1 fees?

2 MR. GEMPLER: Over \$40,000 in that particular case.

3 MR. KIRK: For a \$7,000 settlement?

4 MR. GEMPLER: Correct. And that's just what we
5 could get Evergreen to -- or the employer could get Evergreen
6 to settle for.

7 Case No. 2: This is a particularly powerful
8 example, I believe, and there are letters that will be
9 provided to you in chronological order pertaining to this
10 case.

11 It's a nuisance value case in which claims of
12 multiple MSWPA violations led to a demand by the Legal
13 Services attorney to pay damages of approximately \$20,000 or
14 else face costly and protracted litigation.

15 Now, this was after, I believe, four letters, an
16 exchange of two letters each, in which they started out -- it
17 was Texas Rural Legal Aid, an out of state grantee -- on
18 behalf of a family working up in Washington State.

19 They eventually got to \$20,000, and the gist of case
20 is they realize they had absolutely no case, but they demanded
21 \$20,000 because they knew they could get it, and that's
22 basically what they say in the letter, and the letters are

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1 provide to you. They make the threat of protracted and costly
2 litigation unless you give us the 20 grand.

3 "We know you're not guilty of any MSWPA violations.
4 We know we have no cases, now that you've sent us this
5 evidence in your letters, but to come down here to Texas and
6 try this case, it's going to cost you a lot of money. So
7 \$20,000, or we go all the way with it."

8 CHAIRMAN UDDO: Ken has those letters?

9 MR. GEMPLER: Yeah. You bet.

10 MR. WITTGRAF: Was that litigation in Texas or
11 brought by Texas Rural Legal Aid?

12 MR. GEMPLER: Brought by Texas Rural Legal Aid.

13 MR. WITTGRAF: It's actually in the State of
14 Washington, was it not?

15 MR. GEMPLER: The claim was made against the
16 Washington State employer.

17 MR. WITTGRAF: You were saying "come down here,"
18 which I thought meant from the State of Washington to the
19 State of Texas. I think TRLA probably brought it in the State
20 of Washington, didn't it?

21 MR. GEMPLER: You know, I am not sure. I was
22 informed by the attorney representing the grower that it would

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1 have to be tried in Texas, and that's as much as I know.

2 MR. KIRK: Go ahead, sir.

3 MR. GEMPLER: There are four letters, I believe,
4 pertaining to that case. Case No. 3: A dispute over an
5 alleged underpayment of \$4,360.80 resulted in an initial
6 demand letter from Evergreen Legal to the grower for \$162,000
7 in damages, and that letter is also provided to you; it's the
8 last letter in your packet.

9 The Evergreen Legal Services attorney refused to
10 make a reasonable settlement offer. The case was ultimately
11 settled one day before trial, after great legal expense by the
12 grower, for a total settlement of 9,000. This case was also a
13 nuisance value case in which the settlement was made without
14 regard to merit for the facts in the case.

15 MR. KIRK: Are you saying he paid the \$9,000
16 probably earlier, but then waited until the day before trial
17 to accept?

18 MR. GEMPLER: (Nodding)

19 MR. KIRK: What were the attorney's fees in that
20 case?

21 MR. GEMPLER: I don't know what the total attorney's
22 fees were. I believe they were over \$10,000. The estimated

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1 trial cost was at least \$20,000, because of the number of
2 plaintiffs, and so they settled immediately before trial.

3 Case No. 4: A case in which the employer's
4 bookkeeper accidentally overpaid 19 employees by \$7,125. She
5 made a mistake in calculations, paid gross wages instead of
6 net wages. Acting on the advice of a U.S. Department of Labor
7 and Wage an Hour agent out of region 10 in Seattle, the
8 employer attempted to recoup the over payment by deducting the
9 money from employee's wages.

10 Washington state law prohibits wage deductions
11 unless prior consent has been given by the employees, other
12 than those that are required by law. The U.S. Department of
13 Labor agent didn't know that, and the grower, not being an
14 attorney and not up on those technicalities and all didn't
15 know that.

16 A complaint was made by an employee, when he
17 received a slimmer check than he anticipated, through
18 Evergreen Legal Services about the final deduction. The
19 Evergreen attorney was fully aware from the beginning of the
20 advice of the U.S. Department of Labor agent, yet made an
21 initial demand of the employer for payment of \$76,000.

22 Remember, the overpayment that this grower was

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1 trying to get back was \$7,125. So there was no attempt to
2 really just resolve the issue and solve the problem for the
3 employees, but rather punishment right away, the extortion
4 routine.

5 The Evergreen attorney never lowered the demand
6 below \$42,000 until brought before a U.S. magistrate for
7 settlement conference. The employer eventually settled for
8 23,000 because the Evergreen attorney was forcing the
9 unnecessary depositions of the 19 plaintiffs and making the
10 process of discovery and the trial burdensome and expensive.
11 Clearly a nuisance value case where trial was avoided by
12 settling out of court.

13 No. 6, I'll skip over one here, in case we run out
14 of time, a case in which Evergreen Legal knew the employer was
15 using the Interstate Clearance Order system run by the United
16 States Department of Labor.

17 The grower was paying wages approved by USDOL.
18 There's a lot of regulation and oversight of this program.
19 U.S. Department of Labor is intimately involved. Evergreen
20 sued the employer and the United States Department of Labor in
21 order to change an interpretation by U.S. Department of Labor
22 by approving piece rates equaling prevailing wages, their

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1 calculation method.

2 U.S. Department of Labor settled out of court on
3 undisclosed terms with Evergreen Legal Services, including
4 U.S. Department of Labor agreeing to change the interpretation
5 in question. Evergreen then continued suing the employer
6 despite the U.S. Department of Labor settlement.

7 The named plaintiff in this case worked only for 29
8 hours for the employer then suffered an apparent industrial
9 injury. The employer offered to pay for the transport of the
10 injured employee back to his home state of Texas, and in
11 return, the plaintiff signed a release of all claims related
12 to employment, which was drafted by Evergreen Legal Services.

13 The plaintiff and Evergreen Legal Services did not
14 abide by the release, and Evergreen pursued the suit against
15 the employer.

16 Case No. 8: During a strike at a Washington
17 orchard, a preliminary injunction was obtained by the employer
18 against continued picketing by the United Farm Workers of
19 Washington state, an agricultural labor union.

20 It was during pruning in an orchard. There was no
21 actual representation by this union. It was their first
22 attempt at organizing in central Washington in quite a few

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1 years, and they had a big march with church leaders and so on;
2 it was a big media event, and they wanted to get a good start,
3 basically.

4 The foreman, who managed the ranch, had a wife who
5 had cancer in its last stages, and the people on the picket
6 line were attempting to talk to the employees -- not the
7 employees who were actually on strike -- they were trying to
8 talk the employees out of the orchard where they were pruning,
9 were using bullhorns, and thus the injunction against the use
10 of bullhorns.

11 The United Farm Workers of Washington State wanted
12 to fight the injunction, and the head of the Evergreen Legal
13 Services farm worker division decided to assist the union. He
14 attempted to intervene on behalf of 25 farm workers whose
15 interest in the suit was suspect.

16 The only way that Evergreen could represent the
17 union was to have eligible clients involved in the suit. The
18 25 plaintiffs would probably not have joined the lawsuit if
19 they had not been solicited by Evergreen to provide a cover
20 for challenging the injunction.

21 Depositions were scheduled by the employer's
22 attorney. The Evergreen attorney refused to produce his

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1 clients. The judge denied the motion to intervene. The
2 result was that the Evergreen Legal Services attorney was able
3 to assist the UFW for three months on government money, even
4 though he didn't represent any clients who were party to the
5 lawsuit.

6 The Evergreen attorney did the three months of work
7 on the assumption that the intervention would ultimately be
8 granted.

9 Case No. 9: This was another case on which the
10 claim was settled without regard to the merit of the facts in
11 the case. Evergreen claimed the Fair Labor Standards Act and
12 Migrant Seasonal Worker Protection Act had been violated.

13 The plaintiffs claimed that they had not been
14 informed of the extension of harvest, while other employees
15 were ready and willing to testify that the plaintiffs were
16 fully knowledgeable of the expected term of employment. No
17 actual damages to the plaintiffs were claimed.

18 The employer settled for \$6,000 because he thought
19 it would have cost over three times that amount to try the
20 case and prove his innocence.

21 Case No. 6, I believe I omitted. It's an unusual
22 case I believe I did. If I'm repeating myself, please correct

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1 me. It's an unusual case in that the employer decided to
2 fight on the basis of principle and go all the way, believed
3 he was entirely innocent and took it all the way, which is
4 very unusual.

5 The street language in Washington State is, you
6 know, these are all extortion lawsuits; it's legal extortion.
7 You just pay up, because you feel like you have a gun to your
8 head.

9 In this case, the employer did win the case, but he
10 spent over \$30,000 in attorney's fees to prove that the
11 Evergreen Legal Services case had no merit. The judge found
12 that Evergreen had failed to prove that the plaintiffs were
13 damaged in any way at all, yet Evergreen dragged the employer
14 into a costly suit.

15 MR. DANA: Is that the DOL case?

16 MR. GEMPLER: No.

17 MR. DANA: Department of Labor Case?

18 MR. GEMPLER: No. That's another case altogether.
19 That's a recruitment case. A gentlemen claimed that he had
20 been promised a job when, in fact, he hadn't been. There are
21 a couple of other cases that are in there that I'll let you
22 read on your own.

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1 CHAIRMAN UDDO: Let me just ask a question, Mr.
2 Gempler. The No. 2 case, I guess it is, the four letters in
3 here?

4 MR. GEMPLER: Yes.

5 CHAIRMAN UDDO: What was the final result of that
6 case?

7 MR. GEMPLER: Oh, it's ongoing.

8 CHAIRMAN UDDO: It's in litigation?

9 MR. GEMPLER: No. The last letter received from
10 Texas Rural Legal Aid was the letter demanding the \$20,000 or
11 face the fact --

12 CHAIRMAN UDDO: All right. But the growers'
13 attorney responded to that, basically saying they weren't
14 going to pay it, from what I read. Do you know what happened
15 after that?

16 MR. GEMPLER: No response yet.

17 CHAIRMAN UDDO: Has a lawsuit been filed?

18 MR. GEMPLER: Not as far as I know. That is
19 ongoing. They're kind of in the middle of that. What I'd
20 like to do is talk a little bit about what I personally see
21 law being.

22 I spent a lot of time in Olympia, Washington,

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1 lobbying on behalf of my members, and I know most of the
2 Evergreen Legal Service's attorneys, end up serving on
3 advisory committees with them or going to public hearings with
4 them. I will eat lunch with them and discuss what we're
5 working on, code revising, workshops.

6 They are regularly at the table. They are an
7 expected and regular part of that process on government money.
8 I see them having personal contacts with legislators,
9 participating in legislative committee hearings, regulatory
10 hearings, advisory committees, and work groups on proposed
11 regulations, among other things.

12 MR. WITTGRAF: Let me interrupt you just a moment,
13 Mr. Gempler. Is it your sense that they're asked to do that
14 by legislators involved in the process --

15 MR. GEMPLER: Obviously, on an advisory --

16 MR. WITTGRAF: -- establishing advisory committees?

17 MR. GEMPLER: Obviously then, yes, but otherwise,
18 no. They've been particularly involved recently in worker
19 exposure issues, pesticide exposure, which is a legitimate
20 concern of everybody, but they have been very, very involved
21 in trying to shift the burden of responsibility or the
22 enforcement of pesticide regulations in our state from

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1 Department of Agriculture to Department of Labor and
2 Industries, and I have letters to that effect, and they lobby
3 very, very heavily in the background; they're a big part of
4 it.

5 They also coordinate with a group called Centro
6 Campesino. It's a farm worker advocacy group, United Farm
7 Workers of Washington state, particularly on the pesticide
8 issues.

9 The last thing I'd like to address is the
10 solicitation that I see, what I perceive to be solicitation.
11 I've seen Evergreen Legal Services attorneys personally
12 showing up at labor disturbances where the UFW again was
13 making a push a couple years ago to organize farm workers in
14 Washington state, and the Legal Services' attorneys would show
15 up where the picket lines were and talk and hang out, and so
16 on.

17 The thing you need to understand is that they're all
18 housed together kind of in a little compound. There's
19 Evergreen Legal Services, United Farm Workers of Washington
20 State, and Centro Campesino. So physically, there is a very
21 close association. They often kind of share staff. When I
22 call one office, I get somebody who works for another office

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1 there, manning the phones; that kind of thing.

2 So they're coordinating very, very closely together.
3 So it's like one show. So when they show up at the picket
4 line, it's not necessarily a surprise. They talk about
5 settlements that have recently been made on a public Spanish
6 language radio station out of central Yakima Valley.

7 The message, although they don't say these words,
8 the message is, "Come see us; we'll get you money." That's
9 the message. When a seasonal ag employee hears about the ten
10 guys who thought they were underpaid because the grower said
11 they only picked 20 bins when they thought they picked 25
12 bins, and end up with 15,000 apiece in their pockets because
13 of the damages allowed under MSWPA, that's a pretty good
14 incentive to give it a try. So when they talk about those
15 cases over the radio, we believe that, to a certain extent,
16 that's solicitation.

17 Last but not least, Evergreen Legal Services
18 attorneys have been accompanying field enforcement officers of
19 the Washington State Department of Labor and Industries
20 Employment Standards Division on their field investigations.
21 They ride with them in the cars when they're going out to do
22 enforcement checks, enforcement audits, to see if people are

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1 paying the right wages, keeping hours, and so on.

2 I think that's inappropriate, and most likely, some
3 sort of solicitation is taking place. As I have said, you'll
4 have letters from Mr. Boehm.

5 CHAIRMAN UDDO: Thank you, Mr. Gempler. We'll go to
6 Mr. Kirk for questions. I have to run out and make a quick
7 phone call. Mr. Wittgraf, would you chair the meeting in my
8 absence?

9 MR. KIRK: I'll just defer this time to Mr.
10 Wittgraf.

11 MR. WITTGRAF: Thank you, Mr. Kirk. Mr. Gempler, a
12 couple more questions. I haven't seen the materials that you
13 brought, and I thank you on behalf of all of us for bringing
14 those materials. What time frame do those materials cover, do
15 you recall?

16 MR. GEMPLER: I believe the earliest case is
17 probably '86 or '87. Most of them are very recent. We run a
18 legal service through our association, keep an attorney on
19 retainer, in order to give employers accurate legal advice
20 when they want to make an employment decision.

21 We also run seminars, legal seminars, on Migrant
22 Seasonal Work Protection Act and that kind of thing, do a lot

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1 of intensive grower education. So I'm very aware of what
2 cases are ongoing, MSWPA cases, for example, at all times.

3 So we have access to ongoing litigation, recent
4 litigation. So most of these are -- they may have been
5 started in '86, but as you know, with litigation, it takes a
6 long time to resolve them. Most of these are '88 or since
7 then.

8 MR. WITTGRAF: How many grower producer members are
9 there in the Washington Growers League, approximately?

10 MR. GEMPLER: At this time 550, and we are on a
11 pretty steady growth curve. We're new, new kids on the block,
12 and it's a new concept for people to belong to an organization
13 that's organized around one issue such as this, which is just
14 labor and educating and representing them on labor issues.

15 MR. WITTGRAF: Any idea how many grower producers
16 there are in the State of Washington?

17 MR. GEMPLER: Labor intensive, people who meet
18 substantial payrolls. Let me run down the list here. There's
19 about 4,500 tree fruit growers, actually about 5,000, when you
20 include all tree fruits; about 400 asparagus growers, about
21 100 hop growers, and the vegetable and berry people and the
22 dairy people. I mean, you're probably adding another 5,000 to

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1 10,000 by the time you get all done. There are a lot of small
2 growers, smaller growers.

3 MR. WITTGRAF: And of that some 15,000 to 20,000,
4 that's the group that you're soliciting the membership from,
5 the 550 and growing, and the interest that you represent cover
6 those different areas of agricultural production?

7 MR. GEMPLER: Right.

8 MR. WITTGRAF: In your experience, and, obviously,
9 the legal part of it isn't just your responsibility, but for
10 purposes of being with us today, you've focused on that; in
11 your experience or in the preparation you've made for visiting
12 with us this morning, have you come across any litigation
13 where anybody was involved over Legal Services attorneys ever?

14 MR. GEMPLER: On the plaintiff's side?

15 MR. WITTGRAF: On the plaintiff's side, right.

16 MR. GEMPLER: It's not always the plaintiff's side
17 that's a problem. Only in the case of the United Farm Workers
18 case that's detailed there in which there was a pro bono
19 attorney for a period of time. They ended up -- I believe
20 they had expected payment from the UFW, and the UFW didn't
21 have the money to do it, and they ate a lot of legal fees,
22 ended up being a pro bono case for them.

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1 That's why I think there was a lot of motivation for
2 Evergreen to get involved, because this other attorney was
3 balking and said, "Hey, I can't do this for free forever." So
4 Evergreen said, "Well, we'll find a way to jump in and work on
5 this." That's the only case.

6 As far as individual employers, which is, obviously,
7 the bulk of things, no. And I don't want you to get the idea
8 that we're still in a state where we have picket lines in
9 central Washington; we don't. That was 1987, when they were
10 trying to make this organizing effort; they had marches; they
11 really weren't strikes. They were demonstrations, and they go
12 outside of an orchard.

13 MR. WITTGRAF: A bit of a technical question. If it
14 goes beyond what you've had a chance to look at, just say so.
15 You've indicated, obviously, unhappiness on behalf your
16 organization and the members of the organization with the so-
17 called "nuisance" cases or settlements that were cost of
18 defense settlements for a seemingly not existent or minor
19 violations of some law.

20 MR. GEMPLER: That's right.

21 MR. WITTGRAF: I'm wondering, in the cases that
22 you've cited, are those all of the ones that have been brought

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1 to your attention, on the one hand, and on the other hand, are
2 you aware of the defense lawyers, who are the defendants,
3 having ever filed any complaints with any authorities in the
4 State of Washington about unethical legal use of the process,
5 abuse of the process, any kind of unethical behavior by the
6 lawyers?

7 MR. GEMPLER: As far as I know, that hasn't been
8 done. I believe that, in a general sense, there have been
9 complaints made to the Bar Association, particularly since
10 they give money to the interest on lawyer's trust accounts and
11 take a vote through the Washington State Bar Association to do
12 that.

13 A lot of attorneys have complained and said, "Hey,
14 you guys need to know what's going on, and don't make this a
15 guilt vote and just have somebody doing your pro bono work for
16 you here, because they're not doing a good job."

17 I think the big problem is that -- you know, where
18 there's smoke, there's fire, usually, right? Somebody feels
19 that they've been wronged. You know, some ag employees feels
20 he's been wronged. He has a problem; he wants to resolve it.
21 This isn't the way to go about doing it. You don't make a
22 demand for 162,000 bucks if the demand is \$4,000, if that's

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1 the extent of the damages.

2 So I'm not sure, in all these cases, that the
3 employees' interests are really being served, that there's a
4 quick resolution of the problem; people get paid what they're
5 supposed to be getting paid, or that kind of thing.

6 When it comes to MSWPA cases, when there's a
7 grotesque safety violation or something like that that
8 justifies punitive damages, that's another thing, but we're
9 not talking about that here, and I haven't seen those cases.

10 We're talking about where people perceive that they
11 have some money due them, and in order to resolve the case,
12 you have to go through the legal processes. Just with the
13 free attorney service, essentially, there's very little
14 incentive to pay attention to the merit of the case, and you
15 have to pay a lot of money, as an employer, to be involved,
16 and you just end up settling, because that's really your only
17 choice. Nobody has the money to take it all the way through.

18 MR. WITTGRAF: Approximately how many seasonal or
19 migrant workers in the State of Washington per year?

20 MR. GEMPLER: It's over 100,000. Through the State
21 of Washington Employment Security Department, over 100,000
22 individuals, the peak employment level is typically like 60 to

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1 70,000 a state. Around October 1st, peak of apple harvest, we
2 employ about 43,000 people in the harvesting of apples. We're
3 fourth in the nation in the number of seasonal agricultural
4 workers that we employ.

5 The number who are actually migrant is somewhere
6 around 50 percent of that total, and that number is becoming
7 less by the year.

8 MR. WITTGRAF: Thank you very much, Mr. Gempler.
9 Mr. Chairman?

10 CHAIRMAN UDDO: Mr. Dana?

11 MR. DANA: Are you familiar with the
12 McCollum/Stenholm bill?

13 MR. GEMPLER: Basically, yes. I'm not a technical
14 expert on any of these bills, but, basically, I'm familiar
15 with the difference between the Frank Amendments and the
16 McCollum/Stenholm Amendments.

17 MR. DANA: What particular sections of the McCollum
18 bill are of interest to you?

19 MR. GEMPLER: Well, I anticipated your question. I
20 was hoping you'd ask that.

21 MR. DANA: I'm glad I could oblige.

22 MR. GEMPLER: It seems as if the litigation

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1 safeguards; the plaintiffs to be identified and statement of
2 facts on file, that kind of thing, would go a long way,
3 hopefully, towards eliminating unmeritorious litigation.

4 Also, I really don't know what the language is
5 regarding this, but limitation of class actions or at least
6 something that prevents the deposition process from being used
7 as a economic weapon. Also, the solicitation, obviously.
8 There's another case I did not read to you.

9 Recently -- this happened two weeks ago -- which a
10 group of Evergreen employees, I don't know if any of them were
11 actually attorneys, they may have been paralegals, went to the
12 farm, a small apple farm of 33 acres -- this is not some big,
13 rich grower, now -- up in north central Washington has three
14 houses that he let's people live in.

15 So it wasn't exactly a deep-pocket situation there,
16 but this grower had written a letter to a new government body
17 we have called the Pesticide Incident Review and Tracking
18 Panel that evaluates the adequacy of pesticide reentry
19 standards in our state; it's a positive development for
20 everybody.

21 He didn't agree with one of their decisions on a
22 particular chemical. He said this reentry period was too

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1 long. Evergreen, as I told you previously, has been
2 intimately involved in this process and has been lobbying for
3 at least three years on the worker protection standards.

4 They were at that PIRT board hearing, where his
5 letter was read, and I think it's very coincidental that they
6 went out to his ranch and nobody else's in that relatively
7 isolated part of Washington State with video cameras to his
8 three houses for employee housing and knocked on the doors and
9 said, "Hi, we're from Evergreen Legal Services. Can we come
10 in and take pictures of your house?"

11 Now, there you are, these guys -- I don't know if
12 his employees were -- well, they weren't local people because
13 they were living in employee housing. They may have been from
14 Mexico; they may have been from California. They were
15 Hispanic. From what I understand from the employer, they had
16 limited English skills.

17 I'm not sure these Evergreen employees spoke
18 Spanish, perhaps they did, but the message I'm getting is that
19 they did not go up and say, "Hi, we're from Evergreen Legal
20 Services. We'd like to talk to you about conditions on your
21 farm, and you don't have to let us in." I mean, it's almost
22 like misrepresentation as government employees, like flashing

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1 your badge. "We're from Evergreen Legal."

2 And these guys are saying, "Hey, fine. We don't
3 want any trouble. Come on in." So they went in with video
4 cameras. The employer comes out and says, "Hey, what's going
5 on?" He knows that they have a right to be there. I mean,
6 that's private housing; that's private property at that point,
7 but he wanted to know what was going on, felt his employees
8 were being harassed.

9 The Evergreen employees were taking video pictures
10 of the employer, asking them what was going on, and he said,
11 "Stop the camera. I don't want to be filmed." They pointed
12 the camera away, kept the sound on, then brought the camera
13 back up on him, snuck around behind him, there were four of
14 them, and filmed, and he had to ask them again; this kind of
15 harassment.

16 He said, "Fine. I'm going in, and I'm calling my
17 attorney to find out what my rights are here," and he went in
18 to call his attorney, and in the meantime, they left.

19 So that's the kind of thing that happens. I mean,
20 it smacks of solicitation, that they're going out -- first of
21 all, there was a coincidence with the letter that this farmer
22 wrote. I mean, he has a right to be part of the process and

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1 express an opinion. I mean, it was just a letter to discover,
2 public government body, about what he thought about their
3 decision. And secondly, these people went out, I believe,
4 looking for business.

5 CHAIRMAN UDDO: Have you or any of the growers ever
6 thought of reporting any attorneys to the Bar Association for
7 conduct that might be violative of the Rules of Professional
8 Conduct?

9 MR. GEMPLER: Actually, I never really have thought
10 about doing that. Our attorneys, I would assume, if they
11 thought that was a reasonable course of action or an effective
12 course of action, would have suggested it. Maybe their
13 politically naive. I don't know. Maybe it would be good to
14 get that on the record. Perhaps we should start doing that.

15 CHAIRMAN UDDO: Well, most states have a separate
16 disciplinary system separate from just the Bar Association
17 itself, and the disciplinary system sometimes is the place
18 where some of those things could be worked out or conduct
19 could be penalized. Do we have a copy of your list of cases?

20 MR. GEMPLER: Yes.

21 CHAIRMAN UDDO: Okay, Mr. Gempler. Thank you very
22 much.

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1 MR. KIRK: Could I ask one more question?

2 CHAIRMAN UDDO: Yes, sure.

3 MR. KIRK: Mr. Gempler, is the fact that the Legal
4 Services Corporation as a threat, not only of causing legal
5 fees, but being able to cover legal fees, a tool that works as
6 settlement or convinces you to want to settle?

7 MR. GEMPLER: Oh, absolutely, and I'm sorry I didn't
8 include that in the wish list you gave me an opportunity to
9 give you, but yeah, absolutely. In fact, there was one
10 particular case in which the amount of attorney's fees
11 demanded were incredibly high, particularly in relation to the
12 amount of damages, and the Evergreen attorney did ask that the
13 grower pay those attorney's fees.

14 So yes, it can add substantially. You're talking
15 tens of thousands of dollars, and when it's already paid by
16 the government, it seems a little unfair.

17 MR. KIRK: With regard to the reporting to the Bar
18 Association, one person related to me that the same lawyers
19 are always out there, and the same growers are always there,
20 kind of like, you know, the policeman, and if you start
21 reporting the policeman for bad conduct, he's always going to
22 be there, his buddies are going to be there, and there's

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1 unfair reprisal. Have you felt any fear of reprisal, or do
2 growers feel fear of reprisal.

3 MR. GEMPLER: There's fear of reprisal. I'm not
4 convinced that it's happening in our state. As I've already
5 stated, there was a coincidence with this guy writing the
6 letter. Also, the interstate clearance order, I believe, was
7 definitely targeted by Evergreen Legal, that particular case,
8 because the union and Evergreen Legal did not want to see that
9 system succeed, because it brings in employees from out of
10 state, and it supposedly swells the labor force and drives
11 wages down, right? That's the old argument, which it does not
12 do. In fact, they were paying as high or higher.

13 But in any case, they targeted that, but I have no
14 examples of them going back against somebody who has made a
15 complaint to date. I wouldn't be surprised if it happened,
16 but by and large, after developing some kind of a relationship
17 with some of these attorneys, working for the past four years
18 on various advisory committees and so on, I don't think that
19 would be a big problem, but, again, it really wouldn't
20 surprise me.

21 MR. KIRK: All right. Thank you.

22 CHAIRMAN UDDO: Thank you, Mr. Gempler. Mr. Andrew

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1 Cowin from the Heritage Foundation. Welcome, Mr. Cowin.

2 PRESENTATION OF ANDREW COWIN

3 HERITAGE FOUNDATION

4 ANDREW COWIN: My name is Andrew Cowin, research
5 associate with the Heritage Foundation, which is a public
6 policy research organization in Washington, D.C. I just want
7 to go over some of the more general aspects of the legislation
8 in Legal Services, and what I see is really unquestionable
9 reforms that could be made in legal services.

10 About two years ago, I became interested in Legal
11 Services Corporation. At that time, a bill introduced by
12 Congressmen McCollum and Stenholm was a focus of disagreements
13 between conservatives and liberals. Opponents, and I
14 particularly remember Barney Frank, claimed that supporters of
15 McCollum/Stenholm couldn't care less about reform, but were
16 interested in crushing the Legal Services Corporation because
17 they saw it pursuing a left wing agenda.

18 I supported McCollum/Stenholm, but nevertheless
19 tried to objectively assess the charge made by Congressman
20 Frank. After considering the various issues and
21 controversies, I decided they could be divided into three
22 categories: one is ideological; two, economic; and three,

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1 real unquestionable reform.

2 I place abortion in the ideological category. Had
3 Legal Services been funding the pro-life Operation Rescue
4 legal effort instead of the Pro-Choice Planned Parenthood
5 court cases, there would have been an uproar from the left,
6 which is equally justified as the current uproar on the right.

7 As for the second category, economics, that was
8 where I classified the farmer/farm worker disputes. Both
9 sides have legitimate grievances to which hopefully you will
10 find an equitable solution.

11 The last category, real unquestionable reform,
12 included four items: effective penalties against waste,
13 fraud, and abuse; competition for services; effective
14 monitoring of attorney quality; and time-keeping for
15 attorneys. It's this last category, real unquestionable
16 reform, that I wish to address.

17 These four reforms encompass the necessities of any
18 government program in a modern democrat nation; that is,
19 accountability of the workers to their employer, in this case
20 the government, and accountability of the government to its
21 employer, the people. The fact that these safeguards have yet
22 to be established should be an embarrassment.

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1 Today, as we look around the world, this type of
2 lack of accountability is increasingly isolated to third world
3 dictatorships and communist governments.

4 One other thing I want to discuss that goes along
5 with accountability and I feel is also missing from legal
6 services, is openness; that is, the power of the taxpayer to
7 know how their money is being spent.

8 I want to talk generally about our system, and in
9 America, the people have a right to know what their government
10 is up to. Once the people find out, they can hold their
11 representatives accountable. That's why we have the Freedom
12 of Information Act, public hearings, and the Government
13 Printing Office.

14 That's what the constitution is based on; that's why
15 we hold elections. Legal Services falls outside this
16 tradition. In many respects, the grantees operate in secret,
17 even from their own government, and without fear of
18 punishment. Therefore, they cannot be held accountable for
19 their actions by the government or the people the government
20 represents.

21 Even the Central Intelligence Agency has more
22 restraints on it than a Legal Services grantee. This is a

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1 major concern. Accountability in government is truly a
2 cornerstone of democracy. The United States government,
3 unlike Zaire's, for example, cannot simply spend money on
4 whatever it pleases and tell the citizens to mind their own
5 business.

6 For democracy to work properly, citizens need to
7 know how government spends their money, and if they don't like
8 it, they should be able to do something about it, but this is
9 not the case with Legal Services.

10 When illegal activity is discovered, such as the
11 grantee director, who spent \$31,000 of LSC money to finance
12 his MBA, it is often by a chance tip from a disgruntled
13 employee. Furthermore, the sanctions are extremely limited.
14 Prosecuting a person who robbed the government is difficult.

15 Even the most readily available remedy to cut
16 funding of the grantee by an amount equal to what the was
17 stolen or used for illegal purposes requires lengthy
18 procedures which discourage their use.

19 In the two years since I first became interested in
20 Legal Services Corporation, the Berlin Wall has been
21 dismantled, and Checkpoint Charlie, where Soviet and American
22 spies were exchanged, has been moved to a museum.

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1 East Germany has been absorbed into West, and
2 Czechoslovakia, Poland, and Russia are actively trying to
3 reform their governments. But at Legal Services, the grantees
4 remain virtually unaccountable to the people.

5 Nevertheless, I am heartened to see that Barney
6 Frank and others, who have opposed reform in the past, have
7 finally agreed in principal that the Waste Fraud and Abuse
8 statutes should apply to Legal Services. This is progress.

9 However, you must ensure that the changes are real
10 and enforceable. Those proposed by Congressman Frank, with
11 all their restrictions on enforcement of the law, seemed aimed
12 more at protecting a guilty grantee than in safeguarding money
13 meant for the poor.

14 While failure to effectively enforce laws against
15 waste, fraud, and abuse is a most egregious failure, other
16 lapses need correcting. For one thing, it is very difficulty
17 to know exactly what it is that Legal Services grantees do
18 with the money they receive.

19 Too many barriers stand in the way of effective
20 monitoring. Thus, while we finally have agreement on waste,
21 fraud, and abuse, we have yet to find such agreement on
22 guaranteeing that the services the poor receive are the best

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1 available.

2 In last year's congressional debate, Congressman
3 Frank stated "He believes Legal Services does a good job," but
4 he can only hold a belief because he cannot possibly know what
5 kind of job Legal Services does. That information is not
6 available.

