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CHAIRMAN DURANT: We're going to reconvene and take a couple of things out of order as we did with Jack Curtain. There are a number of people who are farmers in North Carolina who want to come before the Board. I talked with Bob Griffith, an attorney from Newton Grove who has been active in some particular things and he asked that perhaps we try and do a couple of things.

One is that Bob is going to speak and a James Ferguson has asked to speak. What I would like to do, if there is anyone else in particular who has something to address this Board on specifically relating to Legal Services and not...and if it's short in focus to entertain those comments...what we're going to do otherwise though, is that Mario Gabroury of the Corporation and Dan Rathbun of the Corporation have agreed to be willing to meet with any of the farmers of North Carolina who are here, just outside and in a room, I think, to the left.

Mario, is it...where is the space where you're going to be? All right. So, as soon as Mr. Griffith

1 and Mr. Ferguson are through with their comments, if
2 there's anyone else in particular who has something
3 that they want to say to the Board, fine, but then
4 what we will do is, is continue with the Board
5 meeting, but Mario and Dan will meet with any
6 particular farmers and take whatever particular
7 information that they would like to share and the
8 Corporation will evaluate, what, if anything, ought
9 to be done.

10 I also want to say that if there are any
11 particular concerns that involve any of the
12 particular grantees of the Corporation, obviously any
13 particular concerns ought to be openly evaluated by
14 all concerned. Sir, did you have a question? Do you
15 have a question?

16 AUDIENCE: No. I'm with Billy
17 Eargin.

18 CHAIRMAN DURANT: Oh, Billy
19 Eargin, okay. Why don't the two of you come on
20 forward.

21 MR. TAYLOR: Mr. Durant?

22 CHAIRMAN DURANT: Yes, Dick.

23 MR. TAYLOR: Do I understand

1 that to the extent that comments might relate to my
2 program that we'll have an opportunity to respond and
3 to the extent that concerns are expressed privately
4 to Corporation people out of the hearing of the Board
5 related to us, that we will have an opportunity to be
6 privy to that?

7 CHAIRMAN DURANT: I...well, I
8 have no objection and I think it would be appropriate
9 that, you know, if there are any particular kinds of
10 things involved in your program, you ought to. I
11 mean, it's not a question...we have the time
12 constraints that I've talked about and everybody
13 plays by the same rules. Mr. Griffith?

14 MR. GRIFFITH: Mr. Chairman, I
15 appreciate that. It's very difficult to talk on this
16 subject sometimes without crossing over that line
17 which we've been discussing.

18 My name is Robert Griffith. I'm an attorney in
19 private practice in Newton Grove, North Carolina,
20 which is over in the eastern part of North Carolina.

21 I always am very quick to point out when I say a
22 practice in Newton Grove, that I'm on the other side
23 of the traffic circle. The lawyers that work for Mr.

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Eppinette have an office on the opposite side of the traffic circle.

During the past two years I've been involved in numerous cases, the majority of which were the Farm Workers Legal Services of North Carolina, a few with...or one with a rural Legal Services out of Florida. These are both claims and lawsuits.

Two comments first on what immediately preceded our break. The first is one question that I didn't hear asked when we were talking about whether the dependents ought to be counted is, no one asked the Legal Services Group how many dependents they had ever represented. To my knowledge I'm not aware of any.

I would also agree, I believe it was Mr. Mendez who raised the question of the double accounting. I think there's a serious problem with that. I have never understood the need for two Legal Services organizations in very close proximity.

Some good has come out of this meeting already. As I say, for the last two years I've been asking a whole lot of questions and every question I've ever asked has come right back to this Board. I met with

1 Mr. Rathbun about six or eight months ago in
2 Washington, I've met with congressional delegations.
3 Everything points back to this Board and says this
4 Board is the only body that can or will or might do
5 anything to assist my clients.

6 The good news that I've gotten out of this
7 meeting, I was very pleased to hear Mr. Beard and
8 Mrs. O'Briant say that they would talk to us. I
9 noticed this morning that Mr. Taylor and Mr. Beard
10 and Mrs. O'Briant all indicated a lack of knowledge
11 of anything.

12 For the last two years, I've got a stack of
13 clippings a couple inches high from newspaper
14 stories. Mr. Valois has had several in there about
15 problems that farmers have raised concerning migrant
16 legal aid. There's been a lot of publicity about a
17 complaint to the State Bar about Farm Workers Legal
18 Services in North Carolina. There was a lot of
19 publicity about a request for an Attorney General
20 investigation of Farm Workers Legal Services of North
21 Carolina and while I have a great deal of
22 professional respect for Mr. Beard and Mrs. O'Briant
23 and Mr. Taylor, I can only say that if they were

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1 unaware, it was because they chose to be unaware.

2 This morning I heard that some farmers or some
3 supposed farmers, there was a lot of talk in the
4 hotel this morning about some supposed farmers were
5 going to come down and talk to the Board. I have a
6 problem with that.

7 A properly run program should never shun
8 scrutiny. That's what we're asking for. We're
9 asking for you to look beyond the dollars and the
10 numbers and look at the way the programs are being
11 run. The way they are handled out in the field and
12 the effect that they are having on...in this case,
13 the farmer.

14 The problem that the farmer has is the
15 combination of three complex federal laws. You've
16 got the Migrancy and Agricultural Worker Protection
17 Act, you have the Fair Labor Standards Act and then
18 you have your Legal Services Corporation.

19 The Migrant Legal Aid problem, as it's called,
20 started out, from everything I put together, down in
21 Texas several years ago, then it moved to Florida.
22 It's come up into eastern North Carolina and the
23 process now is concentrating moving over into western

1 North Carolina which is the reason all the apple
2 growers are here today. And they are also moving
3 into Pennsylvania and northern Virginia into apple
4 country up there.

5 The problem we have with this is, this morning
6 we are talking about the various things that the
7 groups will do for the migrant worker.

8 My experience has been that we've got a nice
9 pattern going. They are bringing basically claims on
10 housing, safety and health and wages. Where do the
11 Legal Services, the Farm Worker Legal Services
12 clients come from? I raise questions concerning the
13 clients themselves. I've never seen a...I've seen a
14 number of retainer agreements that attorneys use for
15 various work. I've never seen one that is a retainer
16 agreement, an appointment of an attorney, in fact, to
17 settle, bring suit, do anything. It says if you
18 can't reach me at my last mailing address, settle the
19 case for me. And usually the wording is, including
20 initiating litigation in connection with my rights
21 under AWP and FLSA for the work I did in North
22 Carolina in 1985...it leaves it a little wide open.

23 In a deposition not long ago, I found out that

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1 I have yet to know of any...the itemized
2 violations. You've violated the applicable, federal
3 and state safety and health regulations. That's the
4 description they provide to the farmer. I ask any of
5 you if you would advise your client to go running to
6 his checkbook and pay that \$4,000 with no more
7 information.

8 If you ask for more information you'll get
9 another letter. They've got two more clients
10 doubling their demand. The only way to find out who
11 has supposedly brought these charges against you is
12 to either allow them to file suit or agree to a
13 settlement. I know of no case, and I'm familiar with
14 15, 20 or 30 of them, I know of no case where clients
15 names have ever been revealed.

16 The argument is that while our clients may
17 get...have retaliation, economic or physical, I've
18 never known a case like that and I always wonder how
19 many Legal Services can come up with. As someone
20 said on the Board earlier, you run that risk in any
21 lawsuit. My experience has been that people before a
22 suit is filed are less likely to result to physical
23 violence than after a suit is filed. Once the suit

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1 is filed, you usually have some tempers.