7 During the same debate, Congressman Stenholm stated
8 that Legal Services grantees do not have to keep any records
9 of how they are spending federal funds. Although monitors can
10 be sent to grantees and ask questions, no criminal law
11 prohibits the grantees from lying to the monitors.

12 Furthermore, attorneys are not required to maintain
13 time-keeping records, and as much as payments to lawyers form
14 the bulk of Legal Services expenses, and the lack of time-
15 keeping records makes it impossible to know what the attorneys
16 are doing, Legal Services cannot know if the bulk of its money
17 is well spent. Indeed, it cannot know if the money is even
18 being spent legally.

19 A simple question like what percentage of a
20 grantee's budget is spent on divorce cases, and what percent,
21 if any, is spent on illegal activities cannot be answered.
22 Another issue that must be addressed is the quality of service

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1 offered by Legal Services attorneys.

2 I mentioned earlier the lack of accountability and
3 how foreign that is to our political system, but another thing
4 that is foreign is lack of competition. The same grantees
5 that receive funding at the start of LSC still receive it, not
6 because they deliver the best service, but simply because they
7 were first.

8 Once again, this is an area where Legal Services has
9 more in common with third world dictatorships and communist
10 governments than with the American tradition of free
11 enterprise and competition. LSC came to mind last week when
12 the Heritage Foundation hosted a delegation from the Russian
13 republic.

14 These were followers of Boris Yeltzen who wanted
15 help in instituting capitalism in Russia. We took them on a
16 tour of a modern factory in Baltimore, and they were
17 astonished that only six people ran the factory; whereas, in
18 Russia they said at least 400 would be used.

19 They were told that the factory had to be run
20 efficiently, otherwise, it would go out of business. They
21 didn't understand the concept of going out of business. They
22 said, "Never in Russia's history had a government company gone

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1 out of business." In fact, every company formed in 1917, the
2 year of the Russian Revolution, is still around today.

3 Legal Services Corporation runs its grantee program
4 the same way the Russians run their companies, no competition,
5 and the grantees seem to think they have the right to eternal
6 funding. There's no excuse for this. America has 750,000
7 lawyers.

8 I used to work in a big Wall Street law firm, and I
9 can tell you there are numberless young attorneys who would
10 take a big cut in salary to do something rewarding like
11 represent the poor and divorced, landlord/tenant, wills, and
12 bankruptcy proceedings.

13 There's so many qualified people available to bid
14 their services, LSC should stop sending money to the grantees
15 simply because they happened to be there in the beginning. I
16 have four easy steps you can take to make things better: one,
17 institute time-keeping for attorneys. The biggest expense for
18 Legal Services grantees is lawyers' salaries.

19 There can be no way of knowing whether a particular
20 grantee uses taxpayers money effectively without knowing how
21 much time lawyers spend on cases. Additionally, due to the
22 controversy surrounding so many Legal Services grantees and

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1 the proven charges that work has been done on areas prohibited
2 by law, it's even more important to keep accurate records.

3 Objections by Legal Services attorneys to this
4 requirement are ludicrous. They begin to sound like gangsters
5 in court who continually invoke the Fifth Amendment to avoid
6 incriminating themselves.

7 Number two, allow competition for Legal Services
8 grant money. The current method of handing out LSC money
9 needs to change. Like the monarchy system of government,
10 where power is handed down based on inheritance rather than on
11 merit or ability, grantees receive funds simply because they
12 have always received funds.

13 The current system is particularly archaic because
14 of the lawyer glut in America. The government receives
15 competitive bids on almost everything, including paper clips,
16 erasers and pencils. Legal Services supporters often state
17 how important it is to defend the rights of the poor.

18 If they believe that the legal rights of the poor
19 are as important as decent paper clips at the Pentagon, Legal
20 Services should protect those rights through competition to
21 see who can deliver the best, most efficient service.

22 Number three, hold attorneys, not the programs they

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1 work for, responsible for waste, fraud, and abuse. The
2 current system is misdirected because it effectively holds the
3 program, rather than the attorney who works for the program,
4 responsible for legal violations.

5 As has often been pointed out, this punishes the
6 poor for the crimes of their lawyers. The provisions in HR
7 1345, which would apply a variety of federal laws to Legal
8 Services' attorneys makes sense. This would not only place
9 enforcement where it belongs, on the wrongdoer, but would also
10 enhance monitoring by applying to the attorneys federal laws
11 against false claims and statements.

12 And No. 4, improve monitoring of the grantees.
13 Improved monitoring should be two goals: one, to ensure that
14 no laws are being violated; and two, to determine the quality
15 of service provided by grantees.

16 Reform of the time-keeping rules, application of the
17 Federal False Claims Act, will go a long way toward realizing
18 these goals. One further reform would be to allow monitors to
19 receive from grantees the names of clients that are a matter
20 of public record. This will let monitors contact the clients
21 and determine whether they are satisfied with the service they
22 received at LSC.

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1 In combination, these three monitoring reforms will
2 let Legal Services Corporation set a standard by which to
3 judge recipients when receiving competitive bids for Legal
4 Service grants. Accurate information as to how money is
5 spent, what lawyers do with their time, and whether their
6 clients are satisfied will allow the grantors to decide who
7 can best handle the most landlord/tenant or Social Security or
8 bankruptcy cases.

9 It will provide a rational benchmark against which
10 to judge programs so that grants are made based on objective
11 criteria. Those are my four points. I don't see any
12 legitimate reason to oppose these reforms. They would make
13 Legal Services open and accountable to the people, which is
14 the way it should be in a democracy, and they would improve
15 the services delivered to the poor.

16 These reforms have nothing to do with ideology and
17 everything to do with good government. That's my statement.
18 Thank you.

19 CHAIRMAN UDDO: Thank you, Mr. Cowin. Mr. Kirk?
20 Well, I tell you what, how about I start from this side this
21 time, just to kind of give everyone -- oh, you have something?
22 Mr. Dana?

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1 MR. KIRK: I appreciate that, because when I sat on
2 that side, you always started with me, and now that you've sat
3 me on this side --

4 CHAIRMAN UDDO: Since you're moving to the left, I
5 thought you would --

6 MR. KIRK: It depends on where you're sitting out
7 there.

8 CHAIRMAN UDDO: Mr. Dana?

9 MR. DANA: Mr. Cowin, in your comments, on two or
10 three occasions, you talked about improving the quality of
11 service that our grantees lawyers provide, and you mentioned
12 time-keeping as a way of ensuring quality of service.

13 I confess, I'm not sure what the relationship is
14 between time-keeping and the quality of service. I think
15 there may be a relationship between the efficiency and the
16 cost effectiveness, and I welcome your response to that, but I
17 also would like you to list any other reforms that you think
18 the corporation and/or Congress should do to ensure increased
19 quality of service, as distinguished from efficiency or cost
20 effectiveness.

21 MR. COWIN: Well, I think that, on time-keeping, as
22 far as quality is concerned, it seems to me that it's just one

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1 indication of how well a lawyer operates. I imagine that most
2 of the cases that come to Legal Services are fairly simple
3 matters of just people with standard problems with their
4 checks or bankruptcy or, as I say, wills, divorce, whatever it
5 is; and one person who handles that in five days doesn't know
6 what he's doing, probably.

7 If it's on a simple question, and somebody handles
8 it in an hour probably does have some idea of what they're
9 doing, and it's not the only indication, but it's certainly
10 one way, one piece of information that would help you
11 determine whether these attorneys are doing a good job or not.

12 On the quality, it seems to me the most important
13 thing to know is what the clients feel the quality of their
14 service has been, not that they would necessarily -- they
15 probably don't have a lot of experience in legal service, but
16 it would be nice at least to talk to these people and get some
17 feeling from them of how they were treated, of what their
18 problem was, and whether it was handled properly.

19 I think that will be the most important reform,
20 would be to be able to talk to the clients about the kind of
21 service they're receiving.

22 MR. DANA: Okay.

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1 CHAIRMAN UDDO: Mr. Wittgraf?

2 MR. WITTGRAF: Thank you, Mr. Uddo. Mr. Cowin, you
3 indicated, as you began your comments, that you've had an
4 opportunity over the last two years, I think you said, to
5 spend some time studying legal services or Legal Services
6 Corporation. You don't mean on a full-time basis, do you?
7 You

8 MR. COWIN: No, I don't.

9 MR. WITTGRAF: Have you had a chance to spend any
10 time in the field, so to speak, with any Legal Services
11 attorneys?

12 MR. COWIN: No. All I really know -- what I know
13 about it is what I've read about it, and I'm also a lawyer,
14 and I've had some experience in the law and have been able to
15 judge some of what I've read against that, but I've read,
16 well, an awful lot of publications from Legal Services, talked
17 to a lot of people who have worked at Legal Services. I
18 followed the debate in Congress.

19 MR. WITTGRAF: On the one hand, I agree with you
20 about the value of competition, and that's something with
21 which, I guess our board, much like the Congress, has been
22 concerned in trying to figure out how that can be implemented

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1 in an instrumental, valuable way.

2 But go back one step. As you talk about time-
3 keeping, competition, criminal sanctions, applying the
4 individual attorneys, as you talk about monitoring, have you
5 found in your reading any particular problems that need to be
6 addressed?

7 I think the reform concepts you've talked about have
8 been philosophical, and I don't find necessarily that I
9 disagree with you philosophically. I'm wondering, though, if
10 there is some specific concerns that you have that you might
11 share with us as to inadequacies or shortcomings or problems?

12 MR. COWIN: I think the problem is that you don't
13 know what the shortcomings are, because you don't have these
14 reforms. If you don't have a good way of getting information,
15 you don't know what the problem is. That's why we have these
16 kind of reforms. I come from New York City, and when I was
17 growing up we studied Taminy Hall, and they would do the same
18 kind of thing.

19 They would put their friends on the payroll and have
20 absolutely no oversight, and we used to say, "Well, what's
21 wrong with this?" Well, you don't know what's wrong with it,
22 because there's no oversight.

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1 MR. WITTGRAF: Again, I understand what you're
2 saying, in sort of philosophical or conceptual terms. Mr.
3 Gempler, for whose testimony you were present, I believe, came
4 with some very specific concerns, obviously, in what you
5 characterized as the economic area.

6 You're talking about the accountability area or the
7 reform area. I don't think it's impossible to be aware of
8 problems if they exist, so I'll ask you again, perhaps
9 rhetorically this time, are you aware of anything? Is there
10 anything in particular that we need to be concerned with, in
11 terms of quality or in terms of inefficiency?

12 MR. COWIN: You're asking if I know of any cases
13 where a Legal Service attorney spent too long on a welfare
14 case, for example?

15 MR. WITTGRAF: That would be one way to answer the
16 question, but --

17 MR. COWIN: I haven't been out there, as I said,
18 investigating Legal Services, but the reason that the
19 government has these kinds of programs for oversight is so
20 that we can find out whether or not these problems exist.
21 Nobody really knows.

22 MR. WITTGRAF: You've read, I assume, the bulk of

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1 the Legal Services Corporation's employees out of Washington
2 are part of the Office of Monitoring Audit and Compliance,
3 have you not?

4 MR. COWIN: No, I haven't.

5 MR. WITTGRAF: Okay. And their responsibility is to
6 provide the very kind of oversight that you're talking about.

7 MR. COWIN: But, on the other hand, as I think I
8 mentioned, there are things like -- and I think even Barney
9 Frank, who originally opposed applying the Federal False
10 Claims Act and the other acts that would not provide criminal
11 sanctions against people misleading the monitors, there are no
12 sanctions. There are no effective sanctions against the
13 people, the lawyers, who are working for Legal Services.

14 So I don't know exactly what the monitors can find
15 out. As I understand it, what the monitors can discover is
16 limited. As Charlie Stenholm said, there's no law that
17 requires the attorneys to tell the monitors the truth, to
18 actually account for the federal funds that they're receiving.

19 You can have hundreds of monitors. You could have
20 -- everybody at Legal Services could be a monitor, but unless
21 there's something effective the monitors can do, they're not
22 worth as much as they could be. The point would be to change

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1 the laws so that the monitors can do their job better.

2 One of the ways they could do their job better would
3 be if they could talk to the clients. As I understand it,
4 they cannot easily get a list of the clients from the Legal
5 Service grantees.

6 Now, it seems to me that if you're rich and you want
7 a lawyer, then you have a choice, you have a choice of what
8 law firm to go to. But these people are poor; they don't have
9 the choice, and Legal Services Corporation, you would think,
10 would take the time to find out if the service that's being
11 delivered by the grantees are any good.

12 The way to do that, and what the monitors could be
13 doing, it seems to me, is to get a list of the clients and go
14 out there and find out what happened. It would be nice if
15 there were monitors who had some experience and background in
16 handling poverty cases so they would know whether or not the
17 grantees were actually doing a good job.

18 MR. WITTGRAF: Would you be surprised if I told you
19 that that's done already, both by the grantees and by the
20 monitors.

21 MR. COWIN: I would be surprised, because, as I
22 understand it, there is no requirement to turn over the list

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1 of clients, even to publicly, the public, the list, the names
2 that are made of public record to the monitors.

3 MR. WITTGRAF: One final question. You made a
4 comment earlier in your remarks, and I think in reference to
5 time-keeping, as you were talking about that reform, a
6 reference to the controversy surrounding so many grantees.
7 Could you elaborate on that a little bit what you had in mind?

8 MR. COWIN: Sure. I didn't bring the litany of
9 cases with me, because I assume that you're familiar with it,
10 but, you know, the lesbian sheriff with AIDS. I understand
11 there was a case where one of the Texas grantees brought suit
12 for -- a class action suit for a lesbian sheriff with AIDS and
13 all similarly situated people, and the Nicaraguan peace convoy
14 case, some of the preparation of Planned Parenthood.

15 As I say, I didn't -- there's a whole litany of
16 cases, which I assumed that you know, and I didn't bring with
17 me.

18 MR. WITTGRAF: I guess, as we look at 324, 325
19 grantees, and at least as I visited a few in the Midwest, I
20 haven't found much controversy surrounding those grantees that
21 I've he had a chance to get to know --

22 MR. COWIN: Can I ask you, though -- I mean, you are

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1 aware that there is some controversy surrounding some of the
2 grantees?

3 MR. WITTGRAF: Certainly. Texas Rural Legal
4 Assistance has involved itself in some things that are
5 controversial. California Rural Legal Assistance has involved
6 itself in some things that are controversial, but much as Mr.
7 Gempler and I didn't have this colloquy, but I guess, when we
8 assume that adverse economic interests are concerned that's
9 necessarily controversial.

10 When one of those adverse interests is being
11 represented by a federally funded attorney, that's going to
12 make some people why are my federal tax dollars being used for
13 that. So certainly there is controversy, but I take some
14 exception, I guess, to your comment that it surrounds so many
15 grantees.

16 In fact, in my experience thus far, which isn't as
17 long as your two years of experience, mine's only about 15 or
18 16 months, but I haven't found controversy surrounding many
19 grantees. I was just surprised, and that's why I asked you
20 question.

21 MR. COWIN: Well, I guess it's a question of what so
22 many -- I guess even when Mr. Davidson was here, you didn't

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1 think 10 percent was a great number, but he thought that 10
2 percent was a large number.

3 As I say, it just seems to me that people really are
4 upset with Legal Services Corporation. There are people out
5 there who are saying, some individuals who don't necessarily
6 do and chase at windmills and get upset very easily, who
7 really feel that the Legal Services' grantees are taking on
8 ideological cases.

9 As I say, there's a whole litany of cases, which I'm
10 sure you're aware of, and I know you are and don't need to go
11 through them, but it just seems that these people are not
12 insane, that really it's something that should be looked at.

13 You have 199 congressmen who voted in favor of
14 McCollum/Stenholm to make some pretty serious reforms of the
15 Legal Services Corporation, and those people aren't crazy
16 either.

17 There really is a problem, and to say that, well,
18 you know, there really isn't a problem, it's not many, many
19 grantees, there's only grantees is not really -- you know, it
20 may be even factually correct but doesn't go to what is
21 disturbing people, and I really think you have to show some
22 concern for that.

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

2 CHAIRMAN UDDO: Mr. Kirk.

3 MR. WITTGRAF: Thank you, Mr. Cowin.

4 MR. KIRK: Just a couple of comments, Mr. Cowin, on
5 competition. I think that you're going to find that the whole
6 legal system or all of us lawyers have, for years, felt that
7 the rendering of legal services, in whatever form, did not
8 lend itself well to competition, and we've gone through
9 studies, and there's been the San Diego study, and the San
10 Antonio studies and what have you.

11 But more recently, private enterprise, corporate
12 America, capitalism, has found out about competition among
13 lawyers, and what we on this committee don't know I'll assure
14 you is happening in the market place out there.

15 If you read the recent American Lawyer of how EDS is
16 handling their legal services, there's a compendium of
17 comments by general counsel of the large corporations of
18 America; lawyers are now going to have to work on competition,
19 and I think that the lack of basis that we have had for
20 instilling competition or installing competition within the
21 Legal Services Corporation is probably going to fall by
22 wayside, because I think that out there now are some really

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1 good models for us to follow.

2 And I'll tell you what, my law firm now is competing
3 for legal services, and my biggest client sent a letter and
4 says, "Hey, you're competing with other firms. We're going to
5 see what you do, how you do it, what services you render, and
6 what the cost is."

7 So I think that you're going to see a lot of
8 progress in the next year or two, because we've got some
9 models to follow, but I appreciate your comments, and I wanted
10 to share that with you.

11 MR. COWIN: Well, that's a terrific development, and
12 I look forward to that happening, as well as -- and I think
13 now there's some agreement on applying the Waste Fraud and
14 Abuse statutes to Legal Services, so that's progress.

15 CHAIRMAN UDDO: Mr. Dana informs me he has one more
16 question.

17 MR. COWIN: Yes.

18 MR. DANA: Many people are concerned about
19 competition or the competition proposal in this legislation
20 because they see it as a centralization of power in the
21 corporation that we're directors of. A Washington
22 bureaucracy, which is already not insubstantial, would grow

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1 with substantial additional responsibilities, because, as
2 envisioned, they would ultimately decide whether this law firm
3 or that law firm received a federal contract.

4 I am surprised, frankly, that the Heritage
5 Foundation would be pushing a proposal to expand a Washington
6 bureaucracy to solve a problem that historically -- to solve
7 this problem through more intrusive control from inside the
8 Beltway.

9 Mr. Kirk and I are in firms that compete with other
10 firms, and the ultimate decision-maker is the client, whether
11 they be big clients or little clients. They're all out there
12 compete; they have multiple choices.

13 What the proponents of competition, and many of the
14 proponents of competition who have spoken to us today are
15 espousing are competition every year or every two or three
16 careers to move from one monopoly to the next. They aren't
17 talking about competition in the sense that billable attorneys
18 that -- where you were, when you were in a Wall Street law
19 firm, you were filling out time sheets and competing for
20 business.

21 You weren't necessarily, and I've admired many of
22 the positions of the Heritage Foundation. I thought I could

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1 get where they would be. I find the notion that they are
2 espousing, the centralization of Legal Services in a
3 Washington bureaucracy that would control through levels of
4 contract -- I mean, it is the prototype of the centralization
5 of a Russian communist regime that you were talking about
6 earlier.

7 MR. COWIN: Not really, because the Russian
8 communist regime, there is only one contractor, there is only
9 one person that gets the contract, and that's the government.

10 MR. DANA: I understood you to say that every single
11 business that was formed in Russia in 1917 is still operating
12 today --

13 MR. COWIN: Exactly.

14 MR. DANA: -- because the government funds them.

15 MR. COWIN: Well, that's right.

16 MR. DANA: And one of our problems, I think, with
17 Russia is that they don't understand the notion of
18 competition.

19 MR. COWIN: Right. Can I just give you an example?
20 I have no problem with a firm getting a contract for a full
21 year, being the only firm to handle it for that year, and this
22 is standard, I think, in government contracts.

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1 I'll give you an example. In Phoenix, they're
2 trying to privatize the garbage service and they let out
3 contracts. They had competition between private contractors
4 and the public sanitation department that was picking up
5 garbage in Phoenix, and they had to compete to see who would
6 pick up the most garbage.

7 The government wound up -- they divided up the city
8 into sections, and the government granted the contracts
9 depending on who gave the best bid and promised the best
10 service for each section, and they did it for a year. I don't
11 have any problem with that.

12 I don't see why that's difficult, what's wrong with
13 the competition, and then this company wins in that section
14 for this year, and if somebody else gives a better bid the
15 next year, then they can win in that section.

16 Also, there's a better example, really, of Legal
17 Services in New York, which I'm sure you're aware of, the
18 Legal Aid Society, I think it was Bob Abrahms office, the
19 attorney general up there, decided that "We're not going to
20 keep legal aid on this contract. We're going to put out bids
21 and have the best person handle the legal needs of the poor,"
22 and the Legal Aid Society was just up in arms.

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1 "This is horrible. They're asking us to actually
2 contain costs and do things." Well, I think Legal Aid wound
3 up getting that contract, retaining the contract, but now the
4 state and the poor people have a much better deal. I don't
5 see how that is similar to the Russian system at all where
6 there's really no accountability, where just people go out and
7 do whatever they want and continue to get funded, and no
8 matter how many mistakes they make, it doesn't matter, and how
9 bad the service is, it doesn't matter.

10 No, it's not an ideal situation to have the
11 government handing out, a big bureaucracy in Washington
12 handing out money, even based on competition. I agree with
13 you on that, but it's not an ideal world either, and I think
14 this is far better than what you have today.

15 CHAIRMAN UDDO: Mr. Cowin, just on that last point,
16 in Chicago we testimony from Professor Cox, Steven Cox, who
17 conducted a study on competition for the corporation sometime
18 ago. If you've been doing reading about Legal Services, you
19 may have run across his name in his study.

20 He told us pretty much the exact opposite of what
21 you just said, and that is, the worst thing we could do would
22 be to implement competition where you go from one monopoly to

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1 another; that the only kind of competition that's going to
2 really improve Legal Services delivery to poor folks is
3 constant competition where the consumer has some choice.

4 So I think that sort of highlights the problem that
5 this committee has and the board has that there are very
6 reputable proponents of a variety of positions on competition
7 that are contradictory to some extent, and I think that it's
8 an experiment right now at best.

9 The problem that we have is to try to figure out
10 what makes sense to propose as a course that the corporation
11 might take and implement competition.

12 MR. COWIN: Well, I don't know why you can't do both
13 and figure out which is -- I mean, I take it that Professor
14 Cox thinks the system now needs to be changed.

15 CHAIRMAN UDDO: He's a proponent of competition, but
16 not the kind you're talking about.

17 MR. COWIN: Well, what he wants to do is he wants
18 the individual poor people to go to one of 10 or 20 or 30.

19 CHAIRMAN UDDO: To have choices, right.

20 MR. COWIN: Like having a voucher system, something
21 like that? Is that what you're talking about? That sounds
22 good, too. I mean, I think that's great also, but I don't

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1 have any particular problem with that.

2 My point is that you need some form of competition
3 and not having -- really, I didn't actually get to thinking
4 through the voucher concept. I just wanted to take it -- I
5 mean, just one step better would be to have some form of
6 competition in competitive bidding, it seems to me, and the
7 voucher concept might even work even better than that, but
8 some form of competition would be nice, and in fact is really
9 necessary, and I hope that you institute it. I don't know why
10 you couldn't do one form in one place and one form in another
11 place and determine which one is better.

12 CHAIRMAN UDDO: I don't think anybody's saying we
13 can't. The question is, I don't think anyone has thought it a
14 through enough to know how to do it, where to do it, and under
15 what the circumstances to do it.

16 MR. COWIN: But anything's better than this system
17 now, right?

18 CHAIRMAN UDDO: Well, the endorsement of the idea of
19 competition is only the first step. I mean, I think there's a
20 lot more to it, and I think it's being discussed in somewhat
21 simplistic terms, that need to implement competition, but
22 that's only the first most minimal step, because then, when we

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1 start asking questions about how to implement it, there are an
2 awful lot of very, as I say, respectable views on what might be
3 an effective way to do it and what might be a disastrous way
4 to do it.

5 MR. COWIN: Yeah, but now you've got two possible
6 models, and you could do either one.

7 CHAIRMAN UDDO: I don't know if it's even that
8 simple, because I think that the delivery of legal services is
9 complex. I mean, some things may work in some areas and not
10 in others, and I don't think we're sure which one. Some
11 things may work in rural areas that won't work in urban areas.
12 Urban areas tend to have far more providers to start with that
13 you could work into a competitive system.

14 My only point is that this committee has endorsed
15 the idea of competition, and I'm sure the board will, but
16 we're being urged to do more than that. And I think that it's
17 difficult to do more when no one is really quite sure what the
18 more is and what will work and what won't.

19 MR. COWIN: Well, let me make one final point, which
20 is that you've got absolutely nothing to lose by instituting
21 the monitoring reforms and the time-keeping reforms. And that
22 way, you'll have some benchmark, some objective criteria by

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1 which to judge the programs. And then you can have people--
2 even that the simplest thing would be to have people come in
3 and give competitive and you keep them there for a year.

4 And if they promised you to deliver certain services
5 and they don't do it, then you can do something about that;
6 you can take action against them. But to leave the system the
7 way it is now is a disaster. I think the first step has got
8 to be some form of competitive bidding. And you've got the
9 ways, the time-keeping, the monitoring to measure the
10 performance of your attorneys, and you really should institute
11 that.

12 CHAIRMAN UDDO: Thank you Mr. Cowin.

13 MR. COWIN: Thank you.

14 CHAIRMAN UDDO: I want to welcome Ms. Wolbeck who
15 joined us during this testimony. I'm glad you could make it.

16 Mr. Scully, John Scully, from the Washington Legal
17 Foundation?

18 PRESENTATION OF JOHN SCULLY

19 MR. SCULLY: Thank you. My name is John Scully, and
20 I'm an attorney with the Washington Legal Foundation. I want
21 to thank you for allowing me to testify here today.

22 The Washington Legal Foundation is a nonprofit law

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1 and policy center with over 120,000 members and supporters
2 nationwide. We're involved in a wide range of litigation and
3 a wide range of administrative rulemaking procedures. We also
4 have been involved in a lot of First Amendment issues, and
5 have filed a lot of Amicus briefs, particularly in First
6 Amendment area.

7 Let me first give a disclaimer here. The Washington
8 Legal Foundation does not endorse, support, or oppose any
9 legislative proposal. We just merely want to speak
10 specifically on one aspect of Legal Services that it is of
11 great concern to our members and supporters, and that we hope
12 this committee will address, and that is the First Amendment
13 implications of interest on lawyer trust accounts, IOLTAs.

14 I think this is an issue that, no matter where
15 members of the board might split on it, political or
16 ideological spectrum, no matter whether someone is a supporter
17 of Legal Services or thinks it should be totally defunded, is
18 something that should be of concern to all Americans who
19 treasure civil liberty.

20 In late April, the Washington Legal Foundation filed
21 a lawsuit challenging the constitutionality of the Interest on
22 Lawyer Trust Account program in Massachusetts. I'm sure you

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1 all are aware of how IOLTAs operate. They vary somewhat in
2 the 49 states where they're in existence and the District of
3 Columbia, but essentially what they do is they take the
4 interest from a client's money and turn that money over to an
5 organization which then later disburses the funds.

6 A large bulk of those funds currently go to Legal
7 Services grantees. The Washington Legal Foundation is, of
8 course, concerned about how all of that IOLTA money is used.
9 However, we are addressing specifically our concerns as when
10 Legal Services grantees accept IOLTA money and how that money
11 is used.

12 Litigation is, of course, a constitutional right--
13 not the subsidization of litigation, but the right to go into
14 court, the right to use the Administrative Rule, the right to
15 go into court. When an individual goes into court and, as a
16 condition of going into court or as a condition of hiring the
17 lawyer or perhaps as having just been trapped in the legal
18 system by becoming involved as a defendant in a suit or being
19 involved in a car accident, and he finds that he is being
20 compelled to subsidize a political or ideological cause as a
21 condition of using the legal process, his First Amendment
22 rights are implicated.

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1 How does this happen through IOLTA? Well, once the
2 funds go from the individual trust account into the bigger
3 pool that is then dished out, the various recipients can then
4 decide how to use that money. In some states, there are
5 limitations on how that IOLTA funds are used. In other states
6 there are no or virtually no limitations.

7 In many instances, when Legal Services grantees are
8 recipients of IOLTA funds, as in Massachusetts for instance,
9 the Legal Services grantees use their funds to engage in
10 litigation or legislative lobbying activities that they would
11 be prohibited from using federal funds for. So in essence, in
12 those situations, the Legal Services grantee is participating
13 in a system that deprives Joe Citizen out there, who was just
14 in a car accident or wanted to buy a house or was engaged in a
15 divorce, had to do something with the legal system, to
16 subsidizing the Legal Services grantees shows in political or
17 ideological agenda.

18 Now, I'm not going to speak to the merits of those
19 political or ideological agendas. One might be pro-choice and
20 think that abortion related litigation should be available to
21 individuals. One might be pro-life and think that pro-life
22 activity support should be available to individuals. No

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1 matter where one stands on any sort of legislative project, as
2 soon as it goes into the legislature, it becomes
3 controversial.

4 The point is that all of these activities are, by
5 their very nature, political or ideological. If it's
6 something going on in the legislature, if it's something that
7 a Legal Service grantee is lobbying on, it's something
8 political.

9 Even if it might be milquetoast, even if it's
10 something like making sure social security recipients get
11 their checks on time, if it's in the legislature, there's
12 somebody against it, there's some reason it's in the
13 legislature; it's a controverted issue. And oftentimes these
14 issues that IOLTA funds are used for are much more
15 controversial than making sure the mails run on time.

16 CHAIRMAN UDDO: Mr. Scully, let me interrupt you.

17 MR. SCULLY: Yes.

18 CHAIRMAN UDDO: I really need to get you to focus on
19 how this relates to reauthorization and what you want us to do
20 with respect to reauthorization.

21 MR. SCULLY: Okay. As long as the Legal Services
22 grantees are permitted to accept IOLTA funds, they will be

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1 impacting upon First Amendment rights of citizens. So what we
2 would urge this board to consider would be to adopt a policy
3 in the best of all worlds, where grantees would not be
4 permitted to participate in the infringement on First
5 Amendment rights.

6 Ways that could be done, for instance, would be to
7 require that no IOLTA funds be accepted by grantees unless (a)
8 those funds were generated through voluntary contributions and
9 not a mandatory program, and (b) full disclosure had been
10 given to the clients whose funds generated those funds that
11 eventually went to the Legal Services grantees.

12 A less comprehensive way to address that would be to
13 prohibit Legal Services grantees from using IOLTA funds to
14 engage in political or ideological activities. One first step
15 in that would be to prohibit them from using IOLTA funds for
16 anything they would be prohibited from using federal tax
17 dollars for.

18 I think that is a less broad and a less satisfying
19 solution because I think there's the likelihood of a Legal
20 Services grant -- because Legal Services grantees obviously
21 can use money for political and ideological purposes under
22 certain circumstances even with federal funds. But

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1 nevertheless, that would be at least a way of mitigating the
2 impact and the damage to the First Amendment rights of all of
3 those citizens out there who are just drawn into the court
4 system.

5 That basically sums up what the Washington Legal
6 Foundation would like you to consider.

7 CHAIRMAN UDDO: Thank you, Mr. Scully.

8 Mr. Kirk?

9 MR KIRK: I have nothing.

10 CHAIRMAN UDDO: Mr. Wittgraf?

11 MR. WITTGRAF: I don't think I have anything, thank
12 you.

13 CHAIRMAN UDDO: Mr. Dana?

14 MR. DANA: Mr. Scully, I have to make a disclosure.
15 I'm a member of the ABA IOLTA Commission, Interest on Lawyers'
16 Trust Accounts. I argued the case to bring IOLTA to name
17 where it is supplementing the funding of Legal Services from
18 this corporation.

19 I don't accept your characterization of what IOLTA
20 is or how IOLTA funds are generated. I think that if a client
21 had a property interest in the funds that they can't get
22 themselves, we would have had a problem long ago. It is not

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1 clear to me how your -- if Legal Services grantees are
2 prevented from taking IOLTA funds and those funds go elsewhere
3 to do what you represent, go to other organizations who are
4 not LSC grantees, to represent interests which Congress for
5 one reason or another has decided our interest that it doesn't
6 want to pay for, I don't see how the point you're making is
7 solved; it just is sort of a Pontius Pilate approach to the
8 problem.

9 So if there is, in fact, a problem, it would seem to
10 me that just making sure that the Legal Services grantees
11 don't touch this money is not solving it.

12 MR. SCULLY: Two points: first of all, with respect
13 to the property interest, there's two elements of that. First
14 of all, what has never been litigated in the courts with
15 respect to the property interest is the beneficial use of the
16 principal. What's ever been brought up, the cases coming out
17 of Florida and the sort of advisory opinions by the various
18 state supreme courts implementing IOLTAs, have discussed the
19 taking of the actual interest and not the taking of the
20 beneficial use of the property.

21 But I don't want focus on that taking issue. I
22 think that even if you put aside the argument as to whether

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1 the client has a property interest in the money placed into an
2 IOLTA account, the --

3 MR. DANA: They clearly have that, the only question
4 is whether they have a property interest in the interest that
5 they can't get.

6 MR. SCULLY: Right, well, that goes back to mine
7 about the beneficial use, in the taking of that beneficial
8 use. But what I'm just saying is putting all of that aside,
9 for argument's sake, for me to sort of conceive that beyond,
10 that does not still cure the First Amendment problem, because
11 an individual is still -- if he wants to participate in many
12 legal transactions -- is still forced to participate into the
13 IOLTA system.

14 Whether he had a property interest in that money
15 that's taken and given to the IOLTAs or not, he has to choose
16 -- the times when his entry into the system is somewhat
17 voluntary -- does he want to for instance choose to perhaps
18 subsidize something political or ideological that may go
19 against the very grain of his most fundamental beliefs, or
20 does he want to engage in this legal transaction he would be
21 otherwise entitled to? And that's the First Amendment
22 conflict right there.

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1 With respect to the Pontius Pilate problem, I do not
2 at all at all believe that if Legal Services grantees stopped
3 accepting IOLTA funds, that that would solve the
4 constitutionality problems of IOLTA. And that's why I
5 indicated that Washington Legal Foundation is concerned with
6 the broader problem but was merely going to address the Legal
7 Services Corporation's role in that.

8 Since Legal Services Corporation is one of the
9 largest receivers of IOLTA funds -- at least across the
10 country, perhaps not in main -- it certainly might have a
11 ripple effect where the implementors of IOLTAs, whether state
12 supreme courts or state legislatures, might rethink this First
13 Amendment implications and might decide to redirect the
14 program so as to take care of these First Amendment problems.

15 But I think more significantly, the question that
16 you all, as members of the Board of the Legal Services
17 Corporation, have to ask yourselves is whether you will be a
18 participant by allowing grantees to accept IOLTA funds, will,
19 in essence, be a participant in the impacting upon the First
20 Amendment rights of those citizens out there. And that's a
21 question that you, if you believe in civil liberties, have to
22 examine in your own conscience.

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1 CHAIRMAN UDDO: Thank you, Mr. Scully.

2 Mr. French? Mr. Al French, U.S. Department of
3 Agriculture?

4 MR. BOEHM: He stepped out for a second, I believe
5 he thought he was following Libby Whitley and Tom Wilson;
6 they're available.

7 CHAIRMAN UDDO: Okay.

8 Ms. Whitley and Mr. Wilson? Welcome to the
9 committee, you might want to identify yourselves for the
10 record, which I guess I haven't been getting everyone to do
11 today.

12 PRESENTATION OF LIBBY WHITLEY AND TOM WILSON

13 MS. WHITLEY: Thank you, Mr. Chairman. My name is
14 Libby Whitley. I'm here representing the American Farm Bureau
15 Federation. I serve as the assistant director of National
16 Affairs, here in the Washington office.

17 By way of description of the Farm Bureau, we
18 represent 3.9 million members in 50 states plus Puerto Rico.
19 Of those 3.9 million, about 2 million are farmers. I would
20 also say, by way of explanation, elaborating on some of
21 Mr. Gempler's earlier comments, agriculture is not a monolithic
22 industry. Not all farmers in the country are employers. We

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1 estimate that probably there are about 700,000 employers, and
2 of that, a minority are actually subject to wage and hour laws
3 and the worker protection standards, which generates the
4 problem with Legal Services.

5 It's in the context of our growers' problems with
6 Legal Services funded migrant advocacy activities that I want
7 to come before you today. We appreciate the opportunity to
8 share with the committee some of our concerns. As you all
9 probably know, over the years, the American Farm Bureau has
10 testified many times before this board and before Congress
11 about the problems that growers experience with Legal Services
12 grantees.

13 I want to assure you that our problems are very
14 real, practical problems. And we're seeing them right now in
15 probably, I estimate, about 20 states nationwide. It all has
16 to do the LSC prosecution and migrant farm worker claims.

17 And despite the fact that we've come to you pretty
18 consistently for the last 10 years, the problems continue
19 unabated, and, in fact, I would say, they're expanding
20 exponentially around the country right now in states where we
21 have not traditionally seen migrant farm worker litigation
22 problems, certainly up in through the northern tier of

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1 midwestern states is a good example.

2 In March of last year, Keith Eckel, who is president
3 of the Pennsylvania Farmers' Association, which is our
4 Pennsylvania affiliate, and he is also a board member and
5 member of the Farm Bureau Executive Committee, testified
6 before your board. He pointed out that our major problem lies
7 with the badly flawed Migrant and Seasonal Agricultural Worker
8 Protection Act -- we call it MSWPA, you'll also see it
9 referred to as AWPA.

10 Ironically enough, MSWPA was enacted as a consensus
11 measure between farm organizations, farm bureau, other ag
12 groups, migrant activists, including the Migrant Legal Action
13 program, one of your grantees, and the Reagan Labor
14 Department.

15 We have two major problems with MSWPA, and I'm
16 telling you this for background purposes. First is the
17 private right of action, which effectively eliminates any of
18 the administrative enforcement of the Act, so far as we can
19 see. The other problem is that there is no distinction in the
20 Act between technical de minimis violations and major
21 violations in the way it's administered by Legal Services
22 attorneys.

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1 And I would also say that at the appropriate time,
2 the industry may choose to pursue amendments to try to fix
3 MSWPA in Congress, and we acknowledge that this is not the
4 purview of this board. But we would not have the major
5 problems we do with MSWPA if we didn't have an activist
6 taxpayer-funded free bar, and that's the problem that we're
7 dealing with.

8 When you overlay the two provisions I mentioned a
9 moment ago with the existence of this free bar, you have what
10 we consider a toxic mix. And we're seeing the problem come to
11 fruition today.

12 We're in an unforeseen situation -- and I can assure
13 you that the Farm Bureau and I don't want to speak for other
14 agricultural groups, but I'm reasonably certain they would
15 share my view -- we would never have endorsed MSWPA had we any
16 idea of the extent of the problems it would cause within a
17 short five or six years. MSWPA was only enacted in 1984. It
18 has become fully implemented since 1985. And in six years, we
19 really have seen an onslaught of litigation of unprecedented
20 proportion.

21 And we hear a lot about the political and financial
22 might of the farm community and the political and financial

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1 powerless of the migrant community. I want to suggest to
2 you that there is very little way farmers in this nation--
3 and there are less than 2 million farmers right now. The most
4 recent statistics show that they're about 1.9 million farmers.
5 There is very little way we compete with the almost half
6 billion dollars in migrant funding available right now under
7 current taxpayer-funded programs.

8 And of that half billion, 20 million is represented
9 by your migrant programs. There is no way we can come up with
10 a litigation war chest to begin to compensate for that, and
11 that's part of our problem.

12 MR. WITTGRAF: Mr. Chairman?

13 CHAIRMAN UDDO: Yes?

14 MR. WITTGRAF: Ms. Whitley, I'm not sure I
15 understood, you said "a half billion" --

16 MS. WHITLEY: One half billion dollars.

17 MR. WITTGRAF: What are you referring to in the half
18 billion?

19 MS. WHITLEY: That covers the range of migrant
20 funding available under all of federal programs. I'm not
21 trying to suggest that that's your funding exclusively.
22 Migrant education, migrant health, migrant training,

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1 Department of Labor programs, JTPA Section 402 grantee monies,
2 the whole range, but it's about a little in excess of \$500
3 million a year.

4 MR. WITTGRAF: Most of which is not litigation
5 related?

6 MS. WHITLEY: About 20 million of it is your
7 funding.

8 MR. WITTGRAF: Right. So the 20 million that's
9 supposed --

10 MS. WHITLEY: Between your money and IOLTA monies
11 that are dedicated to migrant programs, we estimate it's about
12 20 million. Obviously because we don't know all the money
13 that's dedicated to the --

14 MR. WITTGRAF: That fine. You threw me off with a
15 half billion, right, thank you.

16 MS. WHITLEY: Part of that 20 million would be
17 represented. And those are very rough figures, but I suggest
18 that they're not far off. Bear in mind, you're throwing that
19 kind of money at a population -- figures vary, it depends on
20 whether you're counting migrant and seasonal jobs or actual
21 migrant workers, the estimates vary between less than half a
22 million people up to a max of 5 million.

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1 And even if you assume that there are 5 million
2 migrants out there, which we do not think there are, I think
3 that the figure even under the seasonal agricultural worker
4 program which is part of the Immigration Reform and Control
5 Act, 1.3 million workers stepped forward to be legalized
6 through the SAW program. After the adjudications were
7 completed -- I think there still may be a few remaining--
8 less than a million people qualified.

9 I mean, it depends, the number and -- in fact, the
10 Legal Services Corporation funded an economic study about
11 three or four years ago trying to address the number of actual
12 migrants in this country. There are no good figures. But
13 even so, if you're talking half a billion dollars and, at the
14 largest, a population of around 5 million people, which we
15 think is inflated, that's a lot of money that pertains to a
16 very few number of people.

17 And about 20 million is dedicated to litigation and
18 representational activities; that's larger than the entire
19 budget of the American Farm Bureau. But the point I'm making
20 is that when you're talking about a community that is
21 financially and politically powerless, I would dispute that
22 representation.

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1 And in fact, I've been in meetings with Legal
2 Services attorneys who represent themselves as the enforcement
3 arm of the Department of Labor on the Migrant and Seasonal
4 Agriculture Worker Protection Act. And I think if that's
5 true, then they deserve the oversight and control that you
6 would afford any of the actual civil servants on that issue.
7 But, of course, the whole question of oversight and control is
8 strenuously objected to by the Legal Services migrant
9 grantees.

10 And what I'm really here to talk to you about today
11 is accountability because that we see is the major issue.
12 We're not here to deny migrant workers access to the courts,
13 no matter what the representations that have been made to you
14 claim. We've never advocated that position, and I provided
15 for you in the handouts I've given you, a copy of our 1991
16 policy on Legal Services and on farm labor, which I think will
17 lay out for you very clearly, as you review them, our position
18 on those two issues.

19 While we believe -- and our policy states clearly--
20 that there is a role to be played by Legal Services in this
21 country, representing migrant farm workers, we believe it's
22 also appropriate and timely to talk about equitable

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1 limitations on the behavior of those attorneys. And it's in
2 that context again that we have endorsed the major package of
3 reform introduced by Bill McCollum and Charlie Stenholm in the
4 form of H.R. 1345, introduced this year.

5 We think the Legal Services program, as it exists
6 today, is badly flawed. I'll get to our specific
7 recommendations, but first I would like to outline a few of
8 the problems, and I don't want to go into a lot of detail. I
9 think Mike Gempler provided for you an excellent overview.

10 Washington State is somewhat unusual. The
11 Washington Growers League is an entity that I wish we had more
12 of around the country. They have an ability to get the word
13 out to the most labor-intensive farmers and the vast majority
14 of farmers don't hire anybody and don't hire enough workers to
15 fall under worker protection standards. So organizations like
16 the Washington Growers League are very effective in two-way
17 communications in doing the MSWPA seminars that Mr. Gempler
18 referred to and, again, in getting word back from his grower
19 members about the nature and extent of the problem that
20 they're encountering. I wish we had more data like that.

21 But there are very few organizations like the
22 Washington Growers League out there because, in most parts of

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1 the country, you don't have a concentration of heavily labor-
2 intensive agriculture like in Washington. There are a few
3 states: Florida, obviously, Texas, the Pacific Northwest,
4 Washington, Oregon, California. But in most other states the
5 agriculture industry is very diverse by its nature. It's
6 rural. It's isolated.

7 A lot of the same reasons you have proposed to you
8 for leaving the migrant advocacy program as it's created
9 today, those same arguments apply to farmers. They're
10 isolated. They're independent. They're hard to reach. But
11 anyway, I think Mike Gempler's statement illustrated for you a
12 lot of the problems that we're hearing about nationwide.

13 But Congress has made it clear that Legal Services
14 attorneys are not to engage in a number of practices,
15 including lobbying, union organizing, and participating in
16 political demonstrations. In practice, Legal Services
17 attorneys ignore these statutory restraints, or they dodge the
18 restrictions by using IOLTA funding to do it, or, as they say,
19 nonpublic funds. I think a lot of the grantees view their
20 role very differently than the one Congress envisioned in 1974
21 when it set up the corporation.

22 I would like to say that we strongly defend any

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1 American's constitutional right to take whatever legal means
2 are available to support economic, social, political, or
3 judicial reform. But we do not feel that taxpayer dollars
4 should be used to undertake that kind of an agenda. Nor do we
5 think quasi-public employees should get around the
6 restrictions in the Act by using what they claim to be
7 nonpublic funding to do so.

8 We've observed a lot of instances over the years.
9 Let me just highlight a couple for you. Union organizing:
10 These include, in 1984, the International Farm Workers Union,
11 which Texas Rural Legal Aid undertook to represent, and farm
12 worker strikes organized in the late '70s and early '80s in
13 Florida by Florida Rural Legal Services. Recently TRLA has
14 apparently been engaged in union organizing in the Las Cruces,
15 New Mexico area. And I provided for you a copy of a press
16 report from the June 3, 1991 Texas Lawyer, that details a
17 little of that.

18 Grassroots organizing: in 1981, MLAP organized a
19 series of one-day miniconferences around the country to
20 provide training and discussion intended to improve networking
21 and coalition building in support of farm workers. I don't
22 know how much money MLAP spent on organizing those, but it was

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1 at a time when they were turning away eligible clients because
2 the didn't -- they claimed -- have enough money to continue
3 representing them.

4 Lobbying: MLAP and its state affiliates lobby
5 Congress, state legislatures, and federal agencies frequently.
6 Such as during the negotiation of the 1985 EPA Farm Worker
7 Pesticide Protection regulations and in 1986, the Immigration
8 Reform and Control Act. I frequently observe them up on the
9 Hill lobbying.

10 Administrative rulemaking -- and I'm going to leave
11 a lot of that discussion to my associate, Tom Wilson, who's
12 here to talk in some detail about the litigation he's involved
13 in, but I will say that the industry has spent, literally,
14 millions of dollars since 1987 defending the agency
15 interpretation of the 1986 Immigration Reform and Control Act.

16 These kind of activities go way beyond the simple
17 day-to-day delivery of legal services to the poor. And I've
18 got to tell you, the legal bills are driving growers out of
19 business around the country. I've also provided in your set
20 of attachments a letter to the House Judiciary Committee from
21 Congressman L.F. Payne of Virginia. And his description of a
22 case that came up in his congressional district is excellent;

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1 I think it's a good profile of the type of problem growers are
2 encountering around the country.

3 We believe strongly that it doesn't make sense to us
4 that if there are problems in agricultural employment, driving
5 farmers out of business and eliminating jobs is not the way to
6 help migrant farm workers. We believe that frequently
7 grantees seem to think that the best way to eliminate problems
8 in agricultural employment is to eliminate the employment;
9 that doesn't make any sense.

10 Earlier, you asked why farmers don't file more
11 administrative complaints with the Bar and Rule 11 motions.
12 The simple fact is they can't afford to. When they've been in
13 the situation which, as Mike Gempler pointed out, many farmers
14 feel is extortionate to begin with, filing a Rule 11 motion is
15 more money out of their pocket in pursuit of what may give
16 them a great deal of psychological and personal satisfaction,
17 but it comes off their bottom line.

18 These are not big corporate farmers. For the most
19 part, these are small guys, they're in fresh fruit and
20 vegetable and horticultural specialties industries. They are
21 not price-supported by the federal government. These guys
22 rise or fall on a variety of factors that are totally out of

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1 their control: the markets, foreign trade -- trade, in most of
2 these commodities, is making significant inroads in U.S.
3 production right now -- the weather.

4 On the East Coast, applegrowers have had one good
5 year in the last five. And when I say "good year," I'm
6 talking about a year when they make any money at all, not a
7 year when they're buying a new Mercedes. The average fruit
8 and vegetable grower hopes to get one good year out of four.
9 He hopes to have another year where he breaks even. And he's
10 going to write off the other two.

11 And when you're looking at \$50- and \$60,000 in legal
12 bills for cases that brought, many times, on a de minimis or
13 technical violation of a very complicated statutes, when you
14 ask him to go after the opposing attorney on a Rule 11 motion
15 and his lawyer says, "Yeah, I'd be happy to go after him." --
16 this guy is a crook. This guy is engaging in activities I
17 can't believe any ethical lawyer would even contemplate, much
18 less engage in. "But it's going to cost you another \$50- or
19 \$60,000 to get to court," the grower says, "I can't do that.
20 I'm already out on the edge anyway." And they walk away from
21 it.

22 We do, however, have Rule 11 motions pending against

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1 two migrant attorneys right now, one up in Illinois and one in
2 Florida. And because I'm not privy to either of those two
3 cases and I don't honestly know -- I can't speak for the
4 parties in each case -- I will be happy to try to get more
5 information and provide it to you if it's appropriate. But I
6 am aware of two instances where Rule 11 motions are pending
7 right now.

8 I admit not all agricultural employers are above
9 reproach. A lot of them need to do a lot better job in
10 complying with the law.

11 CHAIRMAN UDDO: Excuse me a second, Ms. Whitley, you
12 said Rule 11 motions are too expensive. I thought you were
13 going to address disciplinary complaints.

14 MS. WHITLEY: I'm sorry, I overlooked it. Same
15 situation, complicated, however, by the fact that in most
16 cases the Bar Association as we know is very strongly
17 supportive of the activities of Legal Services, and we don't
18 find they're taken seriously. The one I am aware of, which I
19 think Mr. Wilson can speak to in more detail -- he was
20 involved in it -- came back with a one-line response from the
21 state Bar Association, after providing for them luminous
22 correspondence, and I'll let Mr. Wilson respond to that.

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1 But again, it's the same situation where you have a
2 farmer paying out of his pocket for a situation he already
3 considers to be extortionate. They want to walk away from it.
4 They want to walk away from it; they want to settle it; they
5 pray it never comes back.

6 Some of them take very affirmative steps to make
7 sure it never comes back. They mechanize as far as possible;
8 they reduce their operations. If they're contemplating
9 retirement -- and bear in mind, the average age of the farmers
10 in this country is not getting any younger. You walk into any
11 Farm Bureau meeting, and you don't see anything but a grey
12 head in the room, and you wonder who's going to be farming in
13 ten years.

14 So they think to themselves, "I'm not going to go
15 through this again. I was thinking about retiring in five
16 years. I think I'm going to retire now. Besides which, my
17 operation won't withstand another one or two of these
18 lawsuits. I might as well get out now, while I've got a
19 little equity left." That is not an unusual situation.

20 So I started to say, not all ag employers are above
21 reproach; we admit that. The Farm Bureau is committed to
22 working with our members to make sure that they understand

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1 their responsibilities under the law. We're no different than
2 any other employer group. We've got good employers, and we've
3 got bad employers. But I absolutely believe that the vast
4 majority of farmers are committed to understanding their
5 responsibilities under the law and want to do the best they
6 can.

7 For that reason, we think that the best interests of
8 both farmers and workers would be served by trying to
9 regularize the problem and figure out a way to resolve
10 conflicts without having to resort to litigation to do it.
11 For that reason, we endorse the Legal Services Reform Act that
12 was first introduced '89 and then again in '90 and has now
13 been reintroduced, as I said, earlier in the form of H.R.
14 1345.

15 And rather than go through every single provision
16 and take your time today, because I know our time is short,
17 I've submitted, again, in the package that I handed you, our
18 statement that we've provided to Congressman Barney Frank in
19 his one day of hearing on reauthorization in March of this
20 year.

21 Let me just point out a few highlights that we think
22 are the key provisions for agriculture. Section IV of the

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1 solicitation provision will help solve one of our biggest
2 problems, and that is inappropriate client solicitation.
3 Section V, the procedural safeguards will eliminate the
4 fishing expeditions brought about by John Doe notice pleading
5 which Legal Services targets a farmer and then builds his case
6 during discovery.

7 Section VII, VIII, and IX, which are time-keeping,
8 local board control, and private funds, are important
9 structural reform which will impose a standard of
10 accountability on Legal Services grantees so that
11 inappropriate activities can be identified, analyzed, and
12 prevented. Section XI, competition, will assist in returning
13 the programs to Congress' original intent, which is maximum
14 delivery of day-to-day Legal Services support.

15 Section XII, the attorney's fees section, will
16 eliminate another one of our biggest problems, and that's
17 unreasonable demands for attorney's fees in cases where the
18 plaintiff may prevail in minor claims. And I recommend that
19 you review the opinion of Judge Silvia Rambo in Pennsylvania,
20 which I've attached to the package I've given you, that's a
21 1990 case in Sharp v. Roth. A situation where this is the
22 third time, by the way, that that grower has been sued by

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1 Friends of Farm Workers.

2 He was sued first in 1985; the year that MSWPA
3 became effective in agriculture, and it eliminated half of his
4 operation. In order to pay the judgement, he had to reduce
5 his farming operation by half. And he became evangelical
6 about compliance with MSWPA and wage and hour law. He became
7 a real advocate for the law. He talked to grower groups. He
8 was very active in his Fruit Growers Association in
9 Pennsylvania, and was targeted again.

10 And then after he had the temerity to stand up in
11 field hearings in, I think, 1988, Congressional field
12 hearings, when his Congressman -- in fact, Bill Goodling
13 called these hearings -- he was targeted again. The original
14 demand in that case was for over \$100,000 in behalf of a very
15 short list of plaintiffs. The actual damages, as the Judge's
16 opinion will show you, actually could have been -- had the
17 judge awarded the maximum damages on all claims, which she did
18 not do, it would have been \$14,500.

19 She awarded damages of \$3,074. They actually also
20 went after attorney's fees in excess of \$60,000. She granted
21 \$9,153.63 in attorney's fees, but her discussion of the
22 conduct of the case is very revealing, and we don't believe

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1 that to be an isolated example. And I recommend that you
2 review her opinion in that case.

3 MR KIRK: Did the farmer have, likewise, high fees,
4 himself, that he incurred?

5 MS. WHITLEY: \$60,000 and still growing.

6 In that particular case, the issue turned on suffer
7 to work. There is a provision in the law which says that if a
8 grower suffers someone to work, then he is responsible for
9 their wages.

10 This involved two women who were wives or commonlaw
11 wives of some of his pruning crew. And he was aware that they
12 were in the orchard, the only thing he did not do,
13 unfortunately -- I'm sure he regrets it now -- he did not get
14 the sheriff to escort them off his property. But he knew that
15 if he had done so, he would lose the members of his pruning
16 crew, understandably. He was sued on behalf of those two
17 women, alleging that he owed them a full year's wages because
18 he suffered them to work, as they were in the orchard during
19 the pruning activities.

20 I hope we've illustrated for you a little of the
21 social and economic pain this is causing members of my
22 industry. And I would be happy to answer any questions you

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1 might have, either now or for the record. I'll take questions
2 now or after Mr. Wilson.

3 CHAIRMAN UDDO: Why don't we let Mr. Wilson --

4 MR. WILSON: Thank you, Mr. Chairman. My name is
5 Tom E. Wilson. I'm a partner in the Washington, D.C. office
6 of the law firm Seyfarth, Shaw, Fairweather, and Geraldson.

7 Since 1983, I've represented the New England Apple
8 Council and other organizations of East Coast apple growers in
9 numerous lawsuits and administrative proceedings. Every one
10 of those proceedings has been engendered by publicly-funded
11 lawyers employed by grantees of the Legal Services
12 Corporation.

13 The experience of the apple growers makes a strong
14 case, but the time has come to enact reform designed to ensure
15 that LSC grantees conduct their affairs in a manner consistent
16 with the original intent of the Legal Services Corporation
17 Act; that is, to provide for the day-to-day needs of the poor
18 rather than engaging in broad administrative rulemaking cases
19 designed to frustrate the operations of government programs
20 which LSC grantee lawyers believe should not exist.

21 In order for the committee to have a proper
22 understanding of the experience of the apple growers, some

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1 background is necessary. The New England Apple Council and
2 other East Coast apple growers have, for many years, found it
3 impossible to recruit an adequate supply of apple harvesters
4 from the domestic agricultural workforce; that is to say,
5 legal harvesters.

6 This reality has forced the apple growers to choose
7 between: one, harvesting their apples using undocumented
8 workers from the agricultural labor black market, which led to
9 the reforms reflected in IRCA; or two, importing harvest
10 workers from abroad to supplement the available domestic
11 workforce through the so-called H2 Offshore Worker program
12 administered by the Department of Labor and INS.

13 The apple growers opted to use the legally-obtained
14 workers through the H2 program. H2 program participants are
15 among the most heavily regulated agricultural organizations in
16 this nation. Wage rates are established by the United States
17 government. Growers are required to provide housing without
18 charge. Grower housing is inspected before each harvest
19 season and must meet state and federal health and safety
20 standards. Grower payroll records and employment practices
21 are monitored by state and federal officials to ensure that
22 all requirements of the H2 program are complied with.

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1 Given the comprehensive regulatory requirements that
2 the H2 growers must meet in order to participate in the
3 program, it is hardly surprising that the allegations of the
4 farm workers that they mistreat, that the apple growers
5 mistreat their H2 workers, is virtually nonexistent. Despite
6 their adherence to DOL-imposed requirements of the H2 program,
7 the apple growers have, for many years, been subjected to a
8 torrent of litigation instigated by publicly-funded LSC
9 grantees.

10 Such litigation typically does not involve
11 allegations that the apple growers have in any way mistreated
12 their workers. Rather, the LSC grantee lawsuits are designed
13 to secure reinterpretation of DOL regulations calculated to
14 drive up the cost of participation in the H2 program to a
15 point where the use of the program is unfeasible.

16 LSC grantee lawyers, on repeated occasions, have
17 proclaimed publicly that they believe the H2 program is bad
18 public policy and that, therefore, the program should be
19 eliminated. In fact, a number the same attorneys who over the
20 years have engaged in sustained litigation against the apple
21 growers, were actively involved in the legislative process
22 associated with IRCA attempting, unsuccessfully, to hobble the

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1 H2A provisions of that legislation.

2 Because of the undeniable shortage of documented
3 domestic workers to satisfy the harvest labor needs of this
4 nation's agricultural economy, opponents of the H2 program
5 have no factual basis for eliminating the program's existence.
6 Be that as it may, if LSC-sponsored lawyers are successful
7 through litigation in making the H2 program so expensive that
8 no grower can afford to use it, they will have achieved the
9 same result as would have occurred had the program been
10 legislatively eliminated.

11 Let me give you one specific example of how the LSC
12 grantee attorneys have created havoc within the H2 program.
13 In 1982, farm worker advocates objected to the pay practices
14 of several apple growers in West Virginia. Instead of suing
15 the affected apple growers and perhaps DOL in West Virginia,
16 where all of the parties could be found and brought before the
17 court, the farm workers sued only the Department of Labor, not
18 in West Virginia, but in the District of Columbia.

19 The central matter at issue in that lawsuit was the
20 DOL regulation controlling year-to-year adjustments made in
21 piece rates which users of the H2 program are required to pay.
22 Since, if the farm worker advocates prevailed, H2 program

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1 piece rates would be dramatically escalated.

2 DOL argued to the court that the absent growers who
3 would be asked to pay the higher rates were indispensable
4 parties to the litigation. Since the District of Columbia
5 court could not join those absent growers in the case, the
6 were not within the power and control of the court, DOL argued
7 that the litigation should be dismissed.

8 The LSC grantee advocates vigorously and
9 successfully opposed DOL's motion. As a consequence, the
10 rights of affected West Virginia farmers were adjudicated in
11 the District of Columbia entirely in their absence. The LSC
12 lawyers secured an injunction against the Department of Labor
13 which forced DOL to require the growers to pay dramatically
14 higher piece rates.

15 In 1983, the LSC-sponsored lawyers went back into
16 the district court in the District of Columbia and had the
17 ruling, which originally had affected only West Virginia
18 farmers -- on West Virginia facts, by the way -- expanded to
19 all users of the H2 program, even though no grower had ever
20 had his day in court on the issue.

21 As a consequence, the piece rate wages of every
22 grower using the H2 program were dramatically escalated. In

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1 some cases, 40 percent in a single year, pursuant to a
2 judicial determination engineered by LSC grantee lawyers
3 without a single grower ever appearing in the courtroom where
4 the controlling decision was made.

5 Since the events of 1983, the LSC grantee lawyers
6 have systematically tried to force the apple growers who
7 participate in the H2 program to pay the higher wage rates
8 mandated in the growers' absence. Because the wage rates
9 engineered by the farm worker advocates would inflict virtual
10 financial ruin on the growers, the growers have had to resist
11 the escalated wage rates in court. That effort, in turn, has
12 brought about sustained litigation which has cost the growers
13 a fortune in legal fees.

14 Suffice it to say that if every step^{ly} of this grim
15 process, even if they went in court, the growers are being
16 bled to death by the cost of participating in the process.
17 For their part, it is a matter of complete indifference to the
18 farm worker advocates whether H2 users abandon the program
19 because the wage rates required are too high or because
20 litigation costs are too steep. Either way, their ultimate
21 goal, the eradication of the H2 program, will have been
22 accomplished.

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1 There's a new wrinkle that's been added recently by
2 the legal aid lawyers on suing over the H2 program. And now,
3 what they appear to be adopting as a routine is they sue under
4 some provision of the H2 program, and they file a parallel
5 complaint with the Special Counsel of the Department of
6 Justice alleging that the growers, by hiring these foreign
7 workers through a process which is regulated by the Department
8 of Labor, are discriminating against workers on the basis of
9 their citizenship or their alien status; that engenders a
10 second elaborate proceeding where the growers have to defend
11 themselves.

12 In a case that I'm familiar with in New York right
13 now, they've figured out a third way -- a hat trick -- one
14 issue, three proceedings. They've initiated now a state
15 proceeding before the State Department of Labor of the State
16 of New York on exactly the same issues. And of course, the
17 growers have to defend on all three fronts at the same time.

18 Now, on this piece rate issue, of course the growers
19 who were not involved in the West Virginia litigation when
20 there was an attempt to impose those piece rates on them, as
21 you would expect, sued to try and prevent that from happening.
22 The case has had a very long and torturous history, but the

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1 case was brought by the growers against the Department of
2 Labor saying, "You can't impose these piece rates on us
3 because they were mandated in litigation to which we were not
4 parties."

5 The farm workers joined in that litigation, counter-
6 sued for the year at issue, which was 1985, plus 1984 which
7 was not at issue in the grower lawsuit against the Department
8 of Labor, plus 1983. And now, they've secured a liability
9 determination by Judge Ritchie who issued the original
10 determination because the case was transferred to the District
11 of Columbia. And now -- get this -- now, they're saying that
12 the growers acted in bad faith for defending against their
13 counter- claims. And they want \$400,000 in legal fees plus
14 the liability for the unpaid piece rates, plus interest from
15 the date the wages were not paid.

16 Now, what option do these grower have but to
17 continue this process? And I will tell you further that the
18 growers have been attempting for the last four years to settle
19 this case for a full payment of the '85 wages, and they won't
20 do it. Why? It's a freebie; it's not costing them anything.
21 They ask for '83 and '84; they roll the dice. There's nothing
22 in it for them to sell.

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1 So now this case is on its way to the courts in the
2 D.C. circuit right now, and we have a briefing scheduled. But
3 I will tell you that the apple grower participants in the H2A
4 program are -- and I'm sure you people on this panel will
5 recognize the term -- the clean jeans of agriculture. These
6 guys are so regulated, it's unbelievable. These lawsuits
7 don't involve whether you mistreated your worker or you housed
8 him in inferior conditions or any of that.