2 We also have the same, as I said, the same
3 workers showing up again and again and the different
4 complaints...same complaint, different farmers,
5 different crew leaders.

6 I understand these same workers will br back
7 applying for jobs with these same farmers next year
8 and if they are not hired, there's another cause for
9 action, discrimination because they've filed a
10 complaint.

11 Two questions for the Board. One, I have a hard
12 time believing that a valid claim that's worth \$4,000
13 is not fee generating and would not be readily
14 snapped up by the local bar. If it's really a \$4,000
15 suit. Now, if it's a \$500 suit and you're just
16 calling it a \$4,000 suit, that might be a difference.

17 You all are charged with the overall
18 responsibility to see that these programs are run
19 correctly. We're asking you to look into something
20 more. We're asking you to look into how this program
21 is run. My clients, my farmer clients, they don't
22 know where else to turn.

23 I met with these farmers and the congressman

1 from the Third District in Meadow, North Carolina
2 last night. I told them I was coming over here this
3 morning and they asked me to give several messages to
4 you, which I can't repeat. You have some unhappy
5 people and everyone has thrown the ball back into
6 your laps.

7 Now, if it doesn't belong there, let's at last
8 get it where it belongs. After two years of constant
9 comments, constant publicity, the entire reaction
10 from the North Carolina Legal Services is a request
11 for an ethics opinion concerning the initial demand
12 letter.

13 MR. VALDIS: Let me ask you
14 about that, if I may, Mr. Griffith. I have, of
15 course, seen that ethics opinion. Did you know
16 anything about the request for that ethics opinion
17 before it was published?

18 MR. GRIFFITH: No, sir. I
19 have some reliable information. I am told it came
20 from Legal Services of North Carolina but I...

21 CHAIRMAN DURANT: What was the
22 request for?

23 MR. GRIFFITH: The

1 request...the demand letter that is mailed out by the
2 farmers, which I have several copies of...

3 MR. VALOIS: Well, I will tell
4 you as a personal matter and I probably ought to
5 discuss this with Dick and Mrs. O'Briant, that I find
6 it a bit short on fair play to have that thing
7 presented to the bar without giving the other side an
8 opportunity to talk about it. I don't happen to
9 agree with the result either, by the way.

10 MR. GRIFFITH: If the
11 implication is did we present it to the bar, sir, I
12 did not.

13 MR. VALOIS: No. I know you
14 did not.

15 MR. TAYLOR: Shall I speak to
16 that now?

17 CHAIRMAN DURANT: Well, no.
18 Why don't you wait and let them...

19 MR. TAYLOR: Because it's
20 certainly not true that the other side was...there
21 was also a grievance matter called by Mr. Eargin on
22 the same issue at the same time and it was dismissed
23 as frivolous. So, they certainly were aware that the

1 State Bar was handling this and dealing with it.

2 I also have copies of the ethical opinion in
3 question, which says not only would it be unethical
4 to disclose the names of clients in the initial
5 demand letter, but that it would be unethical to make
6 that disclosure in the circumstances of our
7 representation and I would be glad for the members of
8 the Board to have that.

9 CHAIRMAN DURANT: Dick, why
10 don't you wait. We'll pass out all that stuff at the
11 end.

12 MR. WALLACE: Who's Mr. Eargin
13 before...

14 MR. EARGIN: I'm Mr. Eargin.

15 MR. WALLACE: Okay. Thank
16 you.

17 MR. EARGIN: I'm a
18 representative of the North Carolina Yam Commission,
19 sweet potato industry in North Carolina.

20 MR. WALLACE: Thank you. I
21 didn't mean to get out of order.

22 MR. GRIFFITH: At the present
23 time that is a proposed opinion. I know of some

1 comments that have gone in on it. I don't know how
2 many. I have some serious reservations about the
3 opinion as written and the inquiry as written because
4 the inquiry stops short of the situation that exists.
5 Adds some suggestions of fact which are not, in
6 actuality, in existence.

7 I think that the real problem is that the
8 opinion is proposed and, Mr. Valois, I hope that you
9 have also made some comments on it, that you have the
10 same concerns that I do concerning it. I was not
11 aware that that request had gone in until I saw it
12 published.

13 Gentlemen, that's the majority of my comments
14 and I apologize if I've strayed over that line from
15 general comments for the Board and into specifics.
16 I've edited down considerably what I would like to
17 tell you. I do know that this problem is not just
18 Farm Workers Legal Services of North Carolina from my
19 dealings both with people in Florida and
20 conversations with people in Maryland and some other
21 states and of course with your staff.

22 Gentlemen, no one's in charge. There's no
23 accountability there. Who is the accountability to?

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1 I thank you.

2 CHAIRMAN DURANT: Mr. Mendez?

3 MR. MENDEZ: Tom does.

4 CHAIRMAN DURANT: All right
5 Tom. He yields to you.

6 MR. SMEGAL: Thank you. Mr.
7 Griffith, you kept saying the problem. What's the
8 problem?

9 MR. GRIFFITH: The problem,
10 Your Honor or...I feel like I'm in court again. I
11 apologize. The farmer receives a demand saying
12 you've violated the Act that contains not seven,
13 eight or nine non-specific allegations completely.
14 You cannot determine from that what is alleged.

15 There is one case, to go into case examples, a
16 farm worker approached an employee with the
17 Employment Security Commission and said that there
18 was a farmer that owed him some money. He alleged
19 that he was owed about \$200. The representative of
20 the Employment Security Commission went to the
21 farmer, the farmer's reaction was he lives in a town
22 eight miles from here, which doesn't meet the
23 requirement of a migrant farm worker. He may have

1 stayed in my labor camp a couple nights, I don't
2 know. He was drunk in the field one day, the crew
3 leader asked him to leave and he didn't leave. The
4 crew leader said he was not working for him and asked
5 me to ask him to leave.

6 But the farmer told the man from the Employment
7 Security Commission, said, tell him to come out and
8 talk to me and if I owe him money, I'll pay him. The
9 farm worker instead went to the Legal Services office
10 and the farmer next received a demand letter saying
11 that he had violated housing, safety and health,
12 about eight violations.

13 Your choice with a client, when he's facing
14 this, is do you want to go through expensive federal
15 discovery? Do you want to waste three, four, five,
16 \$6,000 just getting through discovery? It's a
17 pattern. The same interrogatories show up in
18 Florida, Virginia, North Carolina, Pennsylvania.
19 It's about a 40 page collection of very confusing,
20 very complex interrogatories.

21 That's your choice. You tell your client, you
22 either go pay him or you go through this.

23 MR. SMEGAL: Excuse me. This

1 situation where there's a name...client right? This
2 individual. Do you know who he is?

3 MR. GRIFFITH: Oh, no. There
4 was no...

5 MR. SMEGAL: No one
6 represented by the Legal Service Corporation entity?
7 Pardon?

8 MR. GRIFFITH: There was no
9 client name in that case until suit was filed.

10 MR. SMEGAL: No. You were
11 just describing to me some guy who felt he had \$200
12 coming to him...

13 MR. GRIFFITH: Yes.

14 MR. SMEGAL: ...and that's an
15 individual. Do you know his name?

16 MR. GRIFFITH: The Employment
17 Security Commission revealed it to the farmer.

18 MR. SMEGAL: But I mean,
19 there's a real person there?

20 MR. GRIFFITH: Yes. In that
21 case there was.

22 MR. SMEGAL: And then the
23 problem, I guess, is that somewhere along the way

1 this real person gets represented by a lawyer who
2 happens to be employed by the, I guess, the North
3 Carolina program. Is that the problem?