9 Some questions have been raised during prior
10 witnesses about, "Well, why don't you file complaints for
11 disciplinary action?" I was involved in some cases in
12 Maryland years ago, where a legal aid lawyer went into
13 Maryland in April 1983 and proclaimed that he, personally, was
14 going to see to it that all the fruit harvested in the State
15 of Maryland was harvested by domestic workers, most of whom,
16 by the way, were from Central American countries or were
17 Haitians. They weren't United States citizens at all, but
18 they had the alien status which permitted them to work in this
19 country.

20 This individual engineered the filing of 17 federal
21 lawsuits against four growers in Western Maryland, some of
22 which he won -- and if you want to get into the details, I

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1 will tell you why he won them -- and 175 administrative
2 complaints. The sanction in the administrative process is
3 debarment from the H2 program, which means you don't get any
4 workers to harvest your crop, which is even worse in many
5 respects than a lawsuit -- 175 administrative complaints.

6 The upshot of this has been that the two largest
7 growers representing 80 percent of the fruit crops of Maryland
8 are out of business, 150 permanent jobs have been eliminated,
9 about 350 seasonal jobs. And according to the Department of
10 Labor's prevailing wage surveys, the wages since the
11 eradication of the H2 program in Western Maryland have gone
12 down.

13 So those remaining agricultural jobs that do exist,
14 the workers are making less. It escapes me how this kind of
15 activity is in the interest of the poor, whose interest these
16 people are supposed to protect.

17 Any kind of change in the regulations is yet another
18 excuse to litigate the meaning of the regulation. By the way,
19 the lawsuits are all engineered so they're brought in urban
20 districts. They're never brought -- the effort is made to
21 avoid bringing them anywhere where there are apple workers,
22 where there are apple trees, where there are orchards.

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1 They're brought in the District of Columbia -- one
2 case in 1986, involving Virginia growers and Virginia
3 harvesters of Virginia apple crops was initiated in
4 Philadelphia, Pennsylvania. Another one in that year in the
5 southern district of New York in Manhattan.

6 And you've got to defend -- every time there's a
7 regulatory change, there's going to be litigation. And this
8 is a program which, unlike most agriculture, they pay higher
9 wages, they guarantee the pay of those higher wages. Unlike
10 everywhere else in agriculture, they guarantee three-quarters
11 -- they have to pay three-quarters of the contract even though
12 the contract, for whatever reason, doesn't work. They have to
13 reimburse transportation, which is not generally done in
14 agriculture. They have to pay for housing which is inspected
15 and meets all the health and safety standards.

16 You would think that legal aid lawyers would be out
17 there expending their resources trying to get U.S. workers to
18 take the jobs that are available and that are offered through
19 H2 program participants to get all these benefits; that isn't
20 what they're doing. They're looking to eliminate the program.

21 I took a deposition of a worker just two weeks ago
22 in Boise, Idaho, who was working for \$4.75 an hour when the H2

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1 program, which he eschewed even though he was represented by a
2 Texas Legal Aid lawyer, even though that program guaranteed
3 him a minimum of \$4.79 an hour plus all the other benefits
4 I've listed. You people figure it out. I tell you, it's a
5 mystery to me.

6 Furthermore, in those depositions, I took the
7 deposition of two farm workers, one of whom was moving three-
8 inch hand lines -- he was an irrigator moving three-inch hand
9 lines --and I asked him what his complaint was against the
10 farmers. And he says, "Well, I want my wages raised."

11 I said, "You mean your lawyers haven't told you that
12 even if you win, if your position prevails, there's no chance
13 you're going to have you wage rate raised because the wages
14 you're paid aren't even at issue."

15 "No, I didn't know that."

16 The workers are used, very often, as props. The
17 name of the game is get the narrow end of the wedge, get in
18 court, and then extract pain and suffering from the growers
19 until they finally give it up.

20 In the Maryland situation, we filed a complaint with
21 the Bar Association. We got a one-line answer. We wrote
22 letters to the Legal Aid Association in Maryland; four feet of

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1 documents we provided them -- literally, we Xeroxed it all and
2 sent it to them, some 6,000 pages of stuff of what was going
3 on in those administrative complaints. Never got a response
4 from them; they couldn't care less.

5 And in the meantime, those jobs out there were
6 eliminated. And maybe somebody can tell me someday how the
7 workers have benefitted from that. A few workers got some
8 money; I'll give you that. But it just left the program in
9 shambles.

10 And they're driving growers who want to participate
11 in the program, who want to comply with the law, who want to
12 eschew undocumented workers -- they're driving them out of a
13 program which was enacted by Congress, as recently as 1986,
14 with the specific purpose of giving agricultural employers in
15 those areas where there's a dearth of documented domestic
16 workers to harvest their crops, access to legal workers.

17 MS. WHITLEY: I have one additional comment. I
18 would like to another observation which treats some of the
19 points Mr. Wilson has raised. Legal Services attorneys
20 lobbied the 1986 Immigration Reform and Control Act through
21 the entire subcommittee, full committee, floor, on both sides,
22 the House and Senate.

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1 The litigation Mr. Wilson talked about dealing with
2 crop years '83, '84, and '85 and '86 had to do with the piece
3 rates under the program prior to passage of the '86
4 Immigration Reform and Control Act. Those piece rates and the
5 methodology by which they were determined has been mooted out
6 by the '86 Act. However, the litigation is still ongoing. It
7 has cost growers millions of dollars in escrowed wages,
8 attorney's fees, administrative complaint representational
9 costs.

10 Meanwhile, the Legal Services attorneys are lobbying
11 the 1986 IRCA passage. They made their case at the
12 subcommittee and both House and Senate full committees, were
13 not successful in pushing their view of the issue; tried floor
14 amendments, were defeated on the floor in both the House and
15 Senate; then were not successful in pushing their view of the
16 issue. Tried floor amendments, were defeated on the floor in
17 both the House and Senate, then moved to the administrative
18 representational, working the administrative development of
19 the regulations, were unsuccessful in prevailing at that
20 level, and have been litigating again this very same issue
21 that Mr. Wilson has been litigating since 1983.

22 We have spent millions of dollars since 1987

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1 sustaining our arguments again, as we did throughout the
2 congressional process and throughout the regulatory
3 development process, and now we are representing them again in
4 court.

5 Our industry can't sustain these kinds of costs, and
6 you're going to see happen what happened in Maryland, which is
7 literally thousands of acres -- drive up through Hancock,
8 Maryland. I invite you to do it this fall. You tell me how
9 many workers you see harvesting those apples. They're falling
10 on the ground. The biggest grower in Maryland is now running a
11 roadside stand.

12 CHAIRMAN UDDO: Thank you. Let me see if we can get
13 some questions from the committee. Mr. Dana, do you want to
14 go first this time?

15 MR. DANA: No.

16 CHAIRMAN UDDO: Mr. Wittgraf?

17 MR. WITTGRAF: Mr. Wilson, a couple of questions.
18 First, you're a law partner of Mr. Ilbourn?

19 MR. WILSON: Yes, I am.

20 MR. WITTGRAF: Would you remember us to him, please?
21 He was with us to several months last year, fine gentleman,
22 and a fine member of the board. Thank you.

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1 I missed a little bit of your presentation, so
2 forgive me, and correct me if there was something that I
3 missed that you addressed, if you address my question.

4 I understand that you and your clients are quite
5 unhappy with the protracted litigation, and you wondered, as
6 you indicated, at some of the practical results. Could you
7 speak to what, if any, improprieties there were in terms of
8 the use of the law or the court system by the Legal Services
9 attorneys?

10 MR. WILSON: Whenever you hit -- I mean, these
11 growers, for example, in the Maryland situation with
12 specifically targeted. There had been in the prior ten years,
13 prior to 1983, one administrative complaint in the State of
14 Maryland, one.

15 In 1983 and 1984, after this declaration of war was
16 issued, there were 175 complaints in two years, 17 federal
17 lawsuits. After the dust settled from that onslaught -- of
18 course, most of the growers out there are out of business, but
19 as far as I'm aware, there hasn't been a single complaint
20 filed.

21 Now, either Maryland Legal Aid was anesthetized
22 prior to 1983 and then bail re-anesthetized after 1985, or

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1 something else is going on here. Now, what it was -- I mean,
2 the issues that were raised in that litigation was one farmer,
3 Mr. Hepburn, was giving ladder tests. He'd given ladder tests
4 forever.

5 The ladder test that he gave, every single one of
6 them was monitored and observed by an employee of the Maryland
7 Department of Employment, every one of them. He refused to
8 give a ladder test after Legal Aid started raising questions
9 about it without it being monitored.

10 In fact, the individual monitor took the ladder test
11 himself, and in court he said he passed it. This was
12 onslaught against these guys, which was specifically designed
13 to eliminate the H2 program in Maryland, and it succeed, Mr.
14 Wittgraf.

15 That is not an appropriate activity, I submit to
16 you, of a LSC grantee. Why are they continuing to -- I mean,
17 it's not a question of these wage rates, which, by the way,
18 are generally higher than wage rates that are prevailing in
19 agriculture.

20 It's not a question that they're not being paid. If
21 a farmer is not paying his workers the wages that he's
22 supposed to be paying them, he ought to be sued. This is an

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1 effort, though, to escalate those wages for the specific
2 purpose that even if you're not successful, you inflict such
3 legal costs on the growers that they abandon the program.
4 They say, "Oh, the heck with it. I'm not going to do that,"
5 and a lot of growers have done that. That's improper, sir.
6 That's improper. It ought to be monitored.

7 In fact, the LSC sent an audit team down to
8 Salisbury, Maryland to audit Maryland Legal Aid, and they were
9 locked out, and then you guys found yourself in litigation
10 with these same Legal Aid lawyers that were crushing the
11 farmers out in western Maryland, and it ended up before Judge
12 Young in the district court in Baltimore, and he sort of
13 looked dejectedly at both parties and said, "Look, you guys
14 are supposed to be representing of interests of the poor, and
15 here you are fighting with one another. Can't you work this
16 out?"

17 It was very clear that the Legal Aid lawyers in
18 Maryland would rather fight than switch. They were going to
19 scorched earth the thing against your auditors and your
20 organization at the LSC level. It would have taken -- you cut
21 off the funds; that's what you did, for one month, and they
22 went to court and sued you, and that's how it got into court.

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1 Then it's pretty clear that faced with two years of
2 protracted litigation, the LSC just gave up, and nothing was
3 ever done about that, at least as far as I'm aware. And after
4 the growers were crushed out there, I have to admit I didn't
5 follow the issue, but as far as I am aware, nothing happened.
6 So you talked about "Complain to somebody." Please.
7 Complaining costs money, and it gets you nowhere.

8 MR. WITTGRAF: I guess, if I understood you
9 correctly, you still don't understand or can't appreciate any
10 logic behind the position taken, but the litigational process
11 was not abused in any --

12 MR. WILSON: Sure it was. Sure it was. For example,
13 these people would come out of the orchard at the end of the
14 day, and they would be met by this Legal Aid lawyer with a
15 portable typewriter, and he put it on the hood of a truck.
16 Now, these guy were Haitians. They didn't speak any English
17 at all.

18 He spoke a little Creole, but not all that much, and
19 on the basis of that, he would type up administrative
20 complaints and have these guys sign things they had not a clue
21 what was in them, and that happened repeatedly.

22 MR. WITTGRAF: Okay. You're talking now about

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1 solicitation of plaintiffs as they came out of --

2 MR. WILSON: Well, and filing completely bogus
3 complaints. By the time the grower is able to establish his
4 innocence, believe me, he's in financial ruin.

5 CHAIRMAN UDDO: That was reported to the Maryland
6 Bar Association.

7 MR. WILSON: Yes, sir, ad nauseam. I'm serious;
8 6,000 pages of stuff we Xeroxed and sent to them.

9 CHAIRMAN UDDO: But that particular process of
10 filing complaints that the people didn't know what they were
11 filing?

12 MR. WILSON: That's correct.

13 CHAIRMAN UDDO: And the Bar Association, you said,
14 had a one-line response to that?

15 MR. WILSON: That's correct.

16 CHAIRMAN UDDO: What was their response?

17 MR. WILSON: That they don't find anything. They
18 didn't choose to pursue it.

19 CHAIRMAN UDDO: Mr. Wittgraf.

20 MR. WITTGRAF: I'm finished. Thank you.

21 CHAIRMAN UDDO: Mr. Dana.

22 MR. DANA: Mr. Wilson, as you describe it, you are

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1 describing lawyers ostensibly receipting migrant Haitians for
2 the purpose of destroying that job for those clients the
3 following year, dragging the cost up so that the farmer will
4 hire local people. Do I get your point? You made that over
5 and over, and I assume that was --

6 MR. WILSON: The logic behind it, as best as I've
7 been able to discern it is that if you eliminate the access
8 that farmers have through the H2 program to a potentially
9 unlimited supply of offshore workers, then what you will do
10 is, given the recognized dearth of legal documented
11 agricultural workers in the economy, supply and demand will
12 drive up the cost, will drive up the wages of domestic
13 workers.

14 Well, first of all, that's not their policy to
15 determine, that's one --

16 MR. DANA: No. I understand your point. It seems
17 to me that if, in fact, that could be established, those
18 lawyers were not representing their clients, they were
19 representing people they were not supposed to be representing.
20 I accept that, and I think, at least absent being set straight
21 by somebody who understands the law better than I do, it seems
22 to me that that's patently wrong to, in the guise of

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1 representing one group, actually be representing someone else
2 and acting --

3 MR. WILSON: Well, no, they were domestic workers.

4 MR. DANA: Well, my understanding is that they are
5 representing the H2 --

6 MS. WHITLEY: They do now, but they didn't then.

7 MR. WILSON: They were not allowed to represent the
8 H2 workers. What they were doing is representing the domestic
9 workers against an H2 grower for the purposes of making his
10 participation in the H2 program, which gave him access to
11 Jamaican offshore apple pickers so expensive that he wouldn't
12 use Jamaicans anymore and would hire 100 percent domestic
13 workforce, if he could find them.

14 MR. DANA: What was the -- okay. Then I've
15 misunderstood what you've been saying all along. They have
16 not been --

17 MR. WILSON: Well, let me address --

18 MR. DANA: Now I think I may understand it better.
19 The lawyers in Maryland or West Virginia were not representing
20 the migrant farm workers in the field, they were representing
21 the potential workers who were not working in the field?

22 MR. WILSON: They were representing ostensibly

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1 domestic workers who were working for an H2 grower participant
2 who had a portion of his workforce from Jamaica, and they were
3 litigating supposedly on behalf of the domestic workers over
4 wage rates, ladder tests, this kind of stuff.

5 The whole purpose of litigating all these issues is
6 to drive up the costs -- specifically targeting H2 growers--
7 to drive up the cost of participation in the program so they
8 will abandon use of the program. The ostensible purpose, I
9 presume, is that if you eliminate the access to the offshore
10 workers, then will be, I think, what economists called a
11 "market clearing rate" where the growers will pay whatever
12 wages is necessary to fill the jobs with legal domestic
13 workers.

14 Well, that isn't going to happen. I mean, the
15 growers who can will then grow condominiums instead of apples,
16 and the other ones will cut down their apple trees and grow
17 other crops, which are not as labor-intensive, or whatever.

18 MR. DANA: Thank you for setting me straight. Both
19 of you have made the statement which we heard a lot, some of
20 us heard a lot a year ago, which was, I think, that the
21 original intent of the Legal Services Act was to promote day-
22 to-day -- if I may use that expression -- day-to-day legal

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1 needs of the poor.

2 What evidence do either of you have that that is an
3 accurate statement of Congress's intent back at the time of
4 1974.

5 MR. WILSON: Well, if it wasn't, I mean, then I have
6 completely misunderstood the whole thrust of the Legal
7 Services Corporation Act, and I will tell you, Mr. Dana, that
8 I, when I was a Wall Street lawyer, used to contribute my time
9 and go up to Harlem and get cases and bring them back to the
10 office for Legal Aid.

11 And those were what I understood then and I
12 understand now as the conventional purposes of Legal Aid: to
13 get somebody a wage he's not being paid, to give them even a
14 government benefit that he's not being accorded for some
15 reason, have a poor person not be improperly thrown out by a
16 landlord or something.

17 But the kind of litigation that we're talking about
18 here has nothing -- it has little to do with the workers,
19 frankly. It has more to do with the ideological precepts of
20 the lawyers prosecuting cases.

21 MR. DANA: Ms. Whitley, do you have any evidence
22 that Congress, when it passed the Legal Services Corporation

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1 Act, did not want Legal Services attorneys bringing the kinds
2 of litigation that they bring?

3 MS. WHITLEY: Mr. Dana, I'd have to reread the '74
4 floor debate, but it's my understanding, and I think the vast
5 majority of members of Congress believe that Legal Services
6 attorneys spend most of their time in the type of activities
7 Mr. Wilson has just laid out, and that's not the case in our
8 industry, unfortunately.

9 MR. DANA: I didn't practice on Wall Street, but I
10 was practicing between 1966 and 1974, and there was tremendous
11 controversy, particularly in California, all around this
12 country, about what Legal Services lawyers were doing. Very
13 clear that they have represented people in landlord/tenant
14 cases, and they've represented class actions, and they've
15 lobbied, and they've done all these -- they've represented
16 their clients, as we say, zealously, in every forum that
17 they've been able to, and they were doing it between 1966 and
18 1974, when the Legal Services Corporation Act was passed by
19 Congress.

20 My question to you both is: What evidence do you
21 have that the Congress taht passed the Act that we are trying
22 to administer, the corporation that we are trying to

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1 administer, didn't want Legal Services attorneys to do what
2 they are doing now?

3 MR. WILSON: I can't believe that they intended it
4 to do what they're doing in the H2 program, because that's a
5 program that Congress itself enacted as well, Mr. Dana, and
6 these guys don't like the program, and they've made it very
7 clear, and they stated publicly, "We don't like the program.
8 We think it's a form of indentured servitude, therefore, we
9 will move heaven and earth to eliminate it."

10 And they're smart enough to know that what cannot
11 win in the halls of Congress they can win in courtrooms by
12 crushing people financially. And that's improper. And we can
13 debate all you want about what the original intent of the
14 Legal Services was, and I'm sure there are probably as many
15 opinions on that as there are people here, but I think that we
16 will all agree what was not intended.

17 And I don't think when Congress enacted the H2A
18 provisions of IRCA in 1986, they intended those provisions to
19 be made inoperable by the kind of litigation that I deal with
20 every day.

21 CHAIRMAN UDDO: Let me go to Mr. Kirk, because we're
22 going to have to break soon because of a competing meeting and

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1 lunch arrangement. I want to give everybody a chance to ask
2 some questions. Mr. Kirk?

3 MR. KIRK: I'll let Ms. Whitley have part of my
4 time. Go ahead, Ms. Whitley.

5 MS. WHITLEY: Thank you, Mr. Kirk. I just wanted to
6 add, Mr. Dana, that this has been a terrifically controversial
7 program, enormously controversial, back into the '60s before
8 it was created, when it was part of OEO, after '74, when the
9 act was a passed by Congress, and I think it's time, and I
10 think that President Bush, in appointing all of you,
11 recognized that it was time to resolve this controversy, and
12 let's put the program back on a ground where it can deliver a
13 reasonable level of legal services to as many poor people as
14 possible, and that's what the we're after.

15 MR. KIRK: Mr. Wilson, I have just one question, and
16 we describe this type of question as leading and rhetorical,
17 and previous ones, but let me lead you through it anyway. Do
18 I understand that at this point, the minimum standards that
19 state bar associations has set may not have been technically
20 violated by some of the Legal Services Corporation's lawyers
21 to the extent that they were found in violation?

22 MR. WILSON: I guess I don't understand your

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1 question, Mr. Kirk.

2 MR. KIRK: Well, states have minimum ethical
3 standards, such as Maryland, and you filed a complaint, and
4 there was no finding that the minimum standards had been
5 violated.

6 MR. WILSON: As far as I know, there was no finding
7 of any kind. They just declined not to consider it.

8 MR. KIRK: Is it your opinion that the activities of
9 the Legal Services Corporation attorneys that you have
10 witnessed, whether they met the minimum standards or not is
11 not issue, but they did not meet the standards that you would
12 expect a government-funded attorney to have in filing lawsuits
13 and pursuing them?

14 MR. WILSON: Very often, that's the case, and I
15 think the stated motivation for all of this is improper;
16 namely, the elimination of a program enacted by Congress to
17 provide farmers with an alternative for harvest labor that
18 otherwise in the law wouldn't exist.

19 MR. KIRK: So you're saying that, essentially, that
20 the government-funded attorneys ought to have something more
21 than the minimum ethical standards to follow, that they should
22 be following something of more significance.

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1 MR. WILSON: They ought to bring lawsuits that are
2 really in the interests of the people whom they represent. It
3 seems to me that they have a special responsibility fully to
4 explain to a farm worker what is at issue here and what the
5 implications of litigation are.

6 I have seen no evidence that they to that or that
7 they even particularly care one way or the other about it,
8 because what the farm workers are, are props, sir, that will
9 get them in a courtroom. I mean, they're kind of a necessary
10 component of what you have to do in order to work the process,
11 and they enlist organizations like the NAACP.

12 For example, this West Virginia case in my remarks,
13 which I talked about, is entitled "NAACP v. Donovan, and that
14 was an organization that they recruited for that purpose.

15 The AFL-CIO was the lead plaintiff in the litigation
16 after the enactment the of IRCA, challenging, for example, the
17 wage rate regulations promulgated by the Department of Labor.
18 I just don't think that that's a proper use of federal funds,
19 and to the growers I represent, they're paying three sets of
20 legal fees in every single proceeding that I've been involved
21 in.

22 They're paying their own, they're paying the

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1 Department of Labor lawyers, because they're taxpayers, and
2 they're paying the Legal Aid lawyers, plus, they are defending
3 themselves against motions are \$400,000 in legal fees, which
4 have been filed in the Frederick County case, this piece rate
5 case before Judge Ritchie, for defending themselves against a
6 counterclaim filed by the familiar workers. It's bizarre.

7 But nevertheless, when the motion's filed, you've
8 got to rise to it. You have no choice, particularly when
9 you're talking about the kind of numbers that we're talking
10 about here, and I just think that's improper. Now, getting a
11 judge to determine that is very, very difficult.

12 I can tell you, Mr. Kirk, that it was a case, the
13 Polk case in the western district of Virginia, in Danville,
14 Virginia, where Judge Kaiser determined that, "Yeah, the case
15 was frivolous, but I cannot say that it was brought purely for
16 purposes of harassment." Very tough. I mean, the lawyers in
17 that case sued for legal fees from the Legal Services
18 Corporation under that provision of your Act which permits
19 recovery of legal fees, but it's a very, very tough standard.

20 MR. KIRK: That's my point, that the minimum
21 standards may have been met, according to the judge in that
22 case, but not by the reasonable standards that you think that

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1 should be followed.

2 MR. WILSON: In that case, he determined that the
3 very strict standards for recovery had not been met, the
4 standard of proof that the case had been brought solely for
5 purposes of harassment. The other thing is that the federal
6 judges, I think, are very reluctant to throw the baby out with
7 the bath water.

8 I mean, just because a Legal Services lawyer
9 bedeviled this defendant who is before him, this farmer who is
10 before him, if they award legal fees, then what that does, at
11 least in the mind of federal judges, is it diminishes the
12 capacity for legitimate complaints to be brought by the same
13 organization.

14 I think there's a terrific reluctance ~~to~~ and I can
15 understand it, and I'm sure all of you can -- to award
16 attorney's fees, no matter how meritorious the complaint is,
17 the claim for attorney's fees by the farmers is.

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

19 CHAIRMAN UDDO: Mr. Wilson, my question is, and it's
20 a recurring question, I mean, obviously, the things that
21 you're talking about today are troubling comments, and as an
22 aside, the stated purpose of dismantling the H2 program, was

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1 that ever made in print anywhere, or is that available in
2 print?

3 MR. WILSON: I think it is in print somewhere. I
4 mean, these are sorts of things that you don't necessarily
5 write down in formal correspondence.

6 CHAIRMAN UDDO: Well, I suspect that would be the
7 case, but it would certainly be helpful to me, as a board
8 member, to see that someone was prepared to make a statement
9 like that in print.

10 MR. WILSON: I can represent to you, Mr. Uddo, that
11 those statements have been made to me personally on repeated
12 occasions with a smile.

13 CHAIRMAN UDDO: Ms. Whitley shook her head that it
14 was in print. So if it is, I sure would like to see it. My
15 concern is that -- I don't know what McCollum/Stenholm would
16 do to solve a problem like that, the kind of problems that you
17 all are talking about, and I think they're different from what
18 Mr. Gempler talked about this morning.

19 He was talking about specific cases where, I think,
20 he had some concerns about procedure or the like that I think
21 maybe could be addressed. What you're talking about, though,
22 I'm not sure McCollum/Stenholm could do anything about that

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1 unless you think there is some way the corporation would be
2 able to exercise a judgment that you admit federal judges
3 don't want to exercise and make determinations about
4 enforcement of laws that Congress has enacted, and apparently
5 they're aware of these things, and they haven't gone back and
6 repealed those laws, or I assume you folks have made efforts
7 to try to repeal or tighten laws that you think are being
8 abused.

9 I just wonder what the corporation could possibly do
10 that federal judges and Congress aren't willing to do to try
11 to solve that problem.

12 MR. WILSON: Well, I think that the attorney's fee
13 provision would help. I mean, clearly the attorney's fee
14 provision of McCollum/Stenholm is much broader than anything
15 that currently exists, and that's a pretty effective hammer.

16 CHAIRMAN UDDO: But that doesn't really seem like
17 the problem in the Maryland case that you're talking about. I
18 mean, it seems to me that if you got somebody that's got a
19 stated purpose of dismantling a program, 175 administrative
20 complaints, I'm not familiar with the procedure, but were
21 there attorney's fees for all those administrative complaints?

22 MR. WILSON: No. There were not attorney's fees

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1 awarded, and there wouldn't have to be, and I will tell you
2 because I don't want to -- that some of those lawsuits, they
3 won those lawsuits. They tried them in Baltimore, Maryland,
4 where there are no apple trees, and some of them went very
5 well for the farm worker --

6 CHAIRMAN UDDO: And that's what I'm saying. That's
7 what I see as the problem with the corporation trying to make
8 a judgment about those kinds of things where, admittedly, it's
9 a mixed bag, some you win, some you lose, some I might call
10 for the purpose of harassment and somebody else might not, and
11 I'm just not sure that any of the things in McCollum/Stenholm
12 actually address the problem that you're talking about, and
13 again, the Maryland situation, I don't think the attorney's
14 fees provision would help much, because it seems like an awful
15 lot of the activity was in forums where there were not going
16 to be attorney's fees awarded anyway.

17 So I guess, to sort of bring it back to the
18 reauthorization process, I mean, is there anything in
19 McCollum/Stenholm that you think really addresses the kind of
20 problem you're talking about, which, as I said, I think is
21 different from what Mr. Gempler was talking about this
22 morning?

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1 MR. WILSON: Yes, I think so. I think that
2 accountability is very important. Time-keeping, make them
3 account. I mean, "How much time have you been spending on
4 this case, and what did you get out of it, and what are the
5 issues?" Responsiveness to a board of directors of Legal Aid,
6 they're --

7 CHAIRMAN UDDO: The local board?

8 MR. WILSON: Yes, the local board, that's right.
9 And hopefully -- and I think that part of the reason that I'm
10 here he is just to let you folks know the experience that
11 we've had, and there's a lot of anger out there in the
12 agricultural community for stuff like this that I've talked
13 about.

14 I mean, this is improper, and you all ought to be
15 concerned about it, and you ought to start thinking -- and
16 viewing some of the efforts that are addressed in
17 McCollum/Stenholm in that light, saying, "Well, you know,
18 we're going to have to address these things. It's an
19 imperfect system, and maybe the ways that we choose to address
20 them will be imperfect ways, but we better address them if
21 we're going to do right, here."

22 CHAIRMAN UDDO: The other thing: have these concerns

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1 been brought to Congress, not in the context of Legal
2 Services, but in the context of the laws that are being used
3 to allow this kind of conduct? Because one of the things I
4 mentioned to Congressman McCollum, when he appeared before us,
5 was that it seems like a lot of the complaints against Legal
6 Services lawyers are really complaints against the laws that
7 are there that they're enforcing.

8 So I'm asking you the same question. Is a lot of
9 this basically that there are a lot of laws on the books that
10 allow this kind of litigation, and it's hard for us to fault
11 the attorneys who are using the laws that Congress has put on
12 the books?

13 MR. WILSON: Right. You make a good point. To a
14 send extent, all legislation is launch it and forget it.
15 Going back and making these points, we've all been on Capitol
16 Hill, and we know how that works. I mean, it becomes a very
17 kind of confused message, because for every anecdote that I
18 can come up with, someone else can come up with a different
19 and opposite anecdote, and so forth.

20 So it all gets kind of lost in the process, but in
21 the meantime, there are real, productive, tax-paying providers
22 of jobs in the agricultural community who are just being

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1 ground up by this kind of stuff, and it can't go on forever.

2 Let me tell you, if these guys across the board who
3 use the H2 program, the apple growers specifically, who use
4 the program, go the way of the western Maryland growers, it's
5 not going to help the farm workers one whit. It really isn't.
6 It's going to hurt them, because those jobs that were
7 previously there won't be there anymore.

8 MS. WHITLEY: Can I respond --

9 CHAIRMAN UDDO: Sure.

10 MS. WHITLEY: -- to the question of MSWPA oversight?
11 Since enactment of MSWPA, there have been no oversight
12 hearings on it. There has been no opportunity for us to share
13 with Congress our frustration over certain aspects of the way
14 the law is working on the ground, so to speak.

15 As I said earlier, if we'd had any idea of what this
16 was going to produce in the industry, we would not have signed
17 off on it. We've had some unbelievable things occur. Right
18 now, it looks like the Department of Labor, as a result of
19 some activities on the part of Legal Services grantees in New
20 Jersey, the Department of Labor is going to be requiring
21 farmers to pay the transportation of all farm workers from
22 point of recruitment.

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1 We've had a variety of structural problems occur
2 with the way the industry has to make certain benefits
3 available to farm workers, and it all has come through the
4 private right of action in MSWPA.

5 CHAIRMAN UDDO: But you understand my point, the
6 difficulty of saying that the lawyers are doing something
7 wrong who are using the laws that Congress has enacted. I
8 mean, it's difficult position to put the corporation in to say
9 that in our monitoring or in reauthorization, we're going to
10 do something to say you can't use the laws that Congress has
11 created.

12 The story is the story where you've got
13 administrative law judges, apparently, administrative
14 agencies, federal judges, apparently state judges, all willing
15 to go along with this. I think we would be hard pressed to
16 step in and say, "The law is there. Everybody seems to say
17 you can use it, but we're not going to let you use it."

18 MR. KIRK: Mr. Uddo, I'd like to respond to that.

19 CHAIRMAN UDDO: I'd like to get the witness first,
20 Mr. Kirk, and then you can.

21 MS. WHITLEY: Mr. Kirk, can I give you my time? I'd
22 like respond to that.

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1 MR. KIRK: Go ahead.

2 MS. WHITLEY: Mr. Uddo, they're your lawyers. This
3 is a taxpayer-funded free bar. You have no ability to control
4 their activity --

5 CHAIRMAN UDDO: I didn't say we don't have the
6 ability, I'm asking, how do we judge what laws we're going to
7 say you can enforce or pursue and what laws you can't. I
8 assume that we would find the ability.

9 MS. WHITLEY: I think accountability is the key.
10 Accountability is the key. We have a terrific problem with
11 LSC attorneys that we don't have with the agency that's
12 charged with enforcing this statute, and there is definitely a
13 misconnect, is what I was going to respond for the record.

14 CHAIRMAN UDDO: Mr. Kirk?

15 MR. KIRK: My only comment was that I think that you
16 can give me any 10 lawyers and unlimited funds, and I'll put
17 any city out of business, just filing suits based upon the
18 laws that are in effect today. To think that every law has to
19 be perfect is not the answer.

20 The answer, to me, is that we need to have control
21 and accountability of attorneys. We need to avoid scorched
22 earth policies and to try to create some responsiveness and

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1 accountability. I think we need to talk about the fact, also,
2 that we're not dealing with the majority of the attorneys.

3 I mean, I think the people here will tell you that
4 the ones they've dealt with, that Mr. Wilson dealt with in New
5 York, certainly there's a lot of good there, and we're just
6 trying to eliminate -- I mean, they're trying to bring forth
7 some wrongs that they think can be addressed.

8 CHAIRMAN UDDO: And believe me, I have no quarrel
9 with that. I mean, the story that you tell is a distressing
10 story, and I'm disturbed that Legal Services lawyers would be
11 announcing a policy to embark on the course that you've
12 described. I'm not sympathetic to it at all.

13 I say that with some hesitation, because I'm sure,
14 as you say, there's another side that someone could come in
15 and maybe make me feel somewhat more sympathetic, but on the
16 surface and the story you tell, I'm not pleased with it, but
17 in the reauthorization process, I think we've got to find a
18 way to generalize and be able to deal with problems like that
19 without, in effect, so restricting Legal Services lawyers that
20 they don't really manage to pursue the purpose that Congress
21 had in mind, and that is to be the lawyers of the poor.

22 I appreciate your testimony. We have to break for

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

1
2 CHAIRMAN UDDO: We're going to reconvene now that we
3 have all the members of the committee who are in town for this
4 meeting. Before we good on to our next witness, Ms. Whitley,
5 could you come back up? I did want to ask you one question.

6 Really, the question relates to my time on the board
7 before. These issues, of course, aren't new issues. They've
8 been around for a long time, and we had a meeting in Tampa
9 some years ago where a lot of the agricultural questions came
10 up, and at that time, I raised a question that I don't know if
11 there's ever been any follow-up to it, and that is: Have there
12 ever been any serious efforts on the part of the growers in
13 your organization and the Legal Services lawyers who represent
14 workers to try to negotiate, discuss, meet, do something to
15 bring down the level of rancor and disagreement a little bit
16 and see if there's not some productive suggestions that could
17 come from the two groups collectively?

18 MS. WHITLEY: Mr. Uddo, I'm not familiar with the
19 Tampa situation or the testimony which you attended. I think
20 if you review Keith Eckel's statement from March of '89, I
21 believe, when he spoke before the board, he talked about the
22 one recent example of which I'm aware, which was a negotiated

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1 settlement system that was developed in Pennsylvania by
2 Professor Bill -- I can't recall his name, but he was at the
3 Dickenson School of Law. I can get that for you, if you like.

4 The growers in Pennsylvania and, in fact, the
5 Arbitrator Dickenson came to the conclusion that it was
6 effectively useless to proceed, mainly because the Legal
7 Services grantees in Pennsylvania were unwilling to actually
8 try to resolve the differences during the time the workers
9 were employed by the farmers, waiting until the workers had
10 departed to raise the problems that they perceived.

11 So by the time there was ability to do anything
12 about it, the workers were gone, and you were back into a
13 litigation scenario, but I can get some more information on
14 that --

15 CHAIRMAN UDDO: Were there attempts anywhere other
16 than Pennsylvania that you're aware of.

17 MS. WHITLEY: None that I'm aware of.

18 CHAIRMAN UDDO: That's all I wanted to know. I
19 mean, it seems that that's one stone that ought to be turned
20 over at some point.

21 MS. WHITLEY: We'd welcome that, as a matter of
22 fact.

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1 CHAIRMAN UDDO: Well, maybe the corporation can
2 serve a role in trying to sponsor some sort of an occasion
3 where that can be done. That's not in place of our
4 recommendations about reauthorization, but certainly, as I
5 said earlier, I don't know that any form of reauthorization
6 bill is going to solve that problem. It's going to take more
7 than that, and I think we ought to try to find some creative
8 ways to improve the situation.

9 MS. WHITLEY: Well, I'm sure that the professor in
10 question would be happy to come and speak with the board about
11 his experiences, and in the meantime, let me furnish you with
12 his name and some of the particulars.

13 CHAIRMAN UDDO: If you give Mr. Boehm the
14 information, I'll ask him to write to the gentleman and ask
15 for whatever information he can provide us with.

16 MS. WHITLEY: I'd be happy to. Thank you.

17 CHAIRMAN UDDO: Thank you. Our next witnesses, as I
18 understand it, will speak to us together. That's Mr. Earl
19 Hadlow, former president of the Florida Bar Association; and
20 Mr. David Stefany from Hogg, Allen, Norton & Blue in Tampa.
21 Welcome, gentlemen. It's a pleasure to have you.

22

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1 PRESENTATION OF EARL HADLOW

2 FORMER PRESIDENT, FLORIDA BAR ASSOCIATION

3 MR. HADLOW: As you said, my name is Earl Hadlow. I'm
4 from Jacksonville. I am a former president of the Florida Bar
5 and of the Florida Banker's Association. I practiced law for
6 34 years, from 1950 to 1984, and then I went in-house with
7 Barnett Banks, Inc., which is the largest bank holding company
8 in Florida, as vice chairman of general counsel. I retired
9 last June, just about a year ago.

10 During the course of my career, I became friendly with
11 Congressman Bill McCollum. He called me and asked me if I
12 would volunteer to go to south Florida and talk to a group of
13 farmers down there and learn some information, come up here
14 and report what I learned to this Board, specifically for this
15 meeting. I told him I'd be willing to do that. I was
16 specifically invited in for that purpose. I had no previous
17 background in this situation at all.

18 So last week, late last week, I traveled to Miami and met
19 with a group of five or six farmers and one farm labor
20 contractor. I listened to their tale and learned of their
21 attitude about the Florida rural services, Florida Rural Legal
22 Services, Inc., which is one of your authorized

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1 representatives in that area. I found them to be tremendously
2 adversarial and essentially panicky about the opposition they
3 were meeting from this group.

4 It was so severe that they took the most extraordinary
5 precautions to protect their anonymity. They wouldn't let me
6 use their names. First of all, they wouldn't select a
7 representative and come up here and speak for themselves
8 because they were so fearful of retaliatory measures by
9 Florida Rural Services, Inc. -- which is a very significant
10 comment, it seems to me, on the relationship that's developed
11 between these farmers down there.

12 The group that I met, by the way, were what you'd have to
13 say in farming circles, were small farmers. They were either
14 one-man corporations or one or two people owning a farm
15 together. They were not huge corporations that I was talking
16 with.

17 By way of personal background, I have had a lot of
18 involvement with the legal services' work over the years. I
19 was one of the charter members of the Florida Legal Services
20 Corporation. It was formed during the year that I was either
21 president or president-elect of the Florida Bar. I had, prior
22 to that time, been an activist on behalf of the Jacksonville

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1 Legal Aid Society. My bias, coming out of those contacts, is
2 that legal service lawyers are better served if they use their
3 public funding to handle routine private-type disputes, as
4 opposed to getting into the big public policy-type litigation.

5 I was here this morning when Mr. Dana was part of a
6 dialogue with a previous witness, stating that historically
7 prior to the national organization being formed, that legal
8 aid societies did that. But I can tell you that they did it
9 very frequently, to the consternation and displeasure of the
10 public funders -- not so much the private funders like the Bar
11 Association -- when they did it. They may have cared somewhat
12 less.

13 But when a city, or a county, or a state funded them,
14 those people really regretted it when they would get off in
15 that direction, particularly when there is so much unmet need
16 for legal services for the poor. They just really hated it.

17 I was in on a specific case in Jacksonville where I was
18 kind of lobbying every year for the city funding for the
19 Jacksonville Legal Aid Society. One year they sued the city
20 because the city closed the civic auditorium for a Klu Klux
21 Klan rally, wouldn't permit the Klu Klux Klan in there. So
22 they felt constrained to sue the city, saying it was a First

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1 Amendment violation.

2 Well, that's the sort of case, it seems to me, that's
3 better served by private groups like the ACLU, which would
4 typically take a case like that. But they take it without
5 antagonizing the public funder. The citizens and the
6 taxpayers who are putting up this money just simply don't like
7 their money spent in that way.

8 Secondly, I feel that lobbying activities by public
9 service lawyers -- unless they are lobbying for a bigger
10 budget or something, which I think is perfectly appropriate--
11 but lobbying on social issues, since, by definition, if it
12 needs lobbying, it's probably close to an even split of their
13 constituency, and they're lobbying on one side. They are
14 offending as many people as they are making friends. So it
15 seems to me that those two thrusts are the poorest use of
16 their time, effort, and money and that sort of thing.

17 The second thing I feel about Legal Services' lawyers is
18 that they need to keep a high standard of their methods of
19 practice. They ought to go out of their way to act in the
20 most ethical ways -- maybe raising themselves a notch above
21 the ordinary practitioners.

22 So, while they couldn't be disciplined by a grievance

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1 committee or some such thing as that, nevertheless, they owe
2 it to the public, it seems to me, to try to remove themselves
3 from activities that are going to bring down a tremendous
4 amount of opposition and public approbation. Anything that
5 would cause them to lose public support in large segments is
6 certainly not in their best interest or the best interest of
7 the Corporation it's funding.

8 They ought to avoid adopting any tactics that create fear
9 in the public. When I got to south Florida, I found, to my
10 dismay, that that's exactly the situation that had occurred
11 down there. The farmers feel that their greatest single
12 adversary in the whole world is the Florida Rural Legal
13 Services Corporation. They not only fear them; they hate and
14 despise them. They think that they're out to get them, to put
15 them out of business. They are going to the most
16 extraordinary lengths to avoid having to deal with them.

17 They feel totally abused because starting in about
18 1986 or so, the ones that I talked with -- I could have
19 predated that, but the ones that I have personal knowledge of
20 now by virtue of my conversations -- we're talking about 1986
21 -- the Florida Legal Services adopted a tactic of writing
22 demand letters to the farmers and listing a long number of

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1 migrant farm workers that work for them, and saying that you
2 have violated the following statutes.

3 Then they list six or seven statutory procedures that
4 should have been followed and they weren't followed. They'd
5 cite cases on the extent of the damages. Then they'd say--
6 typically in these letters that we saw -- that we know
7 litigation is long and extensive and expensive, and we believe
8 that the best way out of this for all hands is to settle. So,
9 if you come in and talk settlement with us promptly, then we
10 will dispose of this case with dispatch, and you can get on
11 with it.

12 The way the system worked down there is that these
13 vegetable farmers in south Florida would deal directly with a
14 farm labor contractor who would either have a van that would
15 accommodate 20 farm workers, or a bus which would accommodate
16 40. So they came in two tranches, so to speak, a van load or
17 a bus load.

18 Then that group would come in and work for him. He would
19 hire as many as his size operation would justify. Up until
20 some point in history, they relied entirely on the legal fact
21 that this guy was an independent contractor. If they paid him
22 his agreed fee, it was his responsibility and not theirs to

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1 see that all of the provisions of law that he was responsible
2 for were met.

3 Then a doctrine was developed about joint employers.
4 Some court cases came down and said that not only is the farm
5 labor contractor responsible for that, but the farmer is
6 essentially a joint employer and he is liable also. The
7 farmers were slow to learn of those responsibilities, since it
8 developed through case law as opposed to having somebody to
9 send out a bulletin.

10 So there was a period of flux in there where they
11 had to learn their lesson, essentially. But that was learned
12 in due course. In 1987 or 1988 or so, it became perfectly
13 clear that they had that responsibility in most cases.
14 Therefore, the farmers organization, their trade organization
15 down there, started seminars. The state started licensing for
16 the first time these contractors and spelling out very
17 carefully to the contractors, who themselves, by the way, were
18 mostly Haitian.

19 This particular group in Florida of migrant farm workers
20 were Haitian largely, over 90 percent, I think. The
21 contractors themselves were Haitian. But they would be the
22 most articulate and literate of the group. They were kind of

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1 the godfather for their group of workers.

2 They started having to be regulated. The farmers were
3 given seminars on how to check along behind these contractors
4 to be sure that everything was filed properly with the
5 multitude of governmental agencies that they had to deal with.
6 They started making a very conscientious effort to comply.

7 Notwithstanding that, the suits keep coming in, just as
8 if they there had been no effort to comply. What they
9 objected to were the fact that without any warning or any
10 effort to work this thing out, as you would think a legal
11 services corporation would want to do, you would think their
12 primary motive would be to establish a good rapport and
13 relationship between their group of clients, who are the
14 Haitian workers, and the farmers.

15 But instead of making any effort to do that, they created
16 this terribly adversarial atmosphere by just popping them with
17 this demand letter and immediately suggesting that they sue,
18 and they would kind of set forth the maximum liquidated
19 damages that the farm workers were entitled to under the
20 various statutes that they cited in the case law.

21 These were fairly unsophisticated farmers. Out would
22 come this hugely complex demand letter and suggest that if

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1 they didn't make great progress on selling the case within a
2 period of about six weeks, they were going to sue them in
3 federal court.

4 So then if they went in and quickly talked to this guy
5 and reached a quick settlement, they could get rid of the case
6 promptly and at what subsequently turned out to be a lower
7 figure than if they did anything else. If they disputed any
8 of the facts, and there were many, many facts in each of these
9 allegations, particularly as the years got later, that were
10 just flat wrong.

11 I mean, the demand letters were coming off of a computer
12 and were all almost identical. In many of them, the work had
13 gotten so careless and sloppy that they didn't change the
14 names properly. They'd use the wrong contractor's name on
15 page 3 than they had put on page 1 where they were starting
16 their allegations. They'd just forget to change all of the
17 names in the form they were using.

18 They'd list a bunch of workers, many of whom never had
19 worked on that farm. So if they'd go in and dispute any of
20 those facts and say, "Look, these people never had work for
21 me. What evidence have you got that these workers ever worked
22 for me?"

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1 The Florida legal services' lawyer that was instigating
2 this attack would say, "Look, it's up to you to have the
3 records. My people say they worked there on that date, and
4 you're supposed to keep the records. Have you got them that
5 can disprove that he worked there?"

6 Well, you know, disproving the presence of these
7 migratory workers is a very, very difficult thing to do
8 because there's a frenzy of activity at harvesting time, and a
9 huge number of workers will show up, and it's an absolute
10 nightmare trying to keep accurate records of everybody that's
11 working there. Disproving them is very difficult.

12 Fortunately, they finally started running. They got a
13 computer program and started running all of the names through
14 this computer program. They found that many of the names that
15 were in one complaint, supposed to be working on farm X on
16 such-and-such a date, were also listed on another complaint
17 during that same harvesting season.

18 So it was obvious that the legal services' lawyer was not
19 -- he himself didn't have any such computer program. He
20 wasn't trying to check it out because he had duplications.
21 The computer program, by the way, they got input from other
22 states.

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1 It developed an allegation that the guy was the same
2 group of -- at least one or more of the farm workers was
3 supposed to be picking blueberries up in New Jersey at the
4 same time he was picking beans in Florida. There was
5 litigation pending in New Jersey on that issue. They used
6 that computerized data as grounds for sanctions, Rule 11 type
7 thing.

8 CHAIRMAN UDDO: Excuse me just a second. There was a
9 legal services' attorney sanctioned under Rule 11?

10 MR. HADLOW: The effort has been made.

11 CHAIRMAN UDDO: Okay. I thought you said they were
12 sanctioned.

13 MR. HADLOW: I meant to say a motion for sanction.

14 CHAIRMAN UDDO: Okay.

15 MR. HADLOW: I think that's pending. But, in any case,
16 the farmers would observe numerous errors in the allegations,
17 which were essentially set up as form allegations. One of the
18 allegations in every case was that they had not paid -- while
19 they may have paid the contractor withholding and social
20 security tax and unemployment tax, that that contractor had
21 pocketed the money and had not, in fact, paid it. Therefore,
22 the farmer underpaid the worker.

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1 Well, in a number of cases of these farmers, they, as I
2 said early on in this time frame, once they learned their
3 responsibility, they had started making a separate check for
4 those taxes, making it out to IRS and paying IRS directly or
5 depositing it in an IRS-directed account, separate account, in
6 the bank so that the contractor couldn't get his hands on that
7 money.

8 While they had handled that perfectly and with dispatch,
9 nevertheless, the same allegation was made that had been in
10 the earlier demand letter claiming that they had done this
11 again. So then they'd go try to talk to the legal services'
12 attorney and point these things out.

13 They would find two things. One, he was not really
14 concerned with the fact that these changes had been made. He
15 said my people tell me that they worked out there and these
16 things are true. He showed no willingness to really get to
17 the bottom, the heart of the matter and find out what the
18 actual facts were.

19 Secondly, and most significantly as far as I'm concerned,
20 is they would normally -- one of the responses that almost
21 routinely followed that is another blast of plaintiffs would
22 be added to the complaint. It would start off at 12. They

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1 would come in and complain, negotiate with the guy, and try to
2 point out that 4 of those 12 never even worked there. He
3 would write them back shortly thereafter and say by the way,
4 10 more have come in and hired us to join in the complaint
5 against you. The cost of settlement just doubled.

6 So they all feel like they're paying legal blackmail.
7 That's the phrase that they routinely used. This was not a
8 group meeting, by the way. They wouldn't do that. They were
9 too fearful of having a group meeting. They came in one by
10 one. They would come in one door and go out the other,
11 checking around to be sure nobody was spying on them. They
12 are paranoid, no question about it. They think that the legal
13 services' apparatus down there is out to get them and will
14 retaliate if they find that they are talking to me so I can
15 come talk to you.

16 They were very concerned in talking to me about me
17 releasing any facts to you that would be submitted to those
18 counsel down there. They said you could quickly identify
19 which one of us is saying what. So there is a very high level
20 of genuine fear down there, and that's wrong. I mean, I don't
21 care what else occurs, but your lawyers ought not to be
22 causing a whole industry, apparently in more than one state,

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1 to be afraid.

2 One farmer had decided to try a squash. He'd shifted
3 over and he'd grown squash, and he'd had a very successful
4 year. The crop was up and ready to be harvested. At the last
5 minute, the contractor that he thought he had all of his
6 arrangements with was not able to perform, and he had to go
7 out and get another contractor and that guy did not have all
8 of his certifications saying that he was properly insured.
9 They've got to have a certain amount of insurance to be able
10 to transport him there.

11 There was some things left undone. They guy said I just
12 couldn't take the risk, having just settled with them for the
13 previous year. This was a young farmer who computerized
14 everything. He was so precise on what his duties were and
15 what he needed to do. He did it all for himself and the
16 contractor.

17 He decided that since he'd lost his regular one and had
18 to deal with this new one, and the guy obviously didn't have
19 something, that he just said it's not worth the risk. So he
20 went out and dished up about five or ten, about ten acres of
21 squash which he said at top price would have brought him
22 \$180,000. The relatively bottom price was over \$50,000. He

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1 dished it up rather than run the risk of bringing another
2 lawsuit down on himself.

3 So one of the, I'm sure, unanticipated -- in the Florida
4 situation, I believe this is unanticipated. I don't think
5 they're trying to kill off this Haitian program. But, you
6 know, I have no way of knowing what their intent is. But I
7 think it's unintended, in fact. They have killed the market
8 for the Haitian farm laborers in south Florida.

9 MR. KIRK: What do you mean they have killed the market?

10 MR. HADLOW: The market for them is hand-picking
11 vegetables. This guy has given up squash because that must be
12 hand picked. so he has gone out of the squash business even
13 though he had the highest production of anybody in the
14 country. He just said it's not worth it. So they go into
15 beans instead and other vegetables that can be picked by
16 mechanized methods.

17 Four or five years ago, when this spate of lawsuits
18 started from Florida rural, over 90 percent of all the beans
19 in that area were handpicked because there was a little
20 premium on handpicked beans. They got a couple of dollars of
21 a bushel or whatever size container it is that they sell them
22 in premium.

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1 But now, it's exactly flipped over. Ninety percent of
2 them now have abandoned handpicking and have gone to
3 mechanized picking, even though the bean is not quite as
4 pretty because a few of them are broken and that sort of
5 thing. So those Haitian farm workers are all out of business.

6 It's created a tremendous amount of resentment, both from
7 the farmers who like that premium, you know, and like to
8 handpick it. A lot of them are genuinely fond of these
9 people. They have been working with them for several years.
10 They have a good relationship. It's a long way from being an
11 abusive relationship, at least the ones I've talked to. They
12 had a familial feeling toward these people and felt good about
13 helping them and giving them what livelihood they had during
14 that period.

15 But not only among the workers themselves is there
16 resentment, since they have now have no work, but among the
17 contractors who used to have a work crew and a little
18 business, you know, going like that. They feel so strongly
19 about it that they demanded meetings with the Florida rural
20 legal services' representatives. It's reported to me -- none
21 of my witnesses were there present, but everybody was aware of
22 it. Everybody nodded and agreed that this did happen.

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1 One of the contractors got so emotional, he pulled a
2 pistol and fired it off into the air. It got to be the source
3 apparently of a lot of public comment and debate in the Miami
4 area about whether the Florida rural legal services were
5 helping the Haitian workers or were essentially putting them
6 out of business.

7 Well, I can tell you, based on the six farmers that I've
8 talked to, they have put them out of business. All but one
9 has abandoned handpicking. This one has only a single
10 contractor. So he's relatively small. He works that single
11 contractor. He and the contractor working together have got a
12 long very detailed list of all of the myriad regulations that
13 they've got to comply with.

14 They both understand exactly what they've got to do and
15 they both do it all. He's going to continue to hand pick
16 because he ships vegetables to the New England states and
17 still gets his premium. But he says the cost is
18 extraordinary.

19 But that goes to a point one of you made earlier this
20 morning. Part of that complaint is to the level, the total
21 level, of governmental regulation. But it is being used, that
22 high level of governmental regulation, is being used as a

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1 whip, a weapon, by the Florida Legal Services Corporation, not
2 to accomplish the result of eliminating the problem and
3 letting the people get a degree of comfort working these
4 people under those regulations so that they don't feel like
5 they're going to get sued every year.

6 The squash farmer says, you know, it's not worth it. I
7 could make a nice profit on squash, but if I get hit with a 2
8 or 3 hundred thousand dollar suit at the end of each season,
9 it takes all of my profit. I just can't afford that. I'm not
10 going to run the risk. So he quit. That's happening more and
11 more down there. I just think it's a situation that does not
12 reflect well on the Legal Service Corporation.

13 I think that's a fair summary of what I heard.

14 CHAIRMAN UDDO: Thank you, Mr. Hadlow. Why don't we hear
15 from Mr. Stefany and then we'll ask questions to both of you?

16 PRESENTATION OF DAVID STEFANY

17 HOGG, ALLEN, NORTON & BLUE

18 MR. STEFANY: Thank you, Mr. Chairman. My name is Dave
19 Stefany, and I'm a partner in the law firm of Hogg, Allen,
20 Norton & Blue. Among our clients in the agricultural labor
21 area, we include the Florida Farm Bureau, the Dade County Farm
22 Bureau, and several individual farmers across the State of

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1 Florida.

2 With respect to my comments, I'm going to limit them in
3 light of Mr. Hadlow's comments to you so as to eliminate
4 redundancies. But I would like to make a couple of points
5 from the outline which I prepared for today's talk.

6 I'd like to comment particularly as to how this fear
7 factor has arisen in south Dade County, because I've been
8 intimately involved in representing a lot of the growers in
9 that area in matters that have both fallen short of as well as
10 proceeded through to litigation in federal District Court by
11 Florida rural legal services' attorneys.

12 As Mr. Hadlow mentioned, four or five years ago there was
13 90 percent -- the snap bean harvest was done by hand harvest
14 labor. The primary group of people that did that were
15 Haitians. The Mexican-Americans in the south Dade County
16 have, for years, been entrenched in the large tomato harvest
17 operations that go on down there. The Haitians have somehow
18 been involved in doing the beans.

19 From the summer of 1989 to the summer of 1990,
20 approximately 15 to 18 of the largest bean farmers in south
21 Dade Country received settlement demand letters from Florida
22 Rural Legal Services. They are still receiving them now,

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1 although during that period of time, rural legal was able to
2 identify and go after the largest farmers. But the smaller
3 farmers are still getting letters to this day. It is an
4 active, ongoing process.

5 The information that was spread as 17 or 18 of these
6 large farmers received these demand letters, was a very strong
7 signal that you've got problems, farmer, and we're going to
8 make you pay for the problems you have. It really doesn't
9 matter what you do about it because we're here to stay and
10 we're going to pursue you through to judgment if you fight us.

11 Mr. Hadlow referenced to a couple of these settlement
12 demand letters. The very first letter usually sent by rural
13 legal in this area, from my direct involvement, are generally
14 nine pages typed, single spaced, that identify anywhere from
15 10 to 40 initial plaintiffs, possible plaintiffs, in
16 litigation.

17 The letters are sent to the farmers individually from
18 Florida Rural Legal Services. They, on average, contain 25 to
19 35 case citations of federal district cases from across the
20 country. They cite regulations. They cite sections of the
21 statute. The letters to a T, for my clients as well as
22 others, are very insulting in their tone. They are very

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1 demeaning to the farmers. They accuse them of knowledgeable
2 and intentional violations of the law and seek substantial
3 monetary damages as part of this initial volley of
4 correspondence.

5 CHAIRMAN UDDO: Excuse me, Mr. Stefany, you don't happen
6 to have any with you that you could share with us; do you?

7 MR. STEFANY: I have some with me that I could share with
8 you if we can get some white out to reduce some of the names
9 that are indicated.

10 CHAIRMAN UDDO: Ruby, can we get some white out so he can
11 take the names out of the letters? Thank you.

12 MR. STEFANY: The fear factor then results from the
13 comments that Mr. Hadlow experienced where some of these
14 growers, after receiving an initial letter that showed or made
15 allegations that certain farm labor contractors had worked for
16 growers, when in fact the growers knew those farm labor
17 contractors had not worked, was a follow-up letter within 10
18 days of the initial letter that said oh, by the way, here's
19 the information you asked for. Thank you for communicating
20 with us. Oh, by the way, here's 10 or 15 or here's another 30
21 or 40 people that are now new clients of mine that also want
22 to join this effort.

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1 The message clearly sent out to these farmers was don't
2 ask questions. If you ask questions and delay these things,
3 it's just going to fatten the pot. So, give in. Give in
4 quickly. In one instance, which I've very familiar, a farmer,
5 large bean farmer, in south Dade County, after many of these
6 letter had gone out -- he was one of the later ones to receive
7 a letter -- came in to a threatened federal lawsuit and
8 settled with Florida Rural Legal Services for \$40,000 within
9 three weeks of receiving his first settlement demand.

10 He never hired a counsel. He was so scared to death that
11 he paid \$40,000 to get out from underneath the concern.

12 CHAIRMAN UDDO: Did anyone report those attorneys to the
13 Bar Association for dealing with an unrepresented party in
14 this situation where he should have been advised to be
15 represented?

16 MR. STEFANY: No, sir, to answer your direct question.
17 The correspondence always talks about call me back so we may
18 discuss settlement or have your attorney contact me.

19 CHAIRMAN UDDO: You know there's rules of professional
20 conduct that are fairly specific about dealing with an
21 unrepresented person?

22 MR. STEFANY: I'm aware of those, sir.

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1 CHAIRMAN UDDO: No one has ever been reported for that, I
2 mean of the ones you've dealt with?

3 MR. STEFANY: It was not done in that particular case.
4 But you've got farmers having this fear factor hanging over
5 them. Again, to just reemphasize or perhaps give a scale to
6 it, the snap bean industry has literally put thousands of
7 Haitian farm workers out of work in south Dade County over the
8 last two or three years. The vast percentage of farmers in
9 south Dade County are now machine harvesting their crops.
10 Haitian farm workers are just flat now out of work.

11 Now, I will represent to you that I have personally had
12 discussions with rural legal services' attorneys. Does that
13 bother you, Counselor, that your clients no longer have work?
14 The response comes back sometimes yes, sometimes no. The
15 answer is no when they perceive that the farm workers have
16 moved on to other employment, whether it be minimum wage type
17 inside jobs in the Miami area or elsewhere.

18 But a recent settlement, which I was involved with
19 negotiating, told me the real truth. That is that the farm
20 workers themselves have made complaints to their lawyers
21 because the terms of the settlement, to accomplish the
22 settlement in a reasonable fashion, monetary fashion, required

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1 that this farmer return hand harvesting in future seasons if
2 certain economic conditions were met in an effort to get this
3 thing resolved in short of litigation.

4 The perceptions obviously deal with this MSPWA, the
5 federal law concerning migrant and seasonal agricultural
6 workers. You've heard a lot about that today from Libby
7 Whitley, from Mike Gempler. The law is a tough law. That's
8 certainly part of the problem.

9 There are so many regulations. There are so many ways to
10 stub your toe, whether they be technical violations or true
11 substantive violations, this is certainly part of the picture.
12 But there is a real concern that the farmers whom I represent
13 and others whom I had spoken to have concerning the motive and
14 the reasons why rural legal services goes about doing things
15 in this manner with these insulting letters that absolutely,
16 gentlemen and ladies, raise the emotional level to such
17 extremes that --

18 You asked Ms. Whitley, upon return from lunch, whether
19 there had been an effort to get the parties together to sort
20 of calm this down. I'll tell you, you'd almost have to have
21 federal marshals present because of the high emotionalism that
22 has been generated by the tactics of rural legal services.

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1 Are they misunderstood? Perhaps, but there is a real
2 problem. It continues and it's continued in the seven years
3 in which I've litigated against Florida Rural Legal Services
4 and in which I've been involved representing growers in cases
5 they've brought against them.

6 I'd like to mention one other matter, to anticipate a
7 question from Mr. Dana, perhaps, because I've heard him this
8 morning ask other witnesses, and that is are there any
9 particular areas of the McCollum-Stenholm Bill that you
10 particularly support? I would like to voice my support for
11 two areas of the amendment.

12 Item 1 is on the solicitation. The perception in my
13 dealings with farmers and with rural legal services are that
14 the rural legal services visit places and locations frequented
15 by farm workers and give such shoddy and thin representations
16 as, "Would you like an opportunity to gain some money?"

17 Quickly people sign up in line. It's almost like the
18 lotto down in Florida these days. The opportunity is there
19 for the attorneys to sign up people very quickly and
20 frequently. Frequently, in 50 percent of the cases I'm
21 involved with, there are individuals who step forward, who
22 appear on these correspondence, who appear as plaintiffs in

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1 the lawsuit, who say, "I know nothing about a lawsuit against
2 you Farmer X. I know nothing about that. Nobody told me
3 anything about that."

4 Yes, you might find that they did go to see Florida Rural
5 Legal Services at one point in time, maybe, to check on a SAW
6 program certification or something in that manner, and it
7 winds up that the individual is a plaintiff in a federal
8 lawsuit suing the farmer that formerly employed or allegedly
9 employed the farm worker.

10 So the solicitation aspect of McCollum-Stenholm is valid.
11 I think it would very much assist in the poor perception that
12 farmers in the agricultural community has towards rural legal
13 services. It is absolutely an unfair game with unlimited
14 resources. We say that term. Obviously, there is some limit
15 to it, but it seems like, from the perspective of farmers,
16 that it is unlimited effort in resources that rural legal
17 services' attorneys can make.

18 Secondly, the litigation requirements, I believe it's
19 Section 5 of McCollum-Stenholm, which would require a
20 statement of facts from a plaintiff before the attorney would
21 engage in solicitation of a settlement or engage in the filing
22 of a lawsuit, is something that would absolutely be critical

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1 as a positive step in this area.

2 Again, in several of these cases over the last couple
3 years, a great number of the plaintiffs or alleged plaintiffs
4 listed in correspondence turn out to not have any valid claim
5 whatsoever against a given farmer. We call them bogus
6 plaintiffs. They are difficult to track down because at times
7 the records have been lost. They've been thrown away by the
8 contractor. They've been never maintained to begin with.

9 For those farmers who have a good, as Mr. Hadlow used the
10 phrase, familial relationship with their farm workers despite
11 a language barrier that is very severe in most cases, they
12 know who came to work on their fields and who didn't. Most of
13 these are smaller farmers. That is the only check at this
14 point in time against people signing up with rural legal and
15 having a bogus claim become a threatened claim.

16 Again, this part of the bill would go a long way towards
17 helping the perception.

18 CHAIRMAN UDDO: Thank you, Mr. Stefany. Let me ask Mr.
19 Stefany one quick question before I turn it over, a technical
20 question. The change in the law that made the farmer
21 responsible for what the contractor failed to do, was that
22 judicial or was that statutory?

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1 MR. STEFANY: Originally, the joint employer concept came
2 up as part of the Fair Labor Standards Act. That was
3 judicial. However, with MSPWA being passed in 1984, the
4 legislative history specifically looked to the judicial
5 interpretations of joint employment in the agricultural
6 context and adopted that as part of MSPWA.

7 CHAIRMAN UDDO: So, as of 1984, it's statutory?

8 MR. STEFANY: Deep down in the legislative history and in
9 part of the regulations, which didn't get out, you know, in
10 the mass dissemination as perhaps it should have.