4 MR. GRIFFITH: I think the
5 problem is that the real person, when the name keeps
6 appearing over and over for four or five cases a week
7 at a time, there's no question there's a real person
8 there.

9 MR. SMEGAL: My understanding
10 is there's been about 400 person hours of monitoring
11 of this program last July and August. Were you
12 interviewed by any of the monitoring team?

13 MR. GRIFFITH: Yes.

14 MR. SMEGAL: Did you tell them
15 this?

16 MR. GRIFFITH: Yes.

17 MR. SMEGAL: Are you aware of
18 the monitoring team's report?

19 MR. GRIFFITH: No.

20 MR. SMEGAL: Are you aware
21 there is a report?

22 MR. GRIFFITH: No.

23 MR. SMEGAL: Are you aware

1 that the program's been refunded again for next year?

2 MR. GRIFFITH: I figured it
3 had but...

4 MR. SMEGAL: Wouldn't you
5 think maybe if the kinds of concern you're expressing
6 were found to be valid by the monitoring team that
7 that wouldn't have happened? Do you know Mr.
8 McDonald who headed that monitoring team, by the way?

9 MR. ~~SMEGAL~~ ^{Griffith} GRIFFITH: Was he down
10 there?

11 MR. ~~SMEGAL~~ ^{Griffith} SMEGAL: Framinto...Mike
12 Framinto and...

13 MR. ~~EARGIN~~ ^{Smegal} EARGIN: Framinto was
14 there, too?

15 MR. ~~SMEGAL~~ ^{Griffith} SMEGAL: There was a Mike
16 Framinto who came down and talked with us and I think
17 that the other gentlemen's name was McDonald, but I'm
18 not sure about that.

19 MR. GRIFFITH: If there was a
20 report, I would love to see it.

21 MR. SMEGAL: So, the stuff
22 you're telling us today, though, you told the
23 monitoring team about this when they were evaluating

1 this program last...

2 MR. GRIFFITH: The case I've
3 just mentioned happened...

4 MR. SMEGAL: ...July and
5 August. Well, okay, so you've got another example,
6 but the kinds of examples you had then you told the
7 monitoring team and they spent 400 days on this.

8 MR. GRIFFITH: Hours or days?

9 MR. SMEGAL: Weren't they
10 person days?

11 AUDIENCE: 405 days in North
12 Carolina were person days.

13 MR. WALLACE: Is there a final
14 report...

15 MR. SMEGAL: Was it 400 days
16 or not? What's the answer?

17 AUDIENCE: Well, there's been
18 no report to us, Mr. Wallace.

19 MR. WALLACE: All right.
20 Thank you. So, there has been no report.

21 MR. EARGIN: Mr. Chairman, may
22 I get into this, please?

23 CHAIRMAN DURANT: Sure, Mr.

1 Eargin.

2 MR. EARGIN: My name is Billy
3 Eargin. I represent the sweet potato industry in
4 North Carolina. As the Executive Director of the
5 North Carolina Yam Commission and sir, to pick up
6 dialogue on your question, I think the problem
7 basically is the relationship or perhaps the lack of
8 a relationship between the Farm Workers Legal
9 Services of North Carolina and the farming industry,
10 the farming and agricultural employers of our state.

11 We feel, number one, that Farm Workers Legal
12 Services of North Carolina uses harassing and
13 intimidating tactics in dealing with our farmers.

14 Number two, we feel very strongly that many of
15 these tactics totally lack ethics, legal ethics in
16 pursuit of their cause of representing migrant and
17 legal workers in our state.

18 And number three, with farmers using or having
19 the problems that they are now having in agriculture
20 and have had for the past few years, we feel that
21 this is going to result in simply driving more
22 farmers out of business.

23 I can't tell you the thousands and thousands and

1 thousands of dollars that farmers have paid in legal
2 fees and in damage money to clients, most of whom are
3 unnamed at the hands of Farm Workers Legal Services.

4 Now, to digress a moment, Mr. Taylor here says
5 that the suit or the complaint that we file with the
6 North Carolina State Bar against the tactics of Farm
7 Workers Legal Services was dismissed as frivolous. I
8 don't remember seeing the word frivolous in that
9 response.

10 Number one...number two, Mr. Taylor or his
11 people stood up this morning and declared they were
12 unaware of any of these problems but at the same time
13 he was aware of the complaint that was filed with the
14 North Carolina State Bar.

15 MR. SMEGAL: Was it dismissed?

16 MR. EARGIN: We got a letter
17 saying it was dismissed. That was on October 31st,
18 1986. We wrote a letter back asking eight questions.
19 Those questions pertained essentially to the criteria
20 used to reach that decision and who they used to
21 present testimony on behalf of Farm Workers Legal
22 Services and who they used to present testimony on
23 behalf of the North Carolina Yam Commission.

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1 MR. WALLACE: Were you given a
2 hearing?

3 MR. EARGIN: I beg your
4 pardon?

5 MR. WALLACE: Was there a
6 hearing?

7 MR. EARGIN: Not to my
8 knowledge.

9 MR. WALLACE: Okay.

10 MR. EARGIN: If there was,
11 that was my whole complaint in my letter responding
12 to the October 31st letter from the North Carolina
13 State Bar.

14 How did you...what was your criteria and who
15 provided testimony. We sent that letter to them on
16 November 13th, 1986. Today...as of yesterday at 5:00
17 we had not received a response from them.

18 I think you might, the letter of the law might
19 support this, I believe that the spirit of the law
20 will support the question, why haven't you
21 established some kind of dialogue with us pertaining
22 to the legal ethics of Farm Worker's Legal Services
23 of North Carolina?

1 Our problem simply is that we are being
2 harassed. We, being farmers. This gentleman to my
3 left, the back rows that you see back here in the
4 back of this room, are being intimidated and harassed
5 by Farm Workers Legal Services of North Carolina.
6 And Legal Services Corporation, who is represented
7 here, will tell you either they don't know anything
8 about it or nobody has been to them to talk to them
9 about it.

10 Now, you will hear later on in this meeting
11 today where some folks have met with Legal Services
12 Corporation. At least they will state to you they
13 have met with them.

14 I know that they know about it and have known
15 about it. I know that the mutual contacts between
16 the two of us have talked to both sides or at least
17 I've been told that. I also know that a new member
18 of the Board of Legal Services of North Carolina
19 contacted me, asked me to set up a meeting between
20 him and some farmers so he could get a better insight
21 into the situation. We set a date, time and place
22 and two days before the meeting was to occur, he
23 called me and abruptly cancelled the meeting.

1 I heard later that the meeting was cancelled
2 because the Legal Services office in Raleigh had told
3 him not to have the meeting.

4 Those things leave this issue highly suspect as
5 far as we're concerned. And I'm here simply to let
6 you know that the people I represent who grow labor
7 intensive crops are having a tough time dealing with
8 Farm Workers Legal Services and the final result is
9 going to be that those very migrants that Farm
10 Workers Legal Services is representing are going to
11 find themselves without jobs at least in this state.
12 And I know that there are other states that are
13 suffering the same problems with the migrant labor
14 force.