11 CHAIRMAN UDDO: Okay, thank you. Mr. Dana?

12 MR. DANA: Thank you both. I think this has been very
13 helpful. What, frankly, has bothered me today is the absolute
14 absence of any ethical oversight apparently in West Virginia,
15 Maryland. We've heard about Washington State and now Florida.
16 To my knowledge, not one attorney has been sanctioned or
17 reprimanded for conduct which, if we are hearing what some
18 ethical panel would hear, would make anybody really disturbed.

19
20 What, frankly, bothers me is that this is testimony I
21 believe you believe what you've seen and what you've heard.
22 But why aren't we using the ethical oversight? I mean, in my

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1 state, we've got two lawyers, full time, supervising -- in
2 fact, 2,000 lawyers, so there's one lawyer for every thousand
3 lawyers investigating complaints.

4 The private bar is all the time criticized of doing
5 something wrong. I never hear of a legal services' attorney
6 being criticized on ethical grounds. I'm concerned that
7 Congress has passed this legislation. I think the problem may
8 well be over regulation.

9 I feel sorry for the farmers who are maybe uninformed
10 when they get into a problem, that MSPWA or OFA didn't get to
11 them in time. But I'm not sure we ought to change the law,
12 the legal system. I definitely don't think we ought to
13 restructure, have one kind of legal system for migrant farm
14 workers and another kind of legal system for everybody else.

15 My instinct is that most or many of the things that
16 you've testified to strike me as sharp practice that should be
17 brought to the attention of the legal oversight responsibility
18 in Florida, and I'm surprised that a, it apparently hasn't
19 been done or b, that nobody has found anything wrong with it.
20 I'd be interested in your reactions to that observation.

21 MR. HADLOW: Since I'm not active in the field, my answer
22 is probably not going to be as specific as David's. But, in

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1 general, I would say that these farmers who, by definition,
2 are too frightened to even litigate with this guy are
3 certainly not going to turn him in to a grievance committee.

4 By definition, the ones that settle without getting a
5 counsel -- Mr. Uddo is saying that's unethical to do that and
6 why didn't somebody bring it to the attention of the ethics
7 organization, there's nobody to do that. The farmer is not
8 going to do it. He doesn't have a lawyer.

9 So the same situation, the same creation of -- they are
10 acting like strike lawyers act in the corporate world, I mean
11 exactly like that. They sit there and single out a group of
12 victims and do just like the strike lawyers do. When some
13 corporation has a down quarter or something, everybody races
14 for the courthouse to sue them for fraudulent returns in the
15 previous quarter, and that sort of thing.

16 The threat of a \$2 million lawsuit would make them settle
17 up, you know. That's what these people are doing. There is
18 nobody to complain. Somebody that does have a lawyer like
19 this, his clients don't want him to -- he's hired to negotiate
20 to somehow get him out of this.

21 MR. DANA: I'm sure this varies from state to state. But
22 in my state, lawyers have an ethical obligation to call that

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1 to somebody's attention if they see conduct which is
2 unethical, never mind what the lawyer says. You have a
3 responsibility to say you should investigate this conduct.

4 Typically, you wait until the suit is all over so your
5 client isn't prejudiced, but that happens with a fair
6 frequency in my part of the world. I'm surprised it isn't
7 done and the consequence of there not being any reported
8 criticism of legal services' attorneys doesn't tend to support
9 what we've heard today.

10 MR. STEFANY: If I might address that, with Tom Wilson
11 and Libby Whitley's presentation earlier this morning, you
12 heard one of the reasons, and that's monetary. It adds cost
13 to pursue a Rule 11 sanction. It doesn't add cost to do the
14 administrative problem which I would distinguish and call to
15 the Florida Bar's attention some of this activity.

16 One of the things that is different about this type of
17 litigation is this fear of reprisal. I'm here today with some
18 concerns about fear of reprisal. I have continued litigation
19 with Florida Rural Legal Services, and I can only trust and
20 say publicly that I trust that my participation in speaking on
21 behalf of this reform is not going to cause my continued
22 clients to suffer when the folks down there hear about this.

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1 I do have a concern about that, and it's legitimate.

2 But this fear of reprisal is an ongoing one. Okay,
3 you've settled with Florida Rural Legal for the past four
4 years. There is a four year statute of limitations in
5 Florida. But next year if you're not in beans and you're
6 mechanically harvesting now, then you may be in squash or
7 you're harvesting tomatoes. There's no way to mechanically
8 harvest either of those two crops. You're going to have a
9 whole new potential liability next year.

10 No settlement agreement covers what happens next year.
11 There are so many technical areas of this MSPWA law that can
12 be violated. You all may be familiar with many of them;
13 posting a poster in the field that a thunderstorm knocks down
14 one day. It's a week or two before somebody realizes a
15 thunderstorm blew it down. That would be a technical
16 violation.

17 Libby mentioned it earlier, there is no distinction in
18 this correspondence between a technical violation and a real
19 substantive violation where people's rights concerning housing
20 or housing conditions or transportation or serious problems.

21 So I think it's a two-fold problem. One, it is costly on
22 the Rule 11 side of things. I'm aware that some Rule 11

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1 sanctions are pending up in federal court up north, but the
2 motion itself was 37 pages. It had to cost him a major effort
3 to get that done. So cost is one factor. Fear of reprisal
4 and duty to ongoing clients if it happens next year.

5 MR. DANA: One final point. You have a push for the
6 section of McCollum-Stenholm that requires a statement signed
7 by the perspective client, maintained, which then becomes
8 discoverable. The subsequent proceeding is disclosed to
9 auditors and everybody else.

10 Would you be -- I understand as counsel for defendant I
11 would be -- I'd sort of like that prospect. But if you take
12 your defense counsel off for a moment, wouldn't a signed
13 retainer agreement solve the bogus client argument? In other
14 words, if we made a requirement that everybody had to sign a
15 retainer agreement to be represented by a legal services'
16 attorney so that you would know the existence of a -- that
17 there would be a signed retention agreement.

18 Wouldn't that satisfy your bogus plaintiff problem?

19 MR. STEFANY: If the retainer agreement was specifically
20 drafted to cover the violations of the 1987-1988 winter
21 vegetable harvest in south Dade County at such-and-such farm,
22 yes. I think to a large extent that would go that far. But I

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1 think the concern is --

2 Again, keep in mind that there is a very severe language
3 difficulty here between the farmers who generally don't speak
4 Haitian creole and farm workers who can't even speak English.
5 If they speak any English, it's very broken English.

6 There is a concern that if the retainer agreement--
7 how is that explained to the -- we, as a defense bar, would
8 like to see the farm workers words. I think that's what the
9 amendment calls for is a statement of their facts, what do
10 they allege was wrong.

11 The key here is that there are not complaints made by
12 these farm workers. That's part of the problem. They are not
13 made known to the farmer while they are in the field. This
14 happens two, three, four years after the fact. All of a
15 sudden, somebody applies that statute and goes back four
16 years.

17 A farmer says, those people were here. I remember them.
18 We dealt with them. We were fair to them. If they had a
19 problem, we dealt with it. Now they're alleging all this in
20 this insulting correspondence which we'll share with you. I
21 mean, I think it's all part of the process and part of the
22 problem

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1 MR. HADLOW: Just one more note on that same point.
2 During my conversation, I asked -- one of the farmers had
3 allegations there were 12 plaintiffs that had violated a long
4 list of their rights. He was one who had -- he kept all of
5 his records very closely. He's going to litigate it. He will
6 get a crack at proving that the allegations were false. That
7 will occur here shortly.

8 I asked him, I said, "How many on that list did not even
9 work for you, if any?" He said, "At least four never set foot
10 on my property." I said, "So some of the ones that are on
11 there did work for you?" I said, "Well, do some of them still
12 work for you?" He said, "Oh, yes, four or five of them still
13 work for me."

14 I said, "Well, do they know they're suing you?" He said,
15 "I haven't asked them." So I asked him to get the farm labor
16 contractor to contact them this weekend that just passed and
17 asked them if they knew that they were suing not only him, the
18 farmer, but were making charges against the contractor, too,
19 since they were still on his payroll, still working for this
20 farmer.

21 So he contacted two of them and gave me their names.
22 These two workers said no, they had no idea that they were

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1 making any claim against either the farmer or the contractor,
2 much less threatening to sue him. They were absolutely
3 nonplussed according to the report that I got about that.

4 So, if that's true, then that's an abusive tactic by
5 those lawyers down there. Whether somebody ought to turn
6 them into the grievance committee, I don't know, but what
7 we're here to talk about is should you also have some sort of
8 rule of accountability that would at least tell them that's
9 wrong. They ought not to be doing that and somehow try to
10 make them accountable for not using that behavior.

11 MR. DANA: If I heard you correctly, you testified that
12 there is two or three plaintiffs that have alleged that they
13 were damaged on a given day in Florida, and they also brought
14 a lawsuit in New Jersey that they were up there on the very
15 same day picking something else.

16 Now, if your lawyers or the lawyers involved in that
17 matter will not call that to somebody's attention, why would
18 it make sense to have the president of the Legal Services
19 Corporation be the monitor of that? It seems to me that
20 somebody ought to -- if you've got a plaintiff who is alleging
21 that they are in -- or lawyers on behalf of one person who has
22 alleged to be picking vegetables 2,000 miles apart on the same

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1 day and suing different people in two different states on the
2 same day for doing something, if you've got that, which is
3 what I thought I heard somebody say today, I would think that
4 would be the sort of thing that somebody would call to
5 somebody's attention.

6 MR. KIRK: That is being pursued, Mr. Dana. There is a
7 motion currently pending regarding that. The people were
8 dismissed from the complaint. Now there's a Rule 11 opinion
9 on that, I believe.

10 CHAIRMAN UDDO: Let me just say one thing right now,
11 before I got to the other questions, on the question of
12 reprisal. I think that I'm speaking for the committee when I
13 would say the committee would be extremely disturbed if anyone
14 suffered any consequences directly as a result of testifying
15 before this committee.

16 We certainly can't do our work if people can't feel free
17 to come here and give us information, and we've asked for it.
18 Many people are here at our request. So I would just say that
19 if there are any acts of reprisal, and I have no reason to
20 believe there will be, but since it keeps coming up, if there
21 are, I would like to know about it personally so that I can
22 see to it that any such allegations are properly investigated,

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1 because it shouldn't happen if we have people coming here to
2 talk to us.

3 MR. KIRK: What control do we have over that?

4 CHAIRMAN UDDO: The monitoring department can look into
5 it. I mean, I don't think we'll go into all the details of
6 it. But certainly if there's an accusation that someone was
7 harassed or in some other way adversely affected because they
8 came here to testify, I think the Corporation has the tools to
9 deal with that.

10 Mr. Wittgraf?

11 MR. WITTGRAF: Thank you, Mr. Chairman. Mr. Hadlow, as I
12 understand it, you actually, on your own time as it were, at
13 the suggestion of Mr. Kirk and Mr. McCollum, did this
14 investigation?

15 MR. HADLOW: Yes.

16 MR. WITTGRAF: That was a special effort. Thank you for
17 making that effort. You haven't been involved so much in the
18 direct litigation, apparently, as Mr. Stefany?

19 MR. HADLOW: None whatsoever.

20 MR. WITTGRAF: Well, we do appreciate your having made
21 that special effort and having lent the respect, apparently,
22 with which you're held by your colleagues on the floor to bar

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1 to that undertaking.

2 Mr. Stefany, you've been involved in farm labor
3 litigation, as I understand it, for about seven years.

4 MR. STEFANY: Yes.

5 MR. WITTGRAF: Apparently both in central Florida and
6 south Florida or all over Florida?

7 MR. STEFANY: All over Florida and up the eastern
8 seaboard.

9 MR. WITTGRAF: As you were describing, first of all, the
10 demand letters, have you given us one of those?

11 CHAIRMAN UDDO: No. He has to white out some names.

12 MR. WITTGRAF: Okay, good. You'll do that?

13 MR. STEFANY: I'll do that as soon as we're finished.

14 MR. WITTGRAF: Please. Looking back at those, I think
15 you said something about 15 of the largest south Florida
16 farmer growers have received such letters during the summer of
17 1989 and the summer of 1990, during those two growing seasons.
18 Is it your conclusion that those were frivolous our warranted
19 demand letters, aside from the insulting tones that you
20 described?

21 MR. STEFANY: They were not frivolous. There was some
22 substance to the allegations of the letters. As I think my

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1 prior remarks will state, this is a very difficult area in a
2 statute that had been a pass in 1984. The harvest seasons
3 covered began in 1985 and went forward. So it was fairly new
4 as a former private right of action.

5 MR. WITTGRAF: Clearly, one of your tasks in working with
6 some grower organizations or producer organizations has been
7 the education and the documentation, the processes and the
8 education of growers and producers about those processes; has
9 it not?

10 MR. STEFANY: Absolutely, and, in fact, Mr. Gempler's
11 organization does the same thing. We have sponsored seminars
12 with the Dade County Farm Bureau which were well-attended by
13 growers, et cetera. So we do that on a regular basis.

14 MR. WITTGRAF: All of which strikes me as a logical
15 response, both by you and by Mr. Gempler, his organization, to
16 the evolutionary development of the law. I gathered, I
17 thought, at least from Mr. Hadlow's comments, that the number
18 of lawsuits and the number of demand letters has dropped or
19 diminished somewhat in the last year or so.

20 I'm assuming in part because of the success you've had
21 with the education and documentation process. Is it fair to
22 say that the demand letters and litigation are on the wane?

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1 MR. STEFANY: I think it depends on what geographical
2 areas you're talking about. I think certainly the sheer
3 number of demands have decreased in south Dade County.
4 However, in other areas of the State of Florida, activity is
5 at a peak. So I think the focus is just in another
6 geographical area at this point, although letters are still
7 being received at the present date.

8 MR. WITTGRAF: Did I understand you to say that 50
9 percent of the farm laborers with whom you have visited
10 personally knew nothing about the litigation to which their
11 names were lent?

12 MR. STEFANY: No, I don't believe so.

13 MR. WITTGRAF: I think I misunderstood.

14 MR. STEFANY: I believe my comment towards something like
15 was that in at least 50 percent of the cases in which I've
16 handled, there were farm workers who appeared on the lists who
17 had never worked for that employer or alleged employer.

18 MR. WITTGRAF: So that would be a small proportion of a
19 large number of plaintiffs then over a multitude of cases,
20 apparently?

21 MR. STEFANY: It would be a small number, but still a
22 number, nevertheless, that would be eliminated by having these

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1 fact statements prepared, assuming the farm worker himself or
2 herself was not sufficiently sophisticated to pull the wool
3 over the eyes of Florida rural legal lawyers.

4 MR. WITTGRAF: We don't require statements like that
5 under any other type of federal legal proceeding that you're
6 aware of; do we?

7 MR. STEFANY: When you say we, the legal services?

8 MR. WITTGRAF: No, I'm sorry. That wasn't clear. We,
9 meaning the federal statutes.

10 MR. STEFANY: There used to be an authorization to
11 proceed requirement of the FLSA, but I think that pretty much
12 is not a requirement anymore.

13 MR. WITTGRAF: Okay. So what we're asking for is
14 something unique to legal services' attorneys; right?

15 MR. STEFANY: It's a check and balance, I think, on--
16 again, in this area where there is such a tremendous
17 opportunity for a large number of what we call bogus
18 plaintiffs. Yes, to answer your question.

19 MR. WITTGRAF: Okay. I mean, it's tough. Just as Mr.
20 Wilson and Ms. Whitley indicated this morning and this noon,
21 the real unhappiness is with -- the initial unhappiness is
22 with legal services' attorneys who are the bearers of the bad

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1 news. But the real unhappiness is with the provisions of
2 MSPWA or OFA as that was enacted by the Congress in 1984; is
3 it not?

4 MR. STEFANY: I believe the law is one thing that I'm
5 sure a lot of farmers would like to see addressed and revised.
6 But it's the tactics of rural legal services' attorneys which
7 makes that law almost unbearable because there are so many
8 regulations.

9 There is such an effort to solicit folks and keep the
10 numbers up that it's -- as Libby, I think, commented, I have
11 heard rural legal services' lawyers also state to me that
12 they're going to be the watchdogs since DOL is not doing it
13 under this statute. That's how they perceive their mission.
14 That makes them extremely adversarial.

15 When you read these letters, you'll see the tone. If you
16 can place yourself in a position of a farmer, not
17 sophisticated in the legal process in one way or another, of
18 getting a nine-page typewritten letter with all this innuendo
19 and hyperbole, I ask you to review this letter when you get it
20 in that tone.

21 MR. WITTGRAF: Certainly. But so far as I've understood
22 your testimony this afternoon, what's being done is within the

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1 limits of the law. It's nothing illegal or extralegal that's
2 being done by the legal services' attorneys; is it?

3 MR. STEFANY: I can't say to a specific time in which
4 I've been involved in rural legal services where I've said to
5 myself they have violated the law. I can tell you, however,
6 that there is an overall perception, which I think is very
7 understandable, that their solicitation efforts go far beyond
8 that which we're allowed to do as private lawyers, and that
9 that's not right and that they are -- the word that's used all
10 the time is legal extortionists.

11 MR. WITTGRAF: That's understandably used. I think Mr.
12 Gempler had a couple of euphemisms that he cited this morning
13 as well. That's understandably used within the community. I
14 guess legal services' attorneys would find that pejorative and
15 unpleasant, just as some materials that were given to us this
16 morning characterizing farmers as greedy pigs by people who
17 were associated with Texas Rural Legal Aid out of Texas would
18 be unfair.

19 The fact that that terminology is used kind of within the
20 club or within the network of this set of interests as opposed
21 to this set of interests is kind of human nature; is it not?
22 I mean, just because that's the way it is described doesn't

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1 mean it's so; does it?

2 MR. STEFANY: You make a valid point. It's a perception.
3 It's my understanding that one of the premises, the
4 foundations, of this McCollum-Stenholm amendment is to try to
5 address this public concern about these lawyers doing these
6 types of things. If I'm wrong about that, I stand corrected.

7 But the perception is, you know, in half the times,
8 you've got plaintiffs on there that are bogus. If you call
9 that to the attention of legal services' lawyers, they turn
10 around and say oh, you're right. Prove it to me that you're
11 right. Oh, by the way, here's 25 more people. We'll just
12 supplement. We'll just substitute those folks.

13 MR. WITTGRAF: You just said that half the time those
14 names are bogus. I was thinking you told me a few minutes ago
15 it was really a small proportion of the names that are bogus.

16 MR. STEFANY: In half of the cases I've handled, there
17 are bogus plaintiffs involved in half --

18 MR. WITTGRAF: But it's not the names that are bogus?

19 MR. STEFANY: No, sir.

20 MR. WITTGRAF: Before I ask you more about solicitation,
21 let me ask you about one thing first. I guess I'm a little
22 bit surprised of -- I don't know about Mr. Gempler, but at

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1 least you and Mr. Wilson have both referred to the expense
2 involved with so-called Rule 11 motions.

3 I think you did acknowledge, in response to an inquiry
4 from Mr. Uddo, that filing a complaint with the State Bar
5 Grievance Commission is done at little or no expense to the
6 allegedly agreed party. As we're talking, I think Ms.
7 Whitley, in particular, did about, Mr. Gempler too, 40 and 50
8 and 60 thousand dollar legal bills in some of this litigation.

9 I'm having a real hard time understanding why, for what
10 would seem to me -- and correct me if I'm ignorant because I'm
11 from northwest Iowa rather than central Florida or Maryland--
12 why a few hundred dollars that might be involved in the
13 filing of a motion for Rule 11 sanctions would be so expensive
14 and would be so unlikely when 40 to 50 to 60 thousand dollars
15 is being spent already?

16 MR. STEFANY: Well, your premise is that a Rule 11 motion
17 could be filed for a couple hundred dollars. It's not going
18 to -- in this day and age of federal practice, that's not
19 possible. So that's incorrect.

20 MR. WITTGRAF: Tell me how much. I said my ignorance
21 because of where I'm from, I guess. What would the cost or
22 the expense of a filing of a Rule 11 motion be?

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1 MR. STEFANY: It could vary, Mr. Wittgraf, but the costs
2 would be probably a minimum of a couple thousand dollars
3 anywhere up to 10 or 15 thousand dollars, depending how
4 detailed --

5 MR. WITTGRAF: To file a Rule 11 motion?

6 MR. STEFANY: Absolutely, sir, to file the details needed
7 to convince a court, who is going to be reluctant to extend
8 sanctions, which is a fairly common practice in federal court,
9 it's going to be tough.

10 The one that's been filed that Mr. Kirk referred to is 37
11 typewritten pages long. It had to have taken considerable
12 hours, either through paralegals or lawyers on time to prepare
13 that motion. It's very complex and very time consuming, very
14 labor intensive.

15 MR. HADLOW: And very difficult as well.

16 MR. WITTGRAF: Well, I think that's a key point, Mr.
17 Hadlow, and I appreciate you making it. I mean, several of us
18 have asked about the existence, if any, of successful Rule 11
19 motions because we think that that would be an appropriate and
20 very telling result if there are some of the abuses that at
21 lease implicitly you're suggesting there are, whether or not
22 legal services' attorneys are operating within the law or, as

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1 you're suggesting, are operating outside the law.

2 If they're operating outside the law, be it the rules of
3 civil procedure or the statutes, should special sanctions be
4 applied to legal services' attorneys that don't apply to any
5 other attorneys who are practicing? Answer it not.

6 Let me go to one other question in this regard. Have
7 you, Mr. Stefany in particular, found that there are any
8 attorneys dealing with MSPWA or OFA on behalf of plaintiffs
9 who were anything other than legal services' attorneys?

10 MR. STEFANY: No, not in my seven years of practice in
11 this area.

12 MR. WITTGRAF: So the reason you're particularly unhappy
13 with legal services' attorneys is because they always
14 represent the plaintiffs in these cases. It's almost unique
15 that these migrant or seasonal laborers are going to have
16 legal services' attorneys because there really isn't anybody
17 else to do that legal work.

18 MR. STEFANY: They do the work.

19 MR. WITTGRAF: Can you imagine anybody else from your
20 experience in Florida or along the east coast doing that work?

21 MR. STEFANY: No, not in this area, not in this
22 particular area.

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1 MR. WITTGRAF: That's why you're here then because they
2 all have to be legal services' attorneys because they are the
3 only one who will do the work?

4 MR. STEFANY: They are doing it and that's why I'm here,
5 yes.

6 MR. WITTGRAF: Apparently they're they only ones who will
7 do the work. Can you think of or what are your thoughts about
8 the best way to deal with the solicitation problem while not
9 jeopardizing from a confidentiality and discovery perspective
10 the rights of the plaintiffs? Forget the bogus plaintiffs for
11 the moment, but the legitimate plaintiffs, how can we deal
12 with this solicitation problem while protecting the rights of
13 the individuals making the complaints?

14 MR. STEFANY: I don't have any problem with farm workers
15 who have a complaint going to rural legal services and making
16 a complaint. If rural legal services' lawyers are in another
17 geographical location, they are there. If a complaint comes
18 up -- I think what we continually hear, and it is second and
19 third hand, but what we continually hear is what is held out
20 there is a chance for money, sign here, X. That's it.

21 Then you have these results, as Mr. Hadlow testified,
22 where two or three or four workers currently working for a

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1 There is an antiretaliation provision in MSPWA that if a
2 person makes a claim or goes to a rural legal services' lawyer
3 to make a complaint, they can't be retaliated against. They
4 can't be terminated from their employment. They can't be
5 refused to be hired, et cetera. So I think that's all
6 covered. I don't see any problem with potential retaliation.

7 MR. WITGRAF: Mr. Chairman, thank you. Thank you,
8 gentlemen.

9 CHAIRMAN UDDO: Mr. Kirk?

10 MR. KIRK: Mr. Hadlow, when you were in private practice
11 and senior and managing partner of your law firm, did you
12 expect your lawyers to make sure that when they filed a
13 pleading that the facts or reasons would be accurate and that
14 people that they were representing were in fact the clients?

15 MR. HADLOW: Certainly.

16 MR. KIRK: Mr. Stefany, you the same?

17 MR. STEFANY: Absolutely.

18 MR. KIRK: If you found that one of your people in your
19 law firm had done that repeatedly, would they still be working
20 for you?

21 MR. HADLOW: Not in my case, they wouldn't.

22 MR. KIRK: Are you aware of any such reprisals or any

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1 authority that's held by anybody on this board to these
2 attorneys who have committed these very same acts?

3 MR. HADLOW: I haven't heard of any such thing.

4 MR. STEFANY: I know of none.

5 MR. KIRK: Mr. Stefany, I'd like to ask you to engage in
6 just a little speculation, if you would. Mr. Hadlow has
7 related to you in instance of a couple of people that didn't
8 recall signing up for a lawsuit. Do you think you might have
9 some difficulty if you -- you know, the bar might have some
10 difficulty prosecuting that claim against the legal services'
11 attorney because of language barriers and understandings and
12 who had what piece of paper at what time?

13 MR. STEFANY: There will be some serious practical
14 limitations on that. It's not saying it's impossible, but it
15 would be very difficult, very involved, just like the rest of
16 the litigation these cases are. I can also tell you that I've
17 been involved in attempting to get information like that as I
18 am able to from an ethical point of view.

19 Frequently, what happens is, in my experience, that when
20 rural legal services' attorneys learn of that particular
21 effort, they go on a major offensive to shore up those
22 particular farm workers. All of a sudden there are threats of

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1 retaliatory conduct coming. It's a nightmare. Practically
2 speaking, the solution is not the ethics complaint.

3 MR. KIRK: Mr. Stefany, this retaliation, is this a real
4 fear or is this something you guys are making up?

5 MR. STEFANY: It's a real fear, and it's a real fear from
6 the perspective of the farmers. Next year they are going to
7 have a crop to bring in, and they're going to have hand-
8 harvest labor needs, and there's probably going to be some
9 technical problem despite their efforts to comply that they
0 are not going to be able to meet, and they are going to be
1 back involved with a lawsuit which potentially could cost them
2 big, big dollars.

3 Let me quickly just -- I'll take one extra minute and
4 address -- you know, one farmer that Mr. Hadlow mentioned that
5 is no longer in the squash business had an average crew size
6 of 25 last fall. By December, and his harvest began probably
7 in early October, so for the two or three month period between
8 October and the end of December, he had had 283 migrant
9 workers constituting that 25 person crew for that three month
0 period.

1 Now, just take one violation, one technical violation of
2 up to \$500 of violation for 283 people. You can understand

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1 MR. STEFANY: Again, I'm concerned with the lack of
2 detail in a retainer arrangement. If it's a farm worker's
3 claim, then let that farm worker make the facts and give a
4 statement. If you're concerned about the discoverability, put
5 a limitation as far as the timing in the discoverability. The
6 statement, everybody else has to do it. Why shouldn't farm
7 workers?

8 MR. KIRK: You mean like maybe have it discovered only
9 after the proceedings were concluded, and that would be for
10 purposes of Rule 11 or for purposes of sanctions or for
11 purposes of ethical violations?

12 MR. STEFANY: The limitation would be the typical
13 discovery limitations. Once the case has been filed -- I
14 mean, I don't understand the reluctance. I really don't.
15 I've been practicing in this area for seven years. I don't
16 understand the reluctance to share a plaintiff's statement of
17 what facts occurred to him, when they are willing to allegedly
18 make a claim against a farmer. I don't understand it.

19 It's either the farm workers words or it's rural legal
20 services' attorneys' words. It would help the perceptions and
21 the problems in this area immensely if we could ascertain and
22 make sure that its the farm worker's words not answers to

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1 interrogatories as we're familiar with, as lawyers frequently
2 get involved with preparing. It's the farm worker's words not
3 the lawyers.

4 MR. KIRK: In other words, if they wanted to make a
5 demand for \$50,000 based upon what the farm workers told them,
6 they ought to be willing to share those words with --

7 MR. STEFANY: Absolutely. My clients would understand
8 that a lot better and be able -- that would be much more
9 palatable. But what they cannot deal with is these instances
10 which regularly occur where the farm workers know nothing
11 about the complaint. That's tough to digest.

12 MR. HADLOW: Excuse me, let me just add. Again, I may
13 have said this before but typically all of the ones that
14 testified to me said that the way that the Florida rural
15 lawyers get their client list is to go to a meeting or some
16 other grouping of farm laborers and say does anybody here do
17 farm work in Homestead, in this area?

18 If you do, I can get you some money. All you have to do
19 is sign here, tell me what farm you work on and what period,
20 and I can get you some money. That's the gross level of
21 solicitation it goes on.

22 MR. KIRK: Mr. Hadlow, can you figure out any substantial

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1 disadvantage that would occur to a plaintiff's attorney or to
2 a plaintiff who is required to put down the day, the time, the
3 circumstances under which he worked and whatever he thinks the
4 violations were as a prerequisite to filing a lawsuit or
5 getting money?

6 MR. HADLOW: I certainly can't see any disadvantage to
7 that, for one reason, they don't know. They don't know that
8 anything has happened to them until the legal services' lawyer
9 tells them. So I don't see why the legal services' lawyer
10 would hesitate to make up such a statement and put it down on
11 paper. I mean, he's the one telling them what losses they've
12 suffered.

13 He says, I bet you were on a bus that didn't have enough
14 insurance. Well, the farm worker doesn't know, and he
15 certainly didn't instigate that complaint. You know, I mean
16 it's just on his face. He didn't instigate that. So since it
17 is the legal services' lawyer who is telling him all these
18 rights that have been breached, I don't see why he'd hesitate
19 to put them all down. At least the department could then look
20 at it and check off the ones that aren't true.

21 MR. KIRK: All right. Mr. Stefany, one last question.
22 You did not mention the shifting of attorneys fees or perhaps

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1 the abolition of recovery of attorneys fees by the Legal
2 Services Corporation as something that you think might help in
3 this situation.

4 MR. STEFANY: Thank you for pointing that out, Mr. Kirk.
5 That was an oversight on my part. You all will read this in
6 the letter I'm going to share with you. But as part of the
7 text of every letter I've seen in this area, is basically a
8 warning that under the FLSA, the Fair Labor Standards Act,
9 attorneys fees are authorized to prevailing parties.

10 These fees, and this is a quote, "These fees are awarded
11 at market rates even if the attorneys employee is employed by
12 a legal services organization." He puts a citation in there
13 in parentheses "awarding fees to legal service organization at
14 rate of \$125 per hour for my work in a case involving migrant
15 workers." So I mean it's part of the initial volley of
16 correspondence that, by the way, you're going to be paying me
17 so don't fight me. It gets their attention.

18 MR. KIRK: Are you likely to collect attorneys fees from
19 the migrants?

20 MR. STEFANY: Absolutely not, both legally and
21 practically obviously. But this is a real inequity that
22 again, to address your question from earlier today, the

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1 McCollum-Stenholm amendment would address.

2 MR. KIRK: Do you think that the attorneys fee issue is
3 the same concept when you're dealing with a lawyer dealing
4 with government money as it would be as a lawyer who is
5 dealing with his own invested money or something? It's
6 certainly not the same.

7 Again, the perception is that the lawyer with legal
8 services has quite an arsenal. It's not the same. The
9 plaintiffs aren't pursuing it. There's no risk whatsoever for
10 the plaintiffs. It clearly is a major differential.

11 I might also add that in most of these cases, most of
12 these cases, the reason why this particular paragraph about
13 the Fair Labor Standards Act, in my opinion, is placed in
14 these correspondences because MSPWA does not, does not, allow
15 for attorney's fees. Therefore, in the harvesting of fresh
16 vegetable crops, there are always allegations put forth, both
17 in the correspondence as well as in subsequent litigation
18 lawsuits, that minimum wage violations did occur so that the
19 attorney's provisions will kick in and that threat can be
20 there.

21 MR. KIRK: Thank you, Mr. Chairman. I have no further
22 questions.

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CHAIRMAN UDDO: Can we get everyone in here? Ruby, would you ask Mr. Kirk to come in, please? Mr. Damon Tobias with the Chamber of Commerce, you understand we're down to a fairly rigid time limitation here. I had them express that to you when I got the request that you wanted to testify.

So if you would -- I've been extremely loose on the rest of the witnesses to try to give them a lot of time, but we're at the point of the day where I may have to ask you to be concise. Thank you.

MR. TOBIAS: The questions on the last panel were very complete and probing. So I imagine the short time frame works to my advantage.

CHAIRMAN UDDO: Okay.

PRESENTATION OF DAMON TOBIAS

UNITED STATES CHAMBER OF COMMERCE

MR. TOBIAS: I appreciate the opportunity to be here and would like to thank the Chairman and the committee for that opportunity. I cannot conceive of anyone who would disagree with the basic core purposes for which Legal Services Corporation was created; that being to try to ensure that individuals and families of the disadvantaged and of the

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1 income scale have access to our system of justice, have access
2 to the courts, access to adequate legal representation.

3 The concern that the U.S. Chamber of Commerce comes here
4 with today is that that be access without excess. I know that
5 you all all day today have heard the horror stories that have
6 been raised by and on behalf of different employers about
7 employers who were coerced into making out of course
8 settlements for tens of thousands of dollars with unknown
9 plaintiffs because they are being threatened with -- sued over
10 information that doesn't exist in records anywhere, stories
11 about legal service grantees whose idea of representing poor
12 and civil litigation is filing suit in political redistricting
13 fights, or legal laxity in recordkeeping and accountability to
14 the point where the General Accounting Office last year
15 essentially said it's impossible to tell what many grantees do
16 with their time or with the money that they get from the
17 federal government.

18 Some legal service grantees, according to the horror
19 stories, and it's all anecdotal unfortunately, but we know
20 from observing Congress, government frequently runs by
21 anecdote. Some legal service grantees operate in ways that
22 are unheard of, unheard of by other federal contractors,

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1 unheeded of by any other government agency, or unheeded of in
2 virtually any private sector law firm.

3 It's in response to these stories to the situations that
4 have given rise to these stories that the U.S. Chamber of
5 Commerce comes to you asking for you to embrace the
6 Stenholm-McCollum bill, H.R. 1345, as you approach the
7 reauthorization of the Legal Services Corporation.

8 The Chamber strongly supports this legislation and we
9 agree with the three principal overarching points that have
10 been made by the sponsors of the legislation. The delivery of
11 legal services for the poor ought to be nonpolitical. It
12 ought to be conducted in an accountable way. It ought to be
13 fair.

14 In terms of accountability, and that's the area that
15 particular catches my imagination, it's, I think, somewhat
16 amazing that there is the lack of accountability systemwide
17 for legal service grantees in the area of handling their
18 finances, in their area of defining and then policing local
19 board priorities, in terms of timekeeping and recordkeeping,
20 in terms of making sure that legal service time and money is
21 not spent for lobbying, for making sure that the clients are
22 not solicited, and, of course, being the voice of business and

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1 speaking out for free enterprise in the nation.

2 We, at the Chamber of Commerce, always think that anytime
3 you can inject competition into the system, you have a better
4 system. There should be more competition allowed for legal
5 service grants.

6 When I say that the arguments in the accountability
7 particularly catch my imagination, I'd like to paraphrase, you
8 can say that lack of accountability leads to corruption and
9 absolute lack of accountability corrupts absolutely. Now, in
10 any area of our legal system when you have significant issues
11 of controversy being raised, whether in terms of the big
12 picture of policy areas, in terms of the micro level
13 individual cases that are litigated or settled, it's safe to
14 say that neither side has a monopoly on virtue.

15 I didn't come here today to even remotely suggest that
16 all of the nation's six million employers operate every day in
17 a way that never goes beyond or below what's legal. I would
18 argue that the 180,000 members of the U.S. Chamber of Commerce
19 operate always in a totally forthright and legal manner. But
20 there are always going to be bad apples on both sides.

21 I'm not here to suggest preference for one view of human
22 nature over the other. If you don't have accountability and

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1 fair ground rules, that people are inherently evil, and 90
2 percent of the time they'll abuse the system, or that people
3 are inherently good and only 10 percent of the time they'll
4 abuse the system.

5 If the system is abused 10 or 5 or 2 percent of the time,
6 that still means that there is a crying need for a system that
7 is fair, that is balanced, that in the words of Messrs.
8 Stenholm and McCollum, " a system that is nonpolitical,
9 accountable and fair."

10 I have a number of friends still to have been Legal
11 Services attorneys, and whenever we talk about their work,
12 I've been regaled with stories about some of their
13 relationships with their clients, and when they are the bearer
14 of bad news, sometimes, to their clients, frequently the
15 response is, "Well, I don't need a Legal Services lawyer. I'm
16 going to go out and get me a real lawyer."

17 While the individual statement may seem unrelated to
18 what we're talking about here today, I think it's relevant to
19 what is sometimes the general perception of the Legal Services
20 Corporation. Certainly, one of the things that all of us want
21 to do is to restore the esteem that a program with lofty goals
22 of Legal Services Corporation deserves to have, and that

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1 involves making sure that the system administered by the
2 corporation lives up to its goals.

3 I think that means getting back to the basics,
4 applying to the Legal Service Corporation grantees simple
5 ground rules, universal principles that are pretty uniformly
6 accepted in virtually every analogous situation.

7 Most importantly, getting back to the basics means
8 that we would improve and increase the delivery of legal
9 services to those who are intended to benefit from them, and
10 that is the truly needy who seek and want access to the
11 nation's system of justice.

12 That is why the U.S. Chamber of Commerce supports H.
13 R. 1345, the McCollum/Stenholm Legal Services Reform Act, and
14 that's why we hope that this committee and the Legal Services
15 Board can do so as well.

16 CHAIRMAN UDDO: Thank you very much. Mr. Dana, any
17 questions?

18 MR. DANA: No.

19 CHAIRMAN UDDO: Mr. Wittgraf?

20 MR. WITTGRAF: Thank you, Mr. Chairman. Mr. Tobias,
21 have you been here most of the day?

22 MR. TOBIAS: Just for a brief period this afternoon.

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1 MR. WITTGRAF: Okay. So you've heard some concerns
2 brought first-hand by two lawyers from Florida about excesses
3 of Legal Services attorneys there, utilizing the Agricultural
4 Workers Protection Act.

5 As you talk about nonpolitical, accountable, fair
6 provision of legal services, federally funded legal services
7 to the poor, are you aware of any particular excesses that we
8 should be concerned with?

9 MR. TOBIAS: I think you've heard, on an anecdotal
10 level, a variety of examples today. I didn't come armed with
11 specific cases or specific examples, but certainly there are
12 those cases that have been widely reported, widely repeated,
13 about intimidation through demand letters where facts were
14 unsubstantiated and plaintiffs weren't listed or instances
15 where there was unacceptable client solicitation or
16 involvement in unacceptable activities.

17 MR. WITTGRAF: I think you mentioned that the U.S.
18 Chamber had some 180,000 members?

19 MR. TOBIAS: That's right.

20 MR. WITTGRAF: And that would be middling, mid-size
21 to large employers, typically?

22 MR. TOBIAS: Actually, 60 percent of our employers

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1 employ 10 or fewer employees. Ninety-three percent employ 100
2 or fewer.

3 MR. WITTGRAF: Have you, from your membership,
4 received indications of excessive activities or legal behavior
5 by Legal Services attorneys?

6 MR. TOBIAS: We are only beginning to. By and
7 large, we do not represent many agricultural employers, and
8 that seems to be the population that has had the most front
9 line experience with the Legal Services Corporation. I think
10 it was really the emergence of the Legal Services Reform Act
11 and the growing diversity of the Chamber membership together
12 that has really just begun to interest the Chamber in this
13 area. It's only been in the last year or so that we've really
14 begun focusing on the issue.

15 MR. WITTGRAF: Any subject area, debtor/creditor,
16 bankruptcy, landlord/tenant, employer/employee problems?

17 MR. TOBIAS: Nothing that I came armed with today.

18 MR. WITTGRAF: Thank you, Mr. Tobias. Mr. Chairman.

19 CHAIRMAN UDDO: Mr. Kirk?

20 MR. KIRK: Nothing.

21 CHAIRMAN UDDO: Thank you, Mr. Tobias, appreciate
22 it.

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1 MR. TOBIAS: Thank you very much.

2 CHAIRMAN UDDO: Next we have Mr. Al French with the
3 United States Department of Agricultural.

4 PRESENTATION OF ALLISON T. FRENCH

5 UNITED STATES DEPARTMENT OF AGRICULTURE

6 MR. FRENCH: Thank you, Mr. Chairman, members of the
7 committee. My name is Allison T. French, and I'm coordinator
8 of Agricultural Labor Affairs for the U.S. Department of
9 Agriculture. I've held this position since January of 1987.
10 I appear today by invitation of the Legal Services
11 Corporation.

12 The Department of Agriculture first became involved
13 in the administration of farm labor programs with the passage
14 of the Immigration Reform and Control Act of 1986. This
15 involvement also initiated our involvement in a major way with
16 Legal Services attorneys.

17 The Immigration Reform and Control Act of 1986
18 established the Special Agriculture Worker Program, which
19 provided for the legalization of illegal aliens who had
20 performed requisite work in fruits, vegetables, and other
21 perishable commodities.

22 The Secretary of Agriculture was to define, in

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1 Program would never be implemented, and that it will be
2 covered up with litigation.

3 In January 1987, a few weeks after the IRCA was
4 enacted, the Farm Worker Justice Fund requested a meeting with
5 Ewen M. Wilson, Deputy Assistant Secretary for Economics with
6 USDA. Tina Poplawski of the Farm Worker Justice Fund, and
7 Robert A. Williams attended this meeting and urged the
8 inclusion of sugar cane workers in the Special Agriculture
9 Worker Program.

10 The next day, Mr. Williams wrote Dr. Wilson on the
11 letterhead of the Farm Worker Justice Fund, urging the
12 inclusion of alien sugar cane workers in the SAW Program.
13 Robert A. Williams was then and is now an attorney with
14 Florida Rural Legal Services.

15 On April 22, 1987, USDA published its proposed rule
16 for the Special Agricultural Worker Program. This proposed
17 rule indicated that sod, soybeans, and sugar cane, among other
18 commodities were not to be included in the SAW Program.

19 On April 23rd, USDA received a request under the
20 Freedom of Information Act from Tina Poplawski of the Farm
21 Worker Justice Fund and Robert A. Williams for information
22 received by USDA pertaining to whether sugar cane should be

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1 included in the Special Agricultural Worker Program.

2 Are this request was made on the letterhead of
3 Florida Rural Legal Services. On May 11, Robert C. Lyman of
4 Southern Minnesota Regional Legal Services wrote to USDA with
5 respect to this program on behalf of illegal aliens previously
6 employed in soybeans. On May 13th, Cynthia G. Schneider, an
7 attorney with the Migrant Legal Action Program wrote to USDA
8 to urge the inclusion of illegal aliens previously employed in
9 soybeans and sugar cane in the Special Agricultural Worker
10 Program. She included suggested language for our rule.

11 USDA's final rule defining the commodities to be
12 included in the Special Agricultural Worker Program was
13 published on June 1, 1987. The rule was challenged under the
14 Administrative Procedures Act as being too broad and inclusive
15 in Northwest Forest Workers v. Lyng.

16 In the written copy of my text, I've got the
17 citation for the cases, which I'll mention, but for
18 simplicity, I'll omit them now. Intervenors in Northwest
19 Forest Workers challenged the rule as being too narrow and
20 requested the inclusion of alien sugar cane workers. The
21 intervenor plaintiffs were represented by Robert A. Williams,
22 Sally G. Schmidt, and Charlotte C. Sibley of Florida Rural

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1 Legal Services, Kristine Poplawski of the Farm Worker Justice
2 Fund, and attorneys with the private law firm of Hogan &
3 Hartson of Washington, D.C.

4 These intervenor plaintiffs were both illegal aliens
5 and aliens not permanently admitted to the United States, who
6 desired to be legalized under the Special Agriculture Worker
7 Program. Some of the intervenor plaintiffs were not present
8 in the United States.

9 Some of the intervenor plaintiffs in the Northwest
10 Forest Workers were temporary agricultural workers or H2A
11 workers. Such workers are nonimmigrants and are not legally
12 admitted to the United States for permanent residence.
13 Section 305 of the Immigration Reform and Control Act of 1986
14 provides that an H2A worker may be eligible for legal
15 assistance under the Legal Services Corporation Act, but "only
16 with respect to legal assistance on matters relating to wages,
17 housing, transportation, and other employment rights as
18 provided in the worker's specific contract under which the
19 nonimmigrant was admitted."

20 Florida Rural Legal Services attorneys gave USDA no
21 notice of an intention to sue. They did not engage in any
22 other efforts to resolve the issue without litigation. The

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1 District Court found that USDA had correctly followed
2 congressional intent in promulgating its rule and properly
3 applied that rule to sugar cane workers. The intervenors
4 appealed.

5 The U.S. District Court of Appeals upheld USDA's
6 rule by a unanimous decision. On May 12, 1987, during the
7 comment period on USDA's proposed rule, attorney Nadine K.
8 Wettstein wrote to the USDA on the letterhead of the Arizona
9 Farm Workers Union.

10 The letter stated, "I represent the Arizona Farm
11 Workers Union," and went on to urge the inclusion of cottons
12 as a qualifying commodity under the Special Agriculture Worker
13 Program. On August 3, 1987, after the publication of the
14 final rule, Nadine K. Wettstein wrote the Secretary of
15 Agriculture, this time on the letterhead of Southern Arizona
16 Legal Aid, Inc.

17 Her letter stated "Please consider this letter to be
18 a demand that you change the definition of other perishable
19 commodities under IRCA to include cotton. The definition is
20 faulty. Furthermore, cotton should not be excluded from the
21 crops from which SAWS can qualify under IRCA."

22 The letter contained no other explanation as to why

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1 cotton should be included in USDA's rule. Ms. Wettstein's
2 letter went on to say, "If you do not respond affirmatively by
3 immediately changing the definition of other perishable
4 commodities so that my client will be eligible under IRCA, we
5 will have no choice but to litigate the issue. We will wait
6 10 days from the date this letter before taking any action."

7 The signature on this letter from Southern Arizona
8 Legal Aid appears to be identical to that of the Nadine K.
9 Wettstein who wrote to USDA on the same subject on the
10 letterhead of the Arizona Farm Workers Union.

11 On August 26, 1987, a class action suit was filed
12 against USDA on behalf of alien farm workers previously
13 employed in cotton who wished to become legalized. Attorneys
14 for the plaintiffs were Nadine K. Wettstein and William Morris
15 of Southern Arizona Legal Aid, and an attorney with the
16 private law firm of Chandler, Tullar, Udall & Redhair of
17 Tucson, Arizona.

18 The suit never came to trial because it was made
19 moot by a Texas court decision which found cotton to be a
20 qualifying commodity because it is a human edible fruit.
21 Under a program we look first to see whether a commodity is a
22 fruit or a vegetable, and if it is, why then we don't look

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1 further to see if it was a perishable commodity, which is the
2 request of the program.

3 Also during the comment period for USDA's proposed
4 rule, Jean Agathen, an attorney with the Illinois Migrant
5 Legal Assistance Project of the Legal Assistance Foundation of
6 Chicago wrote USDA stating, "The purpose of this letter is
7 simply to express a favorable response to the proposed
8 regulations. After the final rule is published, she sued on
9 behalf of sod and turfgrass workers for inclusion in the
10 Special Agricultural Worker Program.

11 Sod had not been included in either the proposed or
12 the final rule. USDA had received no notice of an intention
13 to sue, nor was there any attempt to resolve the matter
14 without litigation. The attorneys for the sod workers are
15 Jean Agathen and Vincent H. Beckman of the Illinois Migrant
16 Legal Assistance Project of the Legal Assistance Foundation of
17 Chicago, and four attorneys with Jones, Day, Reavis and Pogue,
18 a private law firm in Chicago.

19 The District Court for the Northern District of
20 Illinois ruled for the plaintiffs in this case, and this case
21 is presently under appeal. The USDA had only one other court
22 challenge attempting to expand the commodities included in its

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1 rule. The Texas Farm Bureau retained private attorneys to
2 attempt to have hay workers included in the Special
3 Agricultural Worker Program. The court upheld USDA with
4 respect to hay.

5 On August 11, 1989, the Department of Agriculture
6 and the Department of Labor jointly published a proposed rule
7 with respect to the procedure for determining the number of
8 replenishment agricultural workers under the Special
9 Agricultural Worker Program.

10 The Farm Worker Justice Fund submitted a comment
11 consisting of several hundred pages on behalf of itself,
12 California Rural Legal Assistance, and the AFL-CIO. The
13 thrust of these comments was that the procedure for the
14 admission of replenishment workers should be made more
15 restrictive.

16 Following the publication of the final rule with
17 respect to replenishment workers, the agencies were sued under
18 the Administrative Procedures Act. Plaintiffs' attorneys were
19 Kristine A. Poplawski of the Farm Worker Justice Fund, Steven
20 A. Rosenbaum and Richard Kohn of California Rural Legal
21 Assistance, Laurence Gold and Walter A. Kamiat of the AFL-CIO,
22 and Robert A. Williams of Florida Rural Legal Services.

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1 Following the decision of the federal court to
2 uphold the agencies, the plaintiffs appealed. The District
3 Court of Appeals upheld the decision of the lower court in a
4 unanimous decision. The IRCA also revised the Temporary
5 Agricultural Worker program or H2 program, which is
6 administered by the Department of Labor and the Attorney
7 General through the Immigration and Naturalization Service and
8 in consultation with USDA.

9 Since the subsequent litigation with respect to this
10 program is handled by the lead agencies, I'm not as familiar
11 with them as those directly affecting USDA. I do know that
12 there's been more litigation by Legal Services attorneys with
13 respect to the H2 program than with the Special Agricultural
14 Worker Program.

15 Of course, the Temporary Agricultural Worker Program
16 has been in existence for a greater length of time. Some
17 cases involving Legal Services attorneys affecting Temporary
18 Agricultural Worker Program included AFL-CIO v. Brock; Rosas
19 v. Brock; Senseny South Corporation v. Brock; Migrant Legal
20 Action Program v. Department of Labor; NAACP, Jefferson County
21 Branch v. McLaughlin; Mount Levels Orchards and Farms v.
22 Brock; Phillips v. Brock; Florida Fruit and Vegetable

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1 Association v. Brock; Presidio Valley Farmers Association v.
2 Brock; AFL-CIO v. Brock; Marquis v. United States Sugar
3 Corporation; Virginia Agricultural Growers Association v.
4 Donovan; Villegas v. Snake River Farmers Association; Shoreham
5 Cooperative Apple Producers Association v. Donovan; Antoine v.
6 Twin Harvesters, Inc.; Rivas v. Donovan; and Virginia
7 Agricultural Association v. Donovan.

8 That's the conclusion of my remarks. If you have
9 any questions, I'll be happy to respond to them.

10 CHAIRMAN UDDO: Thank you, Mr. French. First, just
11 for purposes of the record, are you appearing on behalf of the
12 U.S. Department of Agriculture?

13 MR. FRENCH: Yes.

14 CHAIRMAN UDDO: So this is an official testimony on
15 behalf of the Department?

16 MR. FRENCH: Right.

17 CHAIRMAN UDDO: Mr. Dana?

18 MR. DANA: That was interesting, and I could maybe
19 draw some conclusions from it, but I'd rather hear what you
20 think we should conclude from that recitation.

21 MR. FRENCH: Well, Mr. Dana, I'd stated my
22 experience in coordinating these activities for the Department

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1 of Agriculture. I'm not qualified nor competent to interpret
2 those in the light of the statutes affecting the Legal
3 Services Corporation or its regulations.

4 CHAIRMAN UDDO: Mr. Wittgraf?

5 MR. WITTGRAF: Thank you, Mr. Chairman. Mr. French,
6 as I was trying to follow you, the only criticism I thought I
7 heard was of some litigation that was not preceded by a demand
8 letter or a request to try to negotiate some differences, I
9 guess, particularly the differences on the interpretation of
10 who were sod workers and who were not sod workers. Did I miss
11 some other excesses or grievances that you were describing?

12 MR. FRENCH: The Southern Arizona Legal Aid was the
13 only one of this line of cases which I discussed which sent
14 any letter. There was, of course, no information in that
15 letter, simply a statement that our rule was faulty.

16 MR. WITTGRAF: I guess, based on your answer to Mr.
17 Dana's question, you're not wanting to really draw any
18 conclusions at all, so help me try to draw the conclusions.
19 Is it fair to say that you're being critical of one or more
20 Legal Services grantees for having gone to court over
21 regulations rather than having contacted USDA to try to
22 reconcile or to try to reach an understanding regarding

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1 different positions?

2 MR. FRENCH: No, sir. I'm not being critical at
3 all. I mentioned this only because in the statutes and
4 regulations of Legal Services Corporation as I have read them,
5 why there is an intention that an attempt for resolution is
6 expected prior to litigation.

7 MR. WITTGRAF: Thank you very much, Mr. French.

8 MR. KIRK: I have no questions.

9 CHAIRMAN UDDO: Thank you very much, Mr. French. I
10 have one request for five minutes. Mr. Bob Rudy had a couple
11 of comment he wanted to make.

12 PRESENTATION OF ROBERT RUDY

13 MARYLAND LEGAL SERVICES CORPORATION

14 MR. RUDY: Thank you very much, Chairman Uddo, and
15 committee members and board members. I'm Bob Rudy. I'm the
16 Executive Director of Maryland Legal Services Corporation.
17 I'm the president of the National Association of IOLTA
18 programs.

19 Actually, I came today just to listen to Mr. Scully
20 talk about the IOLTA program and the lawsuit that the
21 Washington Legal Foundation is bringing in Massachusetts. I
22 won't talk about that. Mr. Dana raised some questions about

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1 Bureau back in 1979. I set up the office in western Maryland
2 from '79 to 1980, got it started and moved closer to
3 Baltimore, had opportunity to visit the apple orchards that
4 were in Hancock and Washington County and Frederick County,
5 mostly around Hancock and Hagerstown.

6 We had complaints of farm worker violations of the
7 H2 program and other statutes. This was at the time when the
8 Legal Aid Bureau was just beginning to get migrant funding
9 from the Legal Services Corporation. There had never been an
10 office in that part of the state for Legal Services attorneys
11 before.

12 I had never done and still have never done a migrant
13 lawsuit. I don't know the area that well. It's a very
14 specialized area. The Legal Aid Bureau, in 1979, had gotten a
15 grant to set up a migrant program from LSC on the eastern
16 shore and hired its first attorney over there in '79, 1980,
17 that spent virtually all of his time -- and as he hired a
18 staff of other attorneys and paralegals -- stressing the needs
19 of migrant farm workers on the eastern shore of Maryland.

20 I talked with him, George -- I blank on his last
21 name, now -- who came down from Minnesota, was an excellent
22 attorney, about the complaints that I had received from

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1 unemployed, older males that had been fired from apple
2 orchards or refused to be hired by the apple orchards in that
3 area as Jamaicans were brought into the apple orchards.

4 Jamaicans, under the H2 program are much preferred
5 by apple growers. They're compliant, they work very hard,
6 they don't complain, and they're sent back home if they do.
7 And the H2 program, which developed in the 1970s under the
8 federal law, had very specific statutory provisions and
9 regulatory provisions as indicated, that had to be complied
10 with before a grower could pass over American workers, low
11 income, unemployed -- it's a very low employment area -- older
12 males, primarily, and go outside the United States and bring
13 in workers.

14 We found that these statutes were being violated.
15 That was the appearance to me when I was there, and I passed
16 the complaints on indicated when we had resources that I felt
17 that was an area that should be looked into, and I talked with
18 the apple grower, and I went to the orchards and had some
19 reason to believe that there was a basis for complaints.

20 Also, there were problems in terms of housing
21 provided for the workers, there were problems with wage and
22 other conditions. Nothing was done, as indicated. The

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1 questions was, why were there no suits prior to 1983 or
2 probably one suit in western Maryland?

3 Well, you heard testimony that outside of your
4 attorneys, the attorneys that work for LSC-funded programs,
5 virtually no one does these cases; it's a very specialized
6 area of law. There's not a lot of money in it for private
7 practice. We didn't have the resources in Maryland to handle
8 those cases at that time, and I was developing an office and
9 did some investigation, passed the complaints on.

10 In 1983, as the program was developed in Maryland,
11 there was a new attorney that came in from Florida named Greg
12 Shell. Greg is a Harvard Law grad. Greg was an outstanding
13 attorney. If you had 6,000 attorneys like Greg throughout the
14 United States, your productivity would go up 200 percent, your
15 complaints would go up 250 percent; he won cases.

16 He was a 70-hour a week attorney, he spoke Spanish,
17 he spoke Creole, he brought lawsuits, and he won them. I lost
18 contact with what was happening out there until -- actually, I
19 left Legal Aid Bureau in 1983, worked in D.C. for a while,
20 went back to Maryland, working in Maryland with the IOLTA
21 program in 1986, and at this point, we still don't fund
22 migrant cases.

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1 We fund some other alien representation cases.
2 Migrant work in Maryland is done under your funding. 1987,
3 though, with a new governor in the state, Governor Schaffer,
4 between Christmas and New Year's, I got a call from the
5 assistant director of economic development for the Governor's
6 office, named Paul Schurik and Darl Plevy, who is a special
7 assistant to Governor Schaffer for Legal Services and other
8 affairs indicating they had complaints, that Legal Aid
9 attorneys had put apple orchards out of business in western
10 Maryland, and would I be able to come in and work with them,
11 look at it, see if there was a problem, and come up with some
12 remedies if there were.

13 I came in about the 28th of December, we sat down,
14 and we started looking. We went through the records, we
15 looked at the cases, I made calls to the executive director of
16 Legal Aid Bureau, Charlie Dorsey, to Greg Shell, indicated
17 that if necessary, I wanted them to come in, work with the
18 Governor's office, work with growers, if necessary, see if
19 there were problems, see if there could be other remedies to
20 the problems, in terms of administrative handling of
21 complaints before litigation was filed, et cetera, would they
22 be available. They said, "Certainly."

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1 What the Governor's office found was that there was
2 a concern of the loss of apple orchards in western Maryland.
3 There has been a loss of apple orchards in western Maryland.
4 What the they found, there's a article that I sent to Tim Shay
5 back in December from the Hagerstown Republican, a major
6 newspaper out there, that whereas the complaints were that
7 they were driven out of business, a couple of the major
8 orchards driven out of business by litigation by Legal
9 Services attorneys, the appearance was, and the articles
10 seemed to conclude, the main problem was bad management of
11 apple orchards, failure to restock the trees from deer damage,
12 a loss of old stock that were unproductive, the rising value
13 of land -- this is a marginal industry in a lot of areas.

14 Mr. Wilson talked about growers can grow condos
15 rather than apples. That's what's happening. You're getting
16 people commuting from Washington, D.C. back and forth to that
17 part of the state right now. The value of land has gone up;
18 they're being used for development instead of apple orchards.

19 It's a more productive use of the land in a marginal
20 industry. The effort that -- the activities of the Legal
21 Service attorney was very marginal, in terms of the effect on
22 the industry. The other effects were very much within their

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1 own control; they had a better use for the property.

2 The effort was not to destroy the H2 program, the
3 effort was to take a program that was created by Congress and
4 its regulations and impose the restrictions of that program
5 that were designed to protect jobs for domestic workers who
6 were unemployed in that area, make jobs available for low
7 income Marylanders, or, if you bring guest workers in, make
8 the law work to protect them as well

9 It wasn't to wipe out the program, it was to make
10 the program work. You had laws that had been on the books
11 that, before LSC started expanding in the late '70s, had never
12 been enforced, had never been imposed, and obviously and
13 understandably the industry resents these laws.

14 In some instances, it does rise the cost of
15 production, as Congress has declared is necessary for the
16 protection of American workers, the safety of American
17 workers, field sanitation for American workers, and the
18 consumers of the food that they produce.

19 The effort has been unsuccessful in changing the
20 law, so the effort, I think, in Maryland was, "Let's attack
21 lawyers." What you heard is also true. There was a complaint
22 filed in Maryland, apparently, with the Attorney Grievance

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1 Commission. It was found without foundation. The Governor's
2 office dropped any further inquiry, finding there was no basis
3 to proceed.

4 We made clear that if they wanted us there, we'd be
5 there. There was no effort and intent by them to bring the
6 Legal Services community in to the table with the growers
7 after that. They found that 98 percent of the cases that Greg
8 Shell filed he won in U.S. District Court. That seemed to say
9 something.

10 These cases seemed to have some foundation and some
11 basis. I understand that the GAO office, I think last year,
12 looked into allegations of abuses nationally and didn't find
13 any substantial foundation for them.

14 If you look at the facts in Maryland, and I invite
15 you to, if you want to talk to the Governor's office, I've
16 given you the names, my sense is the facts are somewhat from
17 what you heard. There may be a basis for some changes in the
18 law. You know, anything could be looked at, but I encourage
19 you to be cautious here and look at what the facts really are
20 before you jump too quickly into this area.

21 These are the only attorneys representing a million
22 or more, by my numbers, of some of the poorest of the poor,

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1 the hardest to defend, to protect, workers throughout the
2 United States. I wouldn't tie the hands of the 250 attorneys
3 and paralegals that you're helping to fund that are doing the
4 job right now.

5 CHAIRMAN UDDO: Thank you, Mr. Rudy. I'm not going
6 to open it up to questions because we're pretty late in the
7 day, and you were an add-on. Thank you, though. We're going
8 to take another a brief recess. Before I do, Mr. Stephany,
9 this letter that you gave us, you took the date off, and you
10 don't have to give me the exact date, but is this a recent
11 letter? '89? Okay. We're going to take a brief recess.

12 (A brief recess was taken.)

13 CHAIRMAN UDDO: What I think we're going to attempt
14 to do now, in light of the fact that this is our fourth day of
15 hearings since this process began, the committee is going to
16 entertain any motions or suggestions or recommendations or
17 discussions from members of the committee with respect to the
18 resolutions that we are proposing to the board.

19 For those of you who are not aware, we have a set of
20 resolutions that was previously proposed to the board. The
21 board deferred action on it until the board meeting July 8th,
22 and in the interim, because we've had these additional

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1 hearings and some additional time to consider these
2 recommendations, we are going to have this opportunity to
3 determine whether or not we want to alter any of those
4 recommendations.

5 So the floor is open for any motions to modify any
6 of the resolutions, to delete any of the resolutions or to add
7 new resolutions.

8 MOTION

9 MR. WITTGRAF: Mr. Chairman.

10 CHAIRMAN UDDO: Mr. Wittgraf.

11 MR. WITTGRAF: As it pertains to Draft Resolution
12 No. 7, I move that we substitute for or strike present wording
13 and replace it with the following wording: "The board of
14 directors of the Legal Services Corporation favors
15 authorization by and appropriations from the Congress for the
16 limited implementation of competitive bidding for the
17 provision of Legal Services, both as to geographic and as to
18 substantive areas, with the report as to the success thereof
19 to the Congress within three years after the implementation
20 thereof."

21 CHAIRMAN UDDO: Could you read that one more time?

22 MR. WITTGRAF: Probably not.

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1 MR. KIRK: Why don't you tell us what it's going to
2 say in kind of layman's language, what the difference is
3 before you read it, then I can follow it better.

4 CHAIRMAN UDDO: Why don't you do that again into the
5 microphone.

6 MR. WITTGRAF: "The board of directors of the Legal
7 Services Corporation favors authorization by and
8 appropriations from the Congress for the limited
9 implementation of competitive funding for the provision of
10 Legal Services, both as to geographic and as to substantive
11 areas, with a report as to the success thereof to the Congress
12 within three years of the initiation thereof."

13 CHAIRMAN UDDO: By limited implementation, Mr.
14 Wittgraf, are you contemplating that the board would
15 subsequently make a decision as to whether that would be a
16 percentage of grants or a subject area of grants or a
17 geographic area or something like that, for purposes of
18 determining its effectiveness?

19 MR. WITTGRAF: I guess I view this as a principle
20 rather than as a specific provision, leaving the specifics,
21 perhaps, to the Congress. It seems to me that we could
22 suggest that a percentage of field grants, either by

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1 geographic area or are by substantive area of the law could
2 become the subject of competitive funding, or, in the
3 alternative, new funds made available to the Legal Services
4 Corporation could be utilized for such competitive funding.

5 I think the Congress could take either approach with
6 the corporation to implement it. I think the general tenor of
7 our resolutions is general statements of principle, and it's
8 with that in mind that I chose that overly legalistic wording.

9 CHAIRMAN UDDO: All right. Is there a second to the
10 motion? I'll second it for discussion. Any discussion on the
11 motion?

12 MR. KIRK: Yes, sir. I don't understand it.

13 MR. DANA: I don't either.

14 MR. KIRK: Are you saying that you don't want to
15 have a competition unless Congress is going to give us the
16 money for it?