15 So, essentially our problem is the tactics and
16 the suspect in their using or not using ethics and I
17 would just like to read you a sentence out of one
18 opinion, which was written by a judge and it says,
19 "As I have indicated before, I believe...
20 believed"...past tense..."and continue to believe
21 that the Plaintiffs were no more than pawns in the
22 hands of Farm Workers Legal Services of North
23 Carolina. That many counterclaims and cross claims

1 promulgated on their behalf were frivolous."

2 One other quick statement. A judge's opinion
3 concerning a court order wherein he says, "This court
4 further finds as previously stated that"...and this
5 is the lawyer..."actions were in flagrant disregard
6 of this court's previous order."

7 I have a handwritten notarized statement written
8 by a migrant involving a case and what the migrant
9 says in the statement essentially is that he had no
10 quarrel with his employer, that he was drunk when he
11 signed the paper at Legal Aid. "I was drinking at
12 the time. I signed the paper for Legal Aid, but I
13 was drinking at the time and don't know what I
14 signed. Legal Aid did not tell me what I was
15 signing. I declare under the penalty of perjury that
16 the above statement is true. I have read this
17 statement." It is signed and notarized.

18 This is the kind of thing that we know about
19 that apparently Legal Services Corporation in North
20 Carolina or Farm Workers Legal Services in North
21 Carolina does not realize that we know. And these
22 are just a few things, just a couple of cases. If
23 you want me to take a lot of your time, I will be

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1 happy to give you plenty of cases along these same
2 lines.

3 MR. SMEGAL: Did you give that
4 information to the monitoring team?

5 MR. EARGIN: I gave that
6 information...did we give it to the monitoring team?
7 Let me...Mr. Griffith, by the way, does legal advice
8 or does legal work for the North Carolina Yam
9 Commission and he's here in that capacity, as well as
10 independently.

11 That information was given to the Attorney
12 General's Office, to the State Bureau of
13 Investigation and to anybody who will take it.

14 MR. SMEGAL: Sounds like it's
15 gotten wide dissemination. Why aren't you getting
16 a sympathetic ear?

17 MR. EARGIN: It all gets
18 bounced back into your lap. Sir, that's why I'm
19 here, to ask you why.

20 MRS. BERNSTEIN: Could I make
21 a suggestion. There are local Boards of Directors
22 for each of these programs and I would suggest that
23 you attend the next meeting...have you been to the

1 meetings of those Board of Directors?

2 MR. GRIFFITH: I can't find
3 out when they are.

4 MRS. BERNSTEIN: Would you
5 please, each of the Project Directors that are here
6 and each of the Board Members that are here, please
7 introduce yourselves to these gentlemen before you
8 leave, give them the time of your next two meetings
9 and invite them to come and present these things to
10 you so that you can begin a dialogue that makes some
11 sense?

12 MR. EARGIN: That's good
13 advice. That's good advice, but you see, we didn't
14 hear about this meeting until Tuesday morning when I
15 got a call from a contact of mine in Washington
16 saying, Mr. Valois...

17 MR. SMEGAL: I didn't hear
18 about it until a week ago Friday, so...

19 MR. EARGIN: Maybe they're
20 after you, too, but...

21 MRS. BERNSTEIN: My point is,
22 there are local Boards of Directors made up of
23 attorneys and clients and if you've got concerns

1 about the...either the...you know, it's not a matter,
2 I think, Mr. Smegal, you know, I don't want him to
3 characterize his feelings as taking one side of the
4 issue, because I don't think that's where we are.

5 I think the question that we have is, are there
6 problems that are not being resolved to the benefit
7 of the client by resolving the problem in the most
8 efficient way possible, without jeopardizing the fact
9 that his job may not be there next year because the
10 farmers have been driven out of business.

11 MR. EARGIN: Okay, ma'am, let
12 me...and I agree with what you say. I think that's a
13 great suggestion. And let me further say that,
14 believe me, neither I nor anyone here representing
15 farmers, have any problem with the concept of equal
16 rights. Have any problems with the concept of
17 protecting or helping, at least, to assist migrant
18 labor, indigents or anyone else otherwise handicapped
19 in having their rights. That's not the issue.

20 MRS. BERNSTEIN: One of the
21 things...I haven't seen this ethics opinion, but it
22 does strike me as a bit odd and I would have to
23 think, you know, see the specific situation to

1 justify it, but it does strike me as a bit odd for
2 someone to be subject, in terms of fairness, to a
3 court decision without knowing who the opposition is.

4 MR. TAYLOR: That's not
5 the...there is no court situation in which we are
6 involved where the name of the client is not
7 disclosed. This relates to the initial contact.
8 Maybe it would be appropriate...

9 CHAIRMAN DURANT: We just
10 passed it around.

11 MR. GRIFFITH: It is much more
12 than initial contact. It's all contact until the
13 matter is either settled or suit is filed.

14 MRS. BERNSTEIN: Well, I think
15 everybody in this room, though, whether you're a
16 farmer or Board member or a client, whatever, should
17 just try to put yourself in the situation who
18 receives a demand letter and has no way to respond to
19 it because you don't know enough specifics about it.

20 MR. EARGIN: I think that is a
21 very fair statement. The problem here, if I may say,
22 the problem here has been, as Mr. Griffith will tell
23 you, that they...a farmer received a letter that said

1 we have an unnamed client who says you violated one,
2 two, three, four, five. Pay him. If you pay him, we
3 won't take you to court.

4 MRS. BERNSTEIN: It's
5 extortion. That's extortion. Blackmail should be
6 against the law.

7 MR. EARGIN: If you resist
8 that letter, that demand letter, by either having
9 your attorney call or you call or in any way resist
10 it, then you'll get another letter adding to the
11 violations. Okay? Then you get the court...if
12 you're going to go to court on this thing, then you
13 can find out who he is and strangely enough, as our
14 lawyer will tell you, a lot of times you see the same
15 names popping up, okay? But this issue says that our
16 people never know who the accuser is until they get
17 into court.

18 MR. GRIFFITH: If I can...I
19 hate to go back to an example, but when you ask
20 for...your question and I will give you a case.

21 A gentleman received a letter alleging 11 or 12
22 violations. There are also, these letters do not
23 come out while the workers are still working for

1 them, it's usually you get the letter in February and
2 it says during July and August of last year. Very
3 non-specific times.

4 This particular letter referenced two crew
5 chiefs and you're probably familiar with that. The
6 man who received the letter said, I don't even know
7 this second crew chief. I've never heard of him. He
8 got another letter from Legal Services adding two
9 more clients. This time referencing some housing in
10 an adjoining county. He said I don't know the man
11 who they say owns that housing. I have never worked
12 with him in any way.

13 We went...I took this man's payroll records, his
14 records were very complete, to Legal Services. I
15 said, here are his payroll records. Look through
16 there and see if you see your client's name. They
17 looked through them, they did not find their client's
18 names. Their answer was, that showed that my client
19 had not kept the proper records.

20 I then was shown two Xeroxed pieces of paper
21 upon which one of these two crew chiefs had written
22 to the other one, here's the list of the six people
23 of your crew I used today and a total figure. That

1 was done for two different dates. In no way did it
2 indicate that these people worked for my client. In
3 fact, one of those days my client showed no farm
4 labor, contract farm labor, the other day he showed
5 four hours, which could have been morning work. They
6 could have gone to another farmer that afternoon.

7 Still was told that the problem was my client
8 had not kept good records. At one point I was told
9 that they then had six clients. I was told, my six
10 clients were transported by X, who did not have a
11 license. My six transported by X. I finally, at one
12 point, wrote a letter and said how about clarifying
13 these issues for me? Tell me what in the world we're
14 talking about.

15 The response I got was a telephone call to my
16 office listing eight individuals names. It was
17 accompanied with an allegation that I had contacted
18 his client. I didn't even know his name and my
19 secretary comes in and says Mr. Lawyer has called and
20 said that you violated Disciplinary Rule whatever
21 because you contacted his client. I said, how can I
22 contact his client, I don't know who she, he, it is.

23 We took...they filed suit the next day on this.

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1 And of these eight clients they had, lo and behold
2 only six names on there are alleging violations
3 against my client. One of whom is the driver that
4 transported the six of them. I haven't figured that
5 one out yet, to be honest with you.

6 We then settled the case. I asked whether I was
7 settling this case and paying for all eight or the
8 six and was told there was a conflict as to the other
9 two. They were only representing six. There was a
10 potential, if not real conflict, between these other
11 two and the remaining six with my client and they
12 hadn't heard from these other two for a considerable
13 amount of time. That letter was dated June 12th.

14 Six months later, the other two were added to
15 the case. One of whom had signed a consent on May
16 23rd. We didn't get the names until suit was filed.

17 MRS. BERNSTEIN: Well, I can
18 understand why we're having trouble counting migrants
19 now.

20 MR. GRIFFITH: I'm on the
21 Board of Directors of Migrant Health Clinic in
22 Sampson County and I will tell you there is no way of
23 getting a good count on migrants because we've tried,

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1 too. We do know the population is falling and it is
2 falling rapidly in North Carolina.

3 MR. EARGIN: It will continue
4 to fall rapidly.

5 MR. GRIFFITH: If you don't
6 have that in your figures, I will check and see what
7 figures our Clinic uses, if that will be of help to
8 the Board.

9 MR. WALLACE: Mr. Chairman?
10 Gentlemen of the panel, I appreciate you being with
11 us today.

12 MRS. MILLER: We didn't hear
13 from one more gentleman.

14 MR. WALLACE: Well, I was
15 going to wait for him, but it doesn't look like we're
16 ever going to get there. Let me say that I
17 appreciate you being here with us. I would like to
18 tell you we can't help you. If you've been told by
19 everybody that we're the solution to your problem,
20 you've been told wrong. What we're here on today is
21 pledges to decide how much money to spend on migrant
22 programs to sue you.

23 One of the first things we did with budget when

1 we came in here was to vote to cut the amount of
2 money going to migrant programs to sue you. We got a
3 report language from Congress telling us we couldn't
4 do that.

5 The next year we got bill language from Congress
6 telling us we couldn't do that. Now, we can do it
7 again, but the people you need to be talking to and
8 the meeting you need to be attending is being held
9 next Wednesday in Washington before the House
10 Appropriations Subcommittee because anything...
11 because, you know, you're going to go away from here
12 and think you've made your case and if we believe you
13 and vote to help you, the people you heard before you
14 are going to be in Washington on Wednesday, their
15 going to tell Congress their side of the story and
16 they're going to win because you're not there.

17 Now, I'll sit here all afternoon and listen to
18 you. I've heard farmers from Texas to Maryland. I
19 don't go out in the fields, I can't find the facts
20 for myself, but I do know a little bit about
21 witnesses. And your complaint and the complaint of
22 every farmer is that people who get this money are
23 using your tax dollars to put you out of business.

1 Is that your complaint?

2 All right. I want you to know I believe you.
3 And I want you to know it doesn't matter a hill of
4 beans whether I believe you or not because Congress
5 doesn't believe you and that's where you need to be
6 on Wednesday.

7 I'll stay here as long as you want and vote any
8 way you want me to vote.

9 MR. EARGIN: Sir, are you
10 saying you have no authority over...

11 MR. WALLACE: Zero.

12 MR. EARGIN: I'm glad you
13 cleared that up.

14 MR. WALLACE: Thank you. I
15 don't know who you met with last night in the Third
16 District but...

17 MR. GRIFFITH: We have, over
18 the last couple of years met with the entire North
19 Carolina Congressional delegation. Last night Martin
20 Lancaster from North Carolina was newly elected.
21 There were a number of farmers. In fact, there was a
22 conflict from those farmers who wanted to come up
23 here and also wanted to meet with Mr. Lancaster last

1 night. It's a rough transition to make between 8:00
2 there and 8:00 in the morning here.

3 CHAIRMAN DURANT: Mr.
4 Griffith, two things. Mr. Wallace is quite correct
5 in one aspect and in another aspect. If there are
6 particular problems over which our Operations and
7 Regulations Committee, of which Mr. Wallace is the
8 Chairman, can propose regulations or whatever to deal
9 with these particular problems, the Corporation
10 certainly would be interested in them.

11 Our process in determining what those
12 regulations ought to be is a very open one. That is
13 that suggestions are made, hearings are held, all
14 sides. Dick Taylor and anyone else gets an
15 opportunity to comment on those regulations and to
16 make suggestions, modifications or changes.

17 One of the things that maybe could come out of
18 your meeting with Mr. DuPre and Dan Rathbun is to
19 talk about those particular kinds of things but just
20 as we don't shift accounts to...shift our budget
21 balances in secret, we won't ultimately, you know,
22 make these other kinds of decisions in secret.
23 It is an open process.

1 Some of the complaints that you may have,
2 frankly...Mr. Smegal brings it up in a different
3 context, simply may not be a violation of any
4 existing law or regulation.

5 Maybe those should be changed, but I've got to
6 tell you, maybe they shouldn't be. I mean, in
7 certain cases, perhaps there should be aggressive
8 advocacy in certain kinds of violations.

9 But the point is, Mr. Wallace is correct, the
10 main thrust for certain kinds of changes do have to
11 come from Congress, but we are perfectly willing and
12 open to listen to the particular complaints that you,
13 your clients or, whether they are your clients or
14 not, have and if there are things that fall within
15 the scope of our statute and regulations can be
16 designed to deal with certain kinds of uses after an
17 open process, this Board certainly would be willing
18 to pass them.

19 But even after we pass them, ultimately, then
20 Congress will determine whether or not they are going
21 to let those regulations be enforced or not and then
22 we'll make choices after they make that choice.

23 MR. GRIFFITH: I can certainly

1 appreciate the Board's concern or the Board's
2 position. As Mr. Eargin said earlier, my problem is
3 not with the concept of legal aid. It never has
4 been. In fact, I think that the monitoring board
5 that...the monitoring team that came down would
6 probably substantiate that fact from our
7 conversations.

8 I hate to see a good program in North
9 Carolina... because the rest of the North Carolina
10 program, from my experience with it, is excellent...I
11 hate to see the entire North Carolina program get a
12 black mark because of one segment of it. And just as
13 our clients have trouble differentiating between
14 various agencies, the general public does, as well.

15 CHAIRMAN DURANT: And I have
16 to tell you something else. When I went down to Bell
17 Glade, Florida a year ago to meet with a number of
18 the migrants picking lettuce or cutting sugar cane
19 and whatever and then meet with some of the
20 employers, in many cases, a lot of the problems
21 result from the failure to communicate.

22 I admit that there are crazy lawyers but there
23 are also crazy employers.

1 MR. GRIFFITH: I have never
2 had a client that would object to a lawyer coming to
3 his house and saying, you've got a violation at your
4 camp right now. I'm not going to tell you who filed
5 the complaint, but you better get out there because
6 the shower is backing up and you better get it fixed
7 in two days or we're going to file suit against you.