17 CHAIRMAN UDDO: No, I don't think it says that. I
18 defer to Mr. Wittgraf.

19 MR. WITTGRAF: At this point in time, I believe the
20 law says certainly that we can't, as a corporation defund any
21 existing grantees as to their basic field grants, and I'm not
22 sure that we have to necessarily defund anybody during the

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1 next three years, but I do think that we can move into certain
2 areas of the country, certain geographic areas, and we can
3 move into concern areas of the law, certain substantive areas,
4 and attempt to provide alternative means in delivering legal
5 services.

6 Depending upon the financial constraints in which
7 the Congress finds itself, such authority could be within the
8 be context of the ongoing budgetary amounts. At the moment
9 we're \$328 million. For Fiscal Year 1992, we'll be at \$335
10 million or perhaps a little more.

11 Either a portion of those dollars or some additional
12 dollars, if Congress would see the wisdom of reauthorization
13 legislation and an appropriation to go with that, could be
14 utilized to try alternative means of funding.

15 MR. KIRK: If they don't give us more money, where
16 do you think we'll get the money to do it?

17 MR. WITTGRAF: It's going to depend upon the
18 Congress. They could allow us to take 5 or 10 percent, for
19 example, of the present monies used for basic field grants and
20 to use that for alternative means of delivering services.

21 MR. KIRK: Do you think that under either of the
22 proposals in Congress that we're going to continue to be

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1 restricted from effecting the funding of field offices,
2 defunding?

3 CHAIRMAN UDDO: I didn't hear your question. Could
4 I hear you?

5 MR. KIRK: We're currently prohibited from defunding
6 any office. Is this prohibition going to continue on?

7 MR. WITTGRAF: I would say probably so.

8 CHAIRMAN UDDO: Let me just clarify for the record,
9 we're not prohibited from defunding anyone. There's a
10 presumption of refunding that requires a rather extensive
11 procedure to defund, but we're not now nor would we be under
12 either of the provisions, either of the proposed
13 reauthorization acts, be prohibited from defunding. President
14 Martin can agree or disagree.

15 MR. MARTIN: Well, it would have to be a serious
16 violation of a law and the LSC Act in order -- it would have
17 to have notice hearing and probably a lawsuit before you
18 defunded anyone. So you're talking a long-term process now,
19 under present law.

20 CHAIRMAN UDDO: Does that explain the proposal to
21 you, Mr. Kirk?

22 MR. KIRK: I think somewhat, thank you.

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1 CHAIRMAN UDDO: Mr. Dana?

2 MR. DANA: George, are you proposing some
3 implementation of what has been described as dynamic
4 competition as opposed to static competition?

5 MR. WITTGRAF: I think so. I don't contemplate, as
6 I just indicated to Mr. Kirk, that we're going to see any
7 defunding other than that exists under present law in the
8 foreseeable future, either through the appropriation or the
9 reauthorizes process.

10 So I'm looking toward the possibility of, yes,
11 dynamic competition, but in a geographic area, whether it's
12 another general Legal Service provider or whether it's a
13 specific, specific as to substantive area of the law, specific
14 Legal Services provider, that there would be alternative
15 providers operating side-by-side, with, I guess, the thought
16 in my mind that after three years and some sense of whether it
17 was best to continue with a couple of alternatives in one area
18 or perhaps then to move toward the elimination of one of those
19 providers, that we might be given the authority by the
20 Congress or have the authority to do so he by regulation, in
21 effect, to unfund or defund in some way that's simpler than
22 the present procedure.

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1 MR. DANA: It seems to me your recommendation is
2 actually more limited in its scope than the existing proposal,
3 in terms of what is to be analyzed.

4 MR. WITTGRAF: Mr. Dana, I'm certainly open to any
5 amendments. As I look at the present wording, I'm more
6 interested in moving forward as soon as possible than I am at
7 simply providing another study that is only conceptual and not
8 substantive.

9 MR. DANA: I see. You view this as not calling for
10 actual pilot projects or experimentation as the current rule?

11 MR. WITTGRAF: I don't think it's directly so, no.

12 CHAIRMAN UDDO: Mr. Wittgraf, what if we changed or
13 added the language from the current proposal, which refers to
14 competition in the awarding of grants and between Legal
15 Services providers, to make clear that you're referring to
16 both kinds of competition?

17 MR. DANA: He isn't, though.

18 CHAIRMAN UDDO: No, I think he is. Are you
19 proposing both kinds of competition.

20 MR. WITTGRAF: Yes. I chose a different reference,
21 which was as to geographic and substantive areas, but perhaps
22 you'd like to substitute other wording. I don't care.

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1 CHAIRMAN UDDO: Well, I think -- Howard, correct me
2 if I'm wrong -- I think Howard's point is that the current
3 proposal makes clear that there may be legitimate ways to use
4 competition, both in the awarding of a single grant in an area
5 that maybe would not justify more than one provider, but it
6 also encourages the implementation of competition where you
7 would have more than one provider.

8 MR. WITTGRAF: I think we're largely saying the same
9 thing in two different ways. I have no problem with
10 substituting those words for some of mine.

11 MR. DANA: Good. I would be -- I don't know whether
12 it's because I feel some connection to these original words,
13 but it does seem to me that the original motion and most of
14 your language read very well together.

15 CHAIRMAN UDDO: How would you do it?

16 MR. DANA: I guess you'd just say, "and favors
17 authorization by and appropriation from the Congress for the
18 limited implementation of competitive funding for the
19 provision of Legal Services, both as to geographic and
20 substantive areas, with a report as to their success thereof
21 to Congress within three years of implementation," at the end
22 of resolution.

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1 I mean, you've got two favors here. You just add a
2 third.

3 CHAIRMAN UDDO: Wait. At the end of the current
4 resolution you'd put that line?

5 MR. DANA: Or in the -- yeah, I would say that.

6 CHAIRMAN UDDO: In other words, you're saying that
7 you preserve the first portion that endorses a study of the
8 circumstances --

9 MR. DANA: Both kinds of competition. The second
10 portion talks about demonstration projects, indicating where
11 competition -- so it contemplates the demonstration project.
12 And this last one talks about a limited implementation,
13 whatever that is, but it's sufficiently vague so that --

14 CHAIRMAN UDDO: Well, I understand the limited
15 implementation language to mean -- I think something,
16 obviously, would be contemporaneous with a study, but that
17 there would be some implementation that would not require a
18 complete study before the limited implementation.

19 MR. DANA: Yeah.

20 MR. WITTGRAF: Yeah, I think that's right. I think
21 some implementation as soon as possible is what I'm after, and
22 that's where I'm trying to move beyond our earlier wording.

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1 MR. DANA: And it does seem to me that if you added
2 your wording to the end of this, it's not inconsistent with
3 what has gone before. It makes it clear that we favor
4 implementation of competition, but not a full blown acceptance
5 of the static competition that is proposed in one legislation
6 and rejected in the other.

7 MR. WITTGRAF: I suppose my concern was really
8 getting implementation up front and getting -- I didn't even
9 use the word "study," getting the word "report" on the back
10 end so it was clear we think it's time to move forward.

11 CHAIRMAN UDDO: Maybe what you need to do is take
12 your language wherever first limited implementation add "and
13 comprehensive study," or something like that.

14 MR. DANA: Well, put your up front and then just
15 say, "and favors the study of the circumstances under which
16 these --" So put yours up, your language first, and then
17 follow it with --

18 CHAIRMAN UDDO: What's there now.

19 MR. DANA: Yeah.

20 CHAIRMAN UDDO: And end it with a report in three
21 years? Is that what you're saying?

22 MR. DANA: I guess.

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1 CHAIRMAN UDDO: How about that, George?

2 MR. WITTGRAF: Can you show me --

3 CHAIRMAN UDDO: Yeah. He's just saying, take your
4 language, put it first, with the exception of the three-year
5 report, then the language that's already here, and then close
6 it with the report in three years.

7 MR. KIRK: Whenever it's convenient, I'd like to
8 hear it again.

9 CHAIRMAN UDDO: We all would, Mr. Kirk.

10 MR. DANA: Do you want me to read it?

11 CHAIRMAN UDDO: Wait. I think George is trying to
12 write it. Are you writing it?

13 MR. KIRK: While they're doing that, I don't know if
14 I explained to you what the government sunshine law in Florida
15 requires, and there could be none of this.

16 CHAIRMAN UDDO: Well, there's not a majority of the
17 committee there. There's just the two of them.

18 MR. KIRK: Any two people are precluded from
19 discussing anything except in the public meeting. In other
20 words, I could not call you on the phone and discuss --

21 CHAIRMAN UDDO: Any two?

22 MR. KIRK: Any two.

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1 MR. WITTGRAF: Isn't this a public meeting?

2 MR. KIRK: I'm talking about the off-the-record
3 stuff. I mean, I'm not being critical. I think it's a much
4 easier way to do it, but you just have to realize that their
5 hands are really tied.

6 CHAIRMAN UDDO: Well, I don't understand how -- I
7 mean, one committee member can't call another committee member
8 on the telephone?

9 MR. KIRK: No.

10 CHAIRMAN UDDO: That's pretty strong. Let's hear
11 the language so maybe we can figure this out.

12 MR. WITTGRAF: Mr. Chairman, the wording I'm looking
13 at now, as revised, some in visiting with Mr. Dana, is to this
14 effect, and I quote, "The board of directors of the Legal
15 Services Corporation favors authorization by and
16 appropriations from the Congress for the limited
17 implementation of competitive funding for the provision of
18 Legal Services, including both the awarding of grants to and
19 between Legal Services providers, with a report as to the
20 results thereof to the Congress within three years of the
21 initiation of such authorization and appropriations."

22 MR. DANA: In the first three years, do you

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1 envision, before the report to Congress, do you envision
2 defunding or denying an existing grantee funding as a result
3 of this competition?

4 MR. WITTGRAF: I do not, other than by the existing
5 method therefor or by voluntary action of an existing grantee.

6 MR. DANA: So what you appear to be recommending is
7 the limited implementation of dynamic competition in some
8 geographical areas, and by that I mean another grantee in the
9 same area, or in a substantive area like, for instance, a
10 support center?

11 MR. WITTGRAF: Domestic affairs, family law.

12 MR. DANA: Okay. So it would be like a --

13 CHAIRMAN UDDO: It would be like a contract award of
14 service.

15 MR. DANA: So there is nothing in your study or in
16 your implementation that would test the use of competition in
17 the sense that virtually all of the people who testified today
18 used the term, which is a way of circumventing the
19 competition, a way of circumventing the presumptive refunding
20 provision of 1011, I think.

21 MR. WITTGRAF: For three years' time this does not
22 challenge the concept of presumptive refunding, that's

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1 correct, except by present defunding method or by voluntary
2 action on the part of an existing grantee.

3 MR. DANA: Sort of a withering away of the grantee
4 concept?

5 MR. WITTGRAF: Yes, if you wish, or getting the
6 message, if you wish.

7 CHAIRMAN UDDO: You do ask for appropriation there,
8 too?

9 MR. WITTGRAF: Yes, twice, or say it twice.

10 CHAIRMAN UDDO: Yes, Mr. Kirk.

11 MR. KIRK: I think I'm hearing something different
12 from what I asked the first time. So unless Congress
13 specifically authorizes more money, you would -- that would be
14 the source of trying out this competition, because I think you
15 said there would be no defunding of any current programs.

16 MR. WITTGRAF: That's right. And I think it's fair
17 to say that Congress is going to appropriate more money. Now,
18 we don't know yet the way in which it will appropriate it,
19 whether it will be an extension of existing field grants, or
20 whether it will be for some, I'll say, board initiatives.

21 I think, as we sit here today, there perhaps is a
22 half million to \$1 million that we could put our hands on, as

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1 a board, and put into the field yet into Fiscal Year 1991, the
2 last several months, for the provision of competitive or
3 alternative legal services.

4 I'm not contemplating defunding, as I've said. How
5 much we're able to do is going to depend upon the largesse and
6 the directions of the Congress, either through the
7 appropriations process or through the reauthorization process
8 or both.

9 MR. KIRK: This million dollars that you're talking
10 about getting, is that from the management side? I don't
11 understand where that's coming from.

12 MR. WITTGRAF: If we were to look today with
13 President Martin's assistance and David Richardson's
14 assistance, there is probably some loose money, so to speak,
15 and that would be from what's been authorized for management
16 administration. We have made a request for Fiscal Year 1992
17 for additional monies, \$1 million for board initiatives, which
18 we may or may not get.

19 If we do get that, that would be another substantial
20 source of funds for funding alternative provision of Legal
21 Services.

22 MR. KIRK: Then let me just go on the record as

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1 opposing the amendment, and, of course, I oppose the original
2 motion as well. I oppose the amendment because I think that
3 what we ought to be doing is doing an immediate study and an
4 immediate implementation as soon as we have some feel for what
5 we need to do, as opposed to what appears to be a failure to
6 take bold action immediately.

7 I see, talking about \$1 million, that's 1/300 of the
8 total authorization. I mean, we're not talking about sincere
9 commitment. I believe that we are in a position to make a
10 serious commitment. I think Congress wants us to do more than
11 just scratch at the surface of competition, but to get into
12 it.

13 I believe it's here, I believe it's here in every
14 area of litigation in the private sector, and finally, I think
15 that to say that we're implementing it on this minor basis and
16 only with what's left over or what we can find or what
17 Congress is willing to give us is not the true commitment that
18 we ought to be doing.

19 CHAIRMAN UDDO: As I understand what he's saying,
20 Bud, is that we're endorsing the idea of implementation, and
21 if Congress wants to similarly endorse that idea, they can
22 specify a percentage of existing appropriations that could be

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1 used for that, or they could add money to it. It doesn't
2 necessarily mean that there has to be additional money.

3 Congress could take the approach of saying "10
4 percent of existing grants have to be competitively bid, and
5 use existing money to do that." So I don't think, as I read
6 it, especially with its reference to existing grants or -- how
7 do you put it?

8 MR. KIRK: The awarding of grants to and between
9 Legal Services --

10 CHAIRMAN UDDO: I think Congress has the option of
11 deciding to do that any way they want, percentage of existing
12 grants, additional money, subject matter area. I think it's
13 just an endorsement by the board that some implementation of
14 competition is appropriate.

15 MR. KIRK: Well, I don't think that's the message
16 that's being sent. It says "The board of directors of LSC
17 favors authorization by and appropriations from the Congress
18 with a limited funding," and I think that you may mean for it
19 to say something that they can take a percentage of it, but I
20 believe what it says is, "We favor you giving us more money,
21 and whatever you give us extra, we'll try it out."

22 CHAIRMAN UDDO: Well, I didn't understand it that

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1 way.

2 MR. WITTGRAF: I think it contemplates any of
3 several possibilities.

4 MR. KIRK: Well, I understand the way I read it,
5 where it says, "We favor the --"

6 MR. WITTGRAF: It does contemplate something short
7 of going to competitive funding across the board.

8 MR. DANA: Mr. Chairman?

9 CHAIRMAN UDDO: Yes, Mr. Dana?

10 MR. DANA: You've got a problem, because as soon as
11 you get Bud into your camp, you lose me. I accept your --

12 CHAIRMAN UDDO: Let's look at it the other way, we
13 try to get you both in there rather than neither of you.

14 MR. DANA: All right. Well, it seemed to me that I
15 thought I understood by what you meant by your resolution, and
16 I was prepared to support that. If your resolution means what
17 Basile thinks it means, I'm not.

18 MR. KIRK: In other words, you and I really agree on
19 the wording of, as I stated it, as Basile stated it. Oh,
20 forget it.

21 MR. DANA: In other words, if you can get -- I think
22 you and I ought to, Bud, vote against this prepared amendment

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1 to the present resolution.

2 MR. KIRK: Can I ask another question? It says
3 grant both between legal providers. Does this contemplate a
4 voucher system, for example, or are we restricting it to --

5 CHAIRMAN UDDO: I think it could contemplate a
6 voucher system.

7 MR. WITTGRAF: Sure. That's a form of competitive
8 funding. You can go into an existing area, Polk County Legal
9 Aid Society serving Polk County, Iowa, and you can go in on
10 top of that basic field grant with a voucher system.

11 MR. KIRK: I just said between Legal Service
12 providers, and I thought, perhaps, it was contemplating --

13 CHAIRMAN UDDO: Two end --

14 MR. KIRK: Maybe that's a separate one and that
15 might not be a voucher system.

16 MR. WITTGRAF: I mean, I would hope that we would
17 try several different things, and what different things we
18 would try would depend in large part upon the monies
19 available.

20 MR. DANA: Mr. Chairman, my concern with what I
21 think you are proposing is that I don't see any -- we're
22 adding another program or another approach, but there is no

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1 competition. There are options for the clients, which is
2 good, and I suppose there will be learning that we will gather
3 from the experience, and that's good, but there is no -- but
4 the hook in this process is that, it seems to me, if one
5 program -- assume two identical programs covering the same
6 area. If one program is doing a better job, the clients will
7 want to go it.

8 It seems to me that gives you the competition, and
9 we should let the funding move towards that successfully
10 competing program in the same way that it happens in private
11 practice. That seems to me the theory behind dynamic
12 competition, but that really is creeping defunding, and I
13 understood you to say that was not part of your program for
14 three years.

15 MR. WITTGRAF: Creeping defunding is realized, then,
16 either in the voluntary termination of a grantee or by our
17 utilization of the existing defunding process.

18 MR. DANA: All I'm trying to say is, and I guess to
19 this extent at least Mr. Kirk and I agree: Let's try some
20 things now, and we're asking the Congress to authorize us and
21 to help appropriate further funds to try some things now.

22 CHAIRMAN UDDO: This just points up the difficulty

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1 of this whole area, but I understand Mr. Wittgraf's motion to
2 mean what he just said, basically to put the board on record
3 for actually doing something in the area of competition and
4 see what we can learn from that, as opposed to competition of
5 all grants immediately, and as opposed to a mere study without
6 any actual implementation.

7 I don't think it's any more specific than that, and
8 I don't think we've been any more specific than that with most
9 of our resolutions.

10 MR. DANA: Let's assume we were aware of five
11 programs that were not, in our judgment, doing a very good
12 job, and it was our intention to fund additional programs in
13 those areas for a period of time with the objective, at the
14 end of the period of time, of funding only one of the two
15 programs in that area.

16 So that we would use competition and the existence
17 of competition to, as in lieu of a hearing, but that would
18 really result in, in effect, a defunding of a program, if it
19 didn't measure up. That is what, at least, I had in mind, by
20 demonstration projects that deal with both static and this
21 dynamic competition, or it uses a dynamic competition to
22 achieve an objective that might not otherwise happen.

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1 CHAIRMAN UDDO: But even with a demonstration
2 project, you've got the problem of presumptive refunding.

3 MR. DANA: Well, it seems to me that with a little
4 help from our friends in Congress, we could work around that.
5 Certainly, the McCollum bill authorizes total abrogation of
6 any rights so that you can just -- it destroys any expectancy
7 that any of these programs have. People have their whole
8 career, their whole life is tied up, and the McCollum proposal
9 would give to this board, as I read it, the right to fire
10 everybody and start over again.

11 I think that's got all kinds of problems, and I
12 don't think we know -- we haven't studied it, we have no real
13 sense of what's going to come out of that maelstrom, but I
14 think that study is appropriate, competition of a dynamic
15 nature is appropriate, demonstration projects are appropriate.

16 I don't know what limited implementation is. It
17 could be half of the program. But when Mr. Wittgraf proposed
18 his reading of what he intended, I could certainly support
19 that. I do not think, frankly, it goes as far as my
20 understanding of the existing resolution, and I think it is
21 subject to the criticism that Bud gives it that if Congress
22 doesn't give us the money, we aren't going to be doing it, and

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1 it guarantees that there will be in actual competitive loss
2 for three years.

3 CHAIRMAN UDDO: Well, it leaves us with a great deal
4 of confusion. Mr. Kirk?

5 MR. KIRK: I really liked what Mr. Dana said.

6 CHAIRMAN UDDO: You did?

7 MR. DANA: Uh-oh.

8 MR. MARTIN: So did I, Howard.

9 MR. KIRK: I think I must have misunderstood.

10 CHAIRMAN UDDO: Well, if you put it into a motion,
11 we can get it on the floor.

12 MR. DANA: If you gentleman would like, in this
13 public deliberation, to prepare some alternative wording,
14 that's certainly fine with me.

15 MR. KIRK: I've got some alternative wording. How
16 about, "The board of directors of Legal Services Corporation
17 favors the immediate study and implementation thereof of
18 competition with due regard for provision of the most
19 efficient and effective legal service."

20 CHAIRMAN UDDO: Immediate study and implementation?

21 MR. KIRK: Thereof, yes.

22 CHAIRMAN UDDO: Read that one more time?

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1 MR. KIRK: "The board of directors of the Legal
2 Services Corporation favors the immediate study and
3 implementation thereof of competition with due regard for the
4 provision of the most effective and efficient legal service."

5 CHAIRMAN UDDO: That's a study and implementation at
6 the same time, or a study and then an implementation?

7 MR. KIRK: Well, I think it contemplates a study,
8 and there can be some implementation at the same time, and
9 just --

10 CHAIRMAN UDDO: That kind of sounds like Mr.
11 Wittgraf's proposal.

12 MR. KIRK: Without feeling that you have to be bound
13 by three years or what have you.

14 CHAIRMAN UDDO: I think we've been here too long.
15 Let's take another five-minute recess. We're not getting
16 anywhere.

17 (A brief recess was taken.)

18 CHAIRMAN UDDO: All right. We're going to try to
19 finish this up now. We have some new language on the
20 competition wording that we're going to attempt to get by the
21 committee. Mr. Dana, would you read this new language,
22 please?

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1 MR. DANA: "The board of directors of the Legal
2 Services Corporation favors authorization by and
3 appropriations from the Congress for the limited
4 implementation of dynamic (continuous) competition in the
5 provision of Legal Services and favors the study of (including
6 the use of demonstration projects) static competition in the
7 awarding of grants, with a report to Congress after three
8 years."

9 MR. WITTGRAF: Can we use commas instead of
10 parentheses?

11 MR. DANA: Absolutely.

12 MR. WITTGRAF: I'll second that amendment.

13 CHAIRMAN UDDO: I'm unclear about the reporting
14 provision. Does that only apply to the study or to the --

15 MR. DANA: Both.

16 CHAIRMAN UDDO: Do you think that's clear?

17 MR. DANA: It is now.

18 CHAIRMAN UDDO: Does it say competition -- shouldn't
19 it say, "for provision of Legal Services"? What do you have?
20 In the provision --

21 MR. DANA: Yeah, competition.

22 CHAIRMAN UDDO: In? I don't know.

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1 MR. DANA: "-- with implementation of dynamic
2 continuous competition in the provision of Legal Services".

3 CHAIRMAN UDDO: All right. That's accepted as a
4 wildly different friendly amendment to the original motion by
5 both the mover and the seconder. Any other discussion of
6 this?

7 MR. KIRK: Yes, sir. I'm going to vote against it,
8 because I think that it, again, says, "Congress, either you
9 give me money, or I won't have to do it," and I think we
10 should take it upon ourselves to do the funding, and if it
11 requires taking money from another source and giving it out,
12 that's what we've got to do, and we shouldn't condition it
13 upon whether there's enough money to do it.

14 I think that if you believe in competition, you
15 ought to believe it and put it into immediate effect. I think
16 the three-year time lag is not going to be a factor.

17 CHAIRMAN UDDO: Mr. Kirk, what would you propose to
18 deal with the presumptive refunding?

19 MR. KIRK: I believe that if Congress directs us to
20 implement this immediately, then that certainly viably knocks
21 out presumptive refunding, because we've got to go through and
22 put somebody else there who is not duplicating the services.

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1 I think that, you know, if you're giving somebody \$1 million
2 to run an outfit, and you want to set up competition, it's
3 ridiculous to pay another outfit \$1 million to show what
4 competition is. You've got to take 500,000 from what is there
5 and give it its due and then compare the two.

6 CHAIRMAN UDDO: Any other discussion? The motion
7 has been made and seconded. All those in favor signify by
8 saying aye.

9 (Chorus of ayes.)

10 CHAIRMAN UDDO: Opposed?

11 MR. KIRK: Nay.

12 CHAIRMAN UDDO: The motion carries three to one.

13 MR. DANA: For the record, Mr. Chairman, I think the
14 rationale should be amended by inserting the word "static"
15 before competition, in quotes, in the second line, and
16 "statically" --

17 CHAIRMAN UDDO: No. Let's not do that.

18 MR. DANA: I can't sell that? Okay. Fine. Leave
19 it out. So it's just static competition.

20 CHAIRMAN UDDO: I think maybe we need to add
21 something to that, though, to endorse the prospects of dynamic
22 competition. I mean, all you talk about is static

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1 competition, and shouldn't there be a sentence of some
2 encouragement about dynamic competition? Shouldn't the
3 rationale address the dynamic competition in some way?

4 MR. DANA: Maybe, but you wouldn't accept my
5 creation of a word that doesn't exist.

6 CHAIRMAN UDDO: Since it's a rationale, we don't
7 have to work with that right now. We can do that at the board
8 level, if we have to. Any other motions?

9 MOTION

10 MR. WITTGRAF: Mr. Chairman, I propose, with a
11 certain amount of trepidation, to substitute the wording that
12 presently constitutes the fourth resolution we adopted on
13 April 28th. The following wording, and I quote, "The board of
14 directors of the Legal Services Corporation favors
15 implementation and maintenance of time-keeping and record-
16 keeping systems by its grantees, with such system determined
17 by each grantee in a manner consistent with guidelines
18 promulgated by the corporation and with those guidelines based
19 upon the costs and benefits analysis currently being completed
20 by the corporation."

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

22 MR. KIRK: I'll second the motion.

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1 CHAIRMAN UDDO: Discussion? Mr. Dana?

2 MR. DANA: What, pray tell, is the corporation doing
3 in this area?

4 CHAIRMAN UDDO: About cost benefit analysis?

5 MR. DANA: Yeah.

6 MR. KIRK: Mr. Martin, I'd like you to answer that
7 question. I assume that something going on.

8 CHAIRMAN UDDO: Mr. Martin?

9 MR. MARTIN: We are looking the time-keeping and
10 record-keeping -- we have under study a time-keeping and
11 record-keeping analysis by at least two committees that I've
12 created, a competition committee, principally a competition
13 committee, and have not completed it yet, but certainly will
14 if the board passes this resolution.

15 MR. KIRK: Looking at that GAO report, how long do
16 you think it will take to come up with some facts on it?

17 MR. MARTIN: We can do that fairly quickly.

18 CHAIRMAN UDDO: Any other questions, Mr. Dana?

19 MR. DANA: Yes.

20 CHAIRMAN UDDO: Motion to call the question
21 prevails, doesn't it?

22 MR. KIRK: No, not unless someone was asked a

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1 question.

2 CHAIRMAN UDDO: You'd have to vote on the question,
3 on calling the question, right? I'm trying to accommodate
4 your flight, just in case you came make it. While Mr. Dana is
5 looking at that -- I'm sorry, go ahead.

6 MR. DANA: I was just going to see if he could get a
7 friendly addition to this motion by adding -- at the end, this
8 talks about a report that I didn't know it existed--
9 "guidelines based upon the cost and benefits analysis
10 currently being completed by the corporation consistent with a
11 1988 GAO report."

12 CHAIRMAN UDDO: That any problem with that, Mr.
13 Wittgraf?

14 MR. WITTGRAF: No.

15 CHAIRMAN UDDO: Mr. Kirk?

16 MR. KIRK: Mr. Martin, will you have any trouble
17 complying with the requirements with the requirements of the
18 GAO report in an expeditious manner?

19 MR. MARTIN: We can do it in accordance with a GAO
20 report.

21 MR. KIRK: I have no objection,.

22 CHAIRMAN UDDO: All right. Then we consider it an

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1 amendment. Any further discussion? All those in favor of the
2 motion please signify by saying eye.

3 (Chorus of ayes.)

4 CHAIRMAN UDDO: Opposed?

5 (No response.)

6 CHAIRMAN UDDO: Well, well. Motion carries, four
7 ayes, no nays. In other motions? Hearing no other motions, I
8 would entertain a motion to adjourn with this proviso: there
9 are some changes that need to be made in the minutes, which we
10 will maybe meet briefly for preceding the board meeting just
11 to do that little clean-up work, and not waste time doing that
12 right now, unless anyone has an objection.

13 MR. WITTGRAF: Do you anticipate meeting early on
14 the morning of Monday, July 8th?

15 CHAIRMAN UDDO: Depending what time the board
16 meeting starts.

17 MR. DANA: The board meeting is scheduled for
18 9:00 a.m.

19 CHAIRMAN UDDO: Is he there a committee meeting
20 Sunday night?

21 MR. WITTGRAF: Not at this time. Not scheduled.

22 MR. DANA: We can clean these minutes up in a flash.

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1 MR. KIRK: I wouldn't mind.

2 CHAIRMAN UDDO: Doing it?

3 MR. KIRK: Meeting Sunday night, I don't think.

4 CHAIRMAN UDDO: You're not going to have a raft of
5 new motions for us?

6 MR. KIRK: I might.

7 CHAIRMAN UDDO: The problem with that is, is that
8 last time we went to the board with changes on the eve of the
9 board meeting, they sent us back to do this again, and that's
10 why we're trying to complete it in advance of the board
11 meeting.

12 In you had some, I'd rather try to meet in New
13 Orleans next week.

14 MR. WITTGRAF: I'm sure that Mr. Kirk would not move
15 to continue the board's consideration of the resolutions come
16 the morning of Monday, July 8th.

17 MR. KIRK: Mr. Kirk pledges that he will first move
18 that we not make a commitment on this, that we leave it to
19 Congress to make its best determination, and, that failing, I
20 may well have some substitute resolutions or something that
21 the board should consider.

22 MR. WITTGRAF: Is there any need, then to meet the

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1 evening of Sunday, July 7th?

2 MR. KIRK: I guess not.

3 MR. DANA: In order to avoid meeting Sunday or early
4 Monday, may I, Mr. Chairman, hold you for some amendments to
5 the minutes?

6 CHAIRMAN UDDO: I've seen the amendments. They are
7 purely technical. There are no substantive changes. If the
8 committee approves allowing Mr. Dana's corrections to the
9 minutes to be made, we can dispense with that. They are all
10 removal of words like, "because," and a couple of
11 typographical errors. There are no substantive changes.

12 MR. KIRK: My only problem, the only thing I would
13 want to change or add to is the point at which I left the
14 phone after the first vote was taken, and --

15 CHAIRMAN UDDO: The minutes should reflect that you
16 left the phone and quit participating after the first vote.

17 MR. KIRK: Maybe it could say that my previously
18 scheduled business --

19 CHAIRMAN UDDO: Because he was on vacation in
20 Phoenix, right? Whoever is going to change the minutes,
21 please give due deference to Mr. Kirk as to why he couldn't be
22 with us at that time, and that he did participate as long as

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1 he could.

2 MR. DANA: And that we understand that the rationale
3 for our efforts this evening will have to be tinkered with,
4 with the approval of the chairman.

5 CHAIRMAN UDDO: At the board meeting. The
6 rationale?

7 MR. DANA: Don't you think?

8 CHAIRMAN UDDO: Of each of these?

9 MR. DANA: No, just the ones we changed.

10 CHAIRMAN UDDO: Yeah, but I think we can do that
11 -- we did that at the board level last time, didn't we?

12 MR. DANA: No. The committee rationale doesn't fit
13 the bill. I'm going to give you authorization. Mr. Chairman,
14 I authorize the chairman to make whatever changes seem
15 appropriate in the minutes of the meeting to reflect Mr. Kirk
16 and the typos and to adjust the rationale to conform to the
17 recent resolutions.

18 CHAIRMAN UDDO: The two that we changed tonight, he
19 wants me to change the rationale to reflect the changes. I'll
20 do that and circulate it to the committee, and as long as
21 there's no objections we'll let that be, because the rationale
22 is not being proposed for the board adoption anyway; it's just

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1 the resolutions. Those were committee rationale.

2 Entertaining a motion to adjourn.

3 MR. WITTGRAF: I so move, Mr. Chairman.

4 CHAIRMAN UDDO: Any objection?

5 (No response.)

6 CHAIRMAN UDDO: We stand adjourned.

7 (Whereupon, at 6:15 p.m., the committee meeting was
8 adjourned.)

9 * * * * *

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