8 But they wait. They camp has been empty for
9 six, eight months.

10 CHAIRMAN DURANT: Believe me,
11 and as I say, maybe as you go through it with Mario
12 and Dan, particular kinds of things that can be
13 addressed by regulation. On the other hand, it may
14 be that if there are particular kinds of things,
15 sitting down with Dick or whatever and seeing if
16 certain things couldn't be worked out is maybe also a
17 possibility.

18 But there's no question that the particulars
19 certainly need to be known, but as Michael said,
20 there really are more than one form on this. I mean,
21 I would never be afraid to take the ball.

22 MR. GRIFFITH: I hope Congress
23 will restore your monitoring oversight funds back to

1 the level they were.

2 CHAIRMAN DURANT: Mr. Valois
3 is going to continue as the Chair of this and as I
4 say, when you guys are ready or whatever, you can
5 correct me with Dan and...

6 MR. EARGIN: You mentioned
7 failure to communicate. One of the problems here,
8 sir, is not so much the failure to communicate, it's
9 not the inability to communicate, it's the
10 indifference relating to the need to communicate. I
11 want to say not refusing to communicate, but maybe
12 indifference is a more accurate description.

13 MR. WALLACE: I didn't mean to
14 cut off the last witness. I'm sorry.

15 MR. EARGIN: I have no more to
16 say. I think we have two gentlemen here who are
17 farmers and I'm not a farmer. I represent sweet
18 potato farmers and packers and shippers. I was born
19 and raised on a farm and I have used migrant labor.
20 I don't now and I won't allow any of my family to,
21 who still farm. But these two gentlemen on the
22 outside, I think have something to say and there's a
23 lady here who has something to say whom I feel should

1 have the opportunity.

2 I will simply say to you as sincerely as I know
3 how, whatever authority you might have or don't have,
4 whatever influence you might have or not have over
5 Farm Workers Legal Services of North Carolina, I
6 would hope that you would at least encourage these
7 people to establish a dialogue which heretofore has
8 not been established.

9 MR. VALOIS: Mr. Eargin, I
10 have made that suggestion.

11 MR. EARGIN: I have seen the
12 last couple of years...

13 MR. VALOIS: Yes, sir.

14 MR. EARGIN: And we have...I'm
15 not sure we have personally ever talked before, but
16 we certainly talk to the same people including Dick
17 Taylor. I don't think we can solve your problem and
18 the only way it's going to be solved is you all get
19 together and however that's done, I don't know. But
20 it better be done because I have been practicing
21 Labor law in North Carolina for 25 years and I know
22 that if this problem is not accomplished that
23 something else is going to happen that's a lot more

1 serious than talk.

2 MR. GRIFFITH: I would like to
3 see some of your proposals of about a year ago on the
4 dispute resolution or even a notice requirement
5 before suit to the institute.

6 Your proposal, I think it was about a year ago,
7 had a great deal of merit.

8 MR. EARGIN: I want to say
9 also, if I might, in pulling this meeting into focus
10 and the relationship between Legal Services and Legal
11 Services North Carolina, we're not...I'm not here, at
12 least, to ask you to cut off their money supply.
13 Maybe they think that's why I'm here but that's not
14 the case.

15 I'm seeking whatever route is available to me to
16 bring about some sense of fairness and reason and
17 objectivity in this case between labor and employer.
18 And I won't stop until we accomplish that at least to
19 some degree and I would hope that anybody who is fair
20 minded will help us with that. That's all I have to
21 say now.

22 MR. VALOIS: Thank you very
23 much.

1 MR. FERGUSON: I would just
2 like to say that I am the President of the North
3 Carolina Tomato Growers Association and also,
4 we have about 300 members in western North Carolina
5 and....

6 CHAIRMAN DURANT: State your
7 name, sir. She didn't get it.

8 MR. FERGUSON: James M.
9 Ferguson.

10 I've got a lot stuff here I could say, but these
11 sweet potatoes boys have done covered it all. It
12 best be about the same, be about the same situation
13 they've done run over here is going to make me doing
14 a rerun.

15 CHAIRMAN DURANT: Thank you,
16 Mr. Ferguson.

17 MRS. BERNSTEIN: If you've
18 got a prepared statement though, if you want to
19 submit it to the Board, Tim can disseminate it.

20 MR. DAVIS: I'm Gaylord Davis.
21 I'm a member of the Board of Directors of the North
22 Carolina Apple Growers Association. I'm an apple
23 grower and I taught vocational agriculture for 30

1 years.

2 First of all, I'd like to say we're happy that
3 you folks are in Asheville today. You've come to one
4 of the finest facilities in North Carolina. You've
5 come to one of the finest regions in the whole world
6 and you've come into the finest people in this region
7 that you will find anywhere and we, too, would invite
8 you to come to our orchards and our farms and to
9 witness for yourself the treatment that is taking
10 place in our labor program.

11 I said I taught vocational agriculture for 30
12 years. I worked hard then and now to try to help our
13 farm people make a living and I get damn mad when I
14 see horse thieves and shyster lawyers coming out and
15 giving our people a hard time, if you'll excuse me
16 for saying so.

17 I'm here today to tell you, from everything I
18 have heard and seen and read, that the Farm Workers
19 Legal Services fits both of those categories. They
20 appear to be engaged in intimidation. They're
21 engaged in blackmail and they're engaged in extortion
22 and I'll prove it to you in just a minute. They're
23 aiding and abetting farm workers in extorting money

1 from farmers by bringing false charges, making these
2 farmers feel guilty, threatening them with large
3 lawsuits and urging them to settle out of court, when
4 if the farmers would go to court, they would find out
5 that they weren't guilty at all.

6 Now, I concede, I'll tell you in just a minute,
7 I concede that there probably are some circumstances
8 and have been some circumstances where migrant
9 workers have been mistreated. I wouldn't argue that
10 at all. And with the yam people, we're not in favor
11 of that thing. You've got to understand that we
12 cannot farm without these people coming and they
13 would not come back year after year to our farms if
14 we were mistreating them. Okay?

15 Now, these people are turning the migrant
16 workers against us by enticing them to file a
17 lawsuit. Well, let me tell you, most of you folks
18 are lawyers and if you'd like a good tip, I'll give
19 you one.

20 This room in which you are sitting, this
21 building in which you are sitting is in violation of
22 the building codes. This building would not pass for
23 a migrant camp. Two scores. You want to bring suit

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1 against them, you can make you a few dollars.

2 Now, this is what these people do. They go to
3 these...they tell them how they can make a few
4 dollars and what migrant wouldn't like to make \$500
5 or \$1,000 or \$5,000.

6 There's a door exiting down there on the lower
7 side and the door turns inward. That's a violation.
8 They have lunchroom facilities downstairs and there
9 are no screens anywhere. No migrant could be housed
10 in this building or in most Holiday Inn's. The rules
11 are so stringent that they just won't meet them.

12 And I'm here to tell you another thing, most of
13 those regulations, in my opinion, you're the lawyers,
14 but in my opinion, they are unconstitutional. They
15 are unconstitutional because they require a higher
16 standard of housing for the migrant population than
17 is required for any other group of people in the
18 United States.

19 Migrants can't live in certain places, but you
20 can and I can and we can cite those to you. These
21 are not just something I'm fabricating. They're
22 truths.

23 Now, I want to tell you of a couple of cases

1 we've had in Henderson County. A couple of years
2 ago one of our good apple growers was visited by some
3 representatives from Farm Workers Legal Services.
4 And he has written a letter which I'd be glad to get
5 any of you a copy of, in which he stated that he had
6 never been so rudely treated by anybody in his whole
7 life than he was by these people coming to represent
8 the migrants.

9 Now, just two days ago I found out about this
10 meeting. And just two days ago I found out that
11 these people have got one of my neighbors, one of my
12 former students, one of our good young farmers over
13 the barrel.

14 Now, this young farmer received a letter, and I
15 have a copy of it, but his lawyer...I was going to
16 give you all a copy. His lawyer said not to do it
17 while they're in litigation.

18 He received a letter with ten charges against
19 he. He had two clients which meant 20 offenses and
20 this man was told that there was a...up to a \$500
21 charge on each offense. Now, that's \$10,000 in my
22 calculations.

23 Now, this farmer received this again just, say,

1 a month ago. The season has long been over, but a
2 month ago he received a letter. Now, for a young
3 farmer trying to get in business to get ready for his
4 next year's crop, that's dad-blamed scary and he
5 can't hardly make his payments now and to think of a
6 lawsuit, \$10,000 over his head is scary.

7 He was given 15 days. If you don't respond in
8 15 days, we'll assume that you want to take this to
9 litigation. Now, the bad part of it is, ladies and
10 gentlemen, is that I believe in this man's mind, when
11 he read those 10 charges, I believe he thought he was
12 guilty. I believe he thought he was guilty. The
13 letter said he was guilty and some of those things he
14 had not done. So he hunted a lawyer.

15 Now, this man...let me digress just a minute to
16 tell you about the laws. There are seven different
17 sets of laws that I know of that are affecting that
18 farmer out there, all of them very complicated, very
19 precise and, in some cases in my opinion,
20 unconstitutional because of the specific nature of
21 it.

22 It's very difficult for a small farmer to keep
23 all of these things in his mind, so I feel this man

1 felt he was guilty because he hasn't done some of
2 these things.

3 He is required to have four inspections of his
4 camp and this group...this group is insisting on a
5 fifth one. They are insisting that they inspect the
6 camp and from now on, if they find any violations,
7 they bring these charges up all over again or
8 continue to take him to court.

9 If that isn't blackmail, I don't know what it
10 is.

11 Now, you got to keep in mind that the laws of
12 economics...I know you're concerned about the
13 migrants, and we are too...the laws of economics are
14 just as severe on these small farmers as it is on the
15 migrant workers and I can tell you because I've been
16 in the apple business for 13 years myself. I want to
17 tell you that we apple growers and we farmers do
18 violate the federal rules sometimes and we do it
19 because we feel that we're subject than the higher
20 power than the United States Government.

21 Now, let me tell you what I mean. I wish you
22 could be in my yard, my house for 24 hours at the
23 beginning of the picking season and you see these

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1 carloads of migrants come in and ask for a place to
2 stay. We've been in the car three days. We've got
3 yowling kids and we've got the whole car full and
4 we've got no place to go. We need some work and we
5 need to get out of the car.

6 And I have to say to them, my house hasn't been
7 inspected or it doesn't have the screens or I know
8 where there's a house you can go to, but it doesn't
9 meet the requirements and they'll put me in jail if I
10 allow you to go there.

11 Now, that's discrimination, folks. Pure
12 discrimination against those people and they come day
13 after day. I can't use them all, but somehow or
14 other they find their way to my place. We're
15 sympathetic.

16 As far as I'm concerned, I say to devil with the
17 law. I know where there's a place, you go down there
18 and get out of your car and relax and be as
19 comfortable as you can. Now, that's what we do.

20 This man that they've got under suit right now
21 was in the process last year of building a brand new
22 building. It had been inspected by the building
23 inspector of the county. It was not done and you got

1 to understand too, that these migrants get out of
2 Florida as quick as they can. They come up to this
3 mountain area and I don't blame them. They come up
4 way before the season is open and they want a place
5 to stay.

6 This man let these people move into the house
7 before it was finished and before it was fully
8 inspected.

9 MR. VALOIS: Mr. Davis, I'm
10 going to have to ask you to bring your remarks to a
11 conclusion.

12 MR. DAVIS: Yes, sir, I will
13 right now. The long and short of it was that this
14 man was not guilty. He is not guilty of any of these
15 charges. Now, he didn't know it because he...and I
16 doubt his lawyer knew it, unless he had read the law,
17 but now...I don't mean to be offensive...but any
18 lawyer worth his salt that had read that law would
19 know that there's a good possibility that that feller
20 is not guilty.

21 This man is not guilty on two different
22 exemptions in the law. First of all, he's a family
23 business operation and he hired all his own help, he

1 put them in his place and he didn't use them by
2 anybody else and that's an exemption. He also is
3 exempt under the small business because he didn't use
4 500 man days the year before.

5 Now any lawyer, anybody can tell that a lot of
6 farmers in North Carolina are not guilty because
7 they're small businesses, because they're family
8 operations. We've got more family farms in North
9 Carolina than in any state in the Union.

10 Now, I submit to you that something has to be
11 done with people like this and I can tell you that as
12 a taxpayer and a citizen we're sick and tired of
13 lawyers bringing suit in courts when they got no
14 suit. And these people didn't have a suit. They
15 could have found that out very simply, but they
16 didn't. They wrote him a threatening letter.

17 Now, in conclusion I want to say, that as far as
18 I'm concerned, I'm ready to bring suit against them
19 if they continue to intimidate these farmers and try
20 to bring suits where is no suit there. When they
21 extort money from these farmers and the farmer
22 doesn't want anybody to know it, so he pays them up.

23 Now, that's not good business and I'm ready to

1 join hands with somebody and put a stop to it. So,
2 you folks have already answered the last question
3 that I was going to ask you. I was going to ask you
4 if you're sitting in the same seat Mr. Reagan is. I
5 was going to ask you if you're responsible for these
6 people and if you really knew what was taking place
7 out there or whether you just fund them and you
8 didn't know what they're doing.

9 I appreciate your time and attention and your
10 presence and thank you kindly.

11 MR. VALDIS: Thank you. All
12 right. Thank you, very much. We're going to excuse
13 this panel. We're going to give Mr. Taylor a time
14 period and Mrs. O'Briant time to respond and then we
15 must take the testimony of Dr. Martin, because he has
16 trip plans.

17 Mrs. O'Briant.

18 MRS. O'BRIANT: I'm just going
19 to say a few things about this.

20 First, I would like to clarify what I said this
21 morning. I hope the members of the Board heard me
22 because it's very evident that Mr. Griffith and Mr.
23 Eargin did not hear me.

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1 I said that we knew of a complaint, but the only
2 way we knew about it was by reading the newspaper and
3 hearing from Congressmen in this state. They were
4 the only people.

5 To my knowledge, Mr. Eargin, and I'd really like
6 to ask him this question, but I'm not here to cross
7 examine him, to my knowledge he has never spoken to
8 anyone of any legal services staff in this state
9 about any problem with the farm workers. He has not
10 spoken to farm workers, he has not spoken to Mr.
11 Taylor, he has not spoken to me.

12 But...

13 MR. MENDEZ: That's a fair
14 question to ask him and since you're sitting there
15 right now, have you gone out and spoken to anybody?

16 MRS. O'BRIANT: I have spoken
17 to Representative Tim Valentine. I called him on the
18 phone in Washington when I found out that he...

19 MR. MENDEZ: No, I'm talking
20 about the people in the state. You said that he
21 hasn't contacted you. Have you done the reciprocal
22 and gone out and contacted any farm groups?

23 MRS. O'BRIANT: My problem

1 with contacting farmers is that I don't know which
2 ones are on cases involved in our program and I think
3 that I have...that that would probably be unethical
4 for me to go talk to some of the farmers.

5 MR. TAYLOR: We have met on a
6 number of occasions and I'll...when my voice here
7 permits me, I'll describe how we have met under the
8 auspices of several North Carolina Congressman with
9 farmers to discover on several occasions that they
10 were adverse parties in pending litigation, they were
11 represented by counsel, counsel wasn't present, there
12 was a limit to which we could discuss anything.

13 But I think the point is well taken and I think
14 Mrs. Bernstein's point about inviting anyone who has
15 complaints about our program to the Board...

16 MRS. SWAFFORD: Just a minute,
17 before farm people leave. What hindered you all from
18 talking today. You were all here. It occurs to me,
19 it's a perfect opportunity...

20 MR. TAYLOR: We have, Mrs.
21 Swafford. We have and we...

22 MRS. SWAFFORD: Okay.

23 MR. MENDEZ: I would like to

1 suggest something in the nature of a legal services.
2 seminar on what violations are and invite the farmers
3 and the farm groups.

4 MRS. O'BRIANT: I have
5 suggested that.

6 MR. EPPINETTE: If I could
7 briefly say, we were on a design team with the North
8 Carolina Extension Service to conduct a set of
9 seminars which have just been completed in the office
10 of the North Carolina Farm Workers Council. We were
11 not part of the trainers. The trainers were the U.S.
12 Department of Labor. Covered labor laws, OSHA's
13 position, covered OSHA laws, immigration codes and
14 immigration laws, but we did participate on a
15 planning scheme for that exact training that has
16 taken place. And it continues to take place and will
17 be here in western North Carolina some time next
18 week.

19 MRS. O'BRIANT: I would like
20 to say, and this is almost a repeat of what, I guess,
21 Mr. Eargin said. They have been to the Attorney
22 General of North Carolina. They've been to the
23 Governor of North Carolina. They've been to all the

1 Congressmen in North Carolina. They've been to the
2 State Bar. They've even been to the Bar Association
3 complaining about this program, but as I say they've
4 never been to us, but we've heard about these others.

5 The program has been investigated. Someone
6 representing this Board has investigated it on
7 several occasions, because we've been told by lawyers
8 who represent farmers that investigators from Legal
9 Services Corporation have come to their office asking
10 them and talking to them about specific cases and
11 about allegations.

12 I've also been told by a lawyer who represents
13 farmers in a great many cases against our Farm
14 Workers Program that he has never observed anything
15 unethical being done by any of the lawyers who work
16 for Farm Workers of North Carolina. And this is a
17 very, very well respected attorney that I happen to
18 know and just asked him when I started hearing these
19 things from the newspapers.

20 But still, the only complaint we got was out of
21 the newspapers. And the only complaint that I got
22 from Congressman Valentine when I talked to him was
23 this letter, this original letter.

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1 And so, when we started getting this and reading
2 it in the paper and I was very concerned about Legal
3 Services' image. I appreciate what Mr. Griffith said
4 about the rest of our program as being excellent. I
5 happen to agree with him on that point.

6 But I called a meeting of the various people
7 representing the North Carolina Department of Labor,
8 with the Farm Workers Program. There were several
9 people there, discussing this problem and reading the
10 letter. And we ended the meeting by suggesting some
11 very definite changes in that letter. The letter is
12 quite different now from what it was, I guess, a year
13 ago.

14 And then in talking with Congressman Valentine,
15 he knew that we were...and this is the other thing
16 that came out of that meeting, that we would present
17 this problem to the Ethics Committee of our State Bar
18 and we would abide by whatever they said. If they
19 said what we were doing was unethical, we certainly
20 would cease doing it, because we don't want to do
21 anything that's unethical in any of our programs.

22 And so, that decision was made to do that and
23 Congressman Valentine knew and was informed that we

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1 were presenting this and he seemed to be very much in
2 contact with Mr. Eargin. I mean, he could have told
3 him that it was being presented to the State Bar or
4 anyone else could.

5 But those were our two responses to the only one
6 specific problem that we knew about. And, as I said,
7 the only reason we knew about that problem was the
8 newspaper. And we changed the letter and we
9 presented the problem to the State Bar which we
10 thought were two very appropriate responses.

11 And yet, today was the first day I've ever met
12 or talked to Mr. Eargin and, it's not a secret that
13 I'm President of Legal Services of North Carolina or
14 that Dick Taylor is our Director and it seems to me
15 that since they had been all over the world with
16 their problems about us, they could have then perhaps
17 come to us or at least called Dick and tell him.

18 I do know specifically that Mr. Griffith has
19 been invited to a Farm Workers Board of Director's
20 meeting by the Chair of that Board.

21 And I'll let Dick tell the rest. I have a lot
22 more that I could say, but I don't think I'll take
23 your time.

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1 MRS. BERNSTEIN: I don't want
2 to break in, I want to keep going on, but I have to
3 transmit to you, since your back was to him that
4 there was a great deal of surprise on the face of Mr.
5 Griffith, at the...you know for a fact that he had
6 been invited.

7 MR. GRIFFITH: Ma'am, I will
8 verify that right now to members of your Board
9 personally.

10 In January of last year I saw her in the hallway
11 of the courtroom of Cumberland County and requested
12 that she let me know when the next Board meeting was,
13 that I would like to come. She said, you're welcome
14 to come.

15 I have called Farm Workers Legal Services office
16 I don't know how many times. I've given up now trying
17 to find out when the meeting is.

18 MRS. O'BRIANT: It's not in
19 your newspaper?

20 MR. GRIFFITH: No, ma'am.

21 MR. VALOIS: Dick?

22 MR. TAYLOR: Yes, let
23 me...thank you, Bob.

1 I'm sorry that I have to talk about this subject
2 on short notice, but unfortunately it's a subject
3 that I've talked about many times before and with
4 which I have a lot of familiarity.

5 It is imperative that the situation of migrant
6 farm workers be put into the record here. I am going
7 to submit into the record, and it's my only copy and
8 it would be nice if I could get a copy of it, but a
9 letter that I wrote to Congressman Tim Valentine on
10 December 19, 1986 that summarizes...that describes
11 the ethics opinion seeking process, informs him since
12 Congressman Valentine let me know that Mr. Eargin had
13 gone to him with complaints and, in effect, I was
14 communicating through Congressman Valentine, so I was
15 informing him of a request for an ethics opinion and
16 also giving him all of the background material that
17 had been given to the State Bar.

18 Some of that material is important for you to
19 understand. The first thing I would like to do is
20 I'd like to read to you from a U.S. Fourth Circuit
21 Court of Appeals opinion in the case of United States
22 versus Booker, decided July 30th, 1981, which was the
23 upholding of a slavery conviction against crew

1 leaders in eastern North Carolina in which the Court
2 found that the 13th Amendment and the laws that
3 enforce it are directed not only at involuntary
4 servitude supported by state action, but exactly by
5 purely private conduct, as well.

6 They go on to state that the statutes which
7 protected persons similarly situated to migrant
8 workers of our own time. They were persons without
9 property, without skills, save those in tending the
10 fields, with little education, little money, little
11 hope. They usually fell prey to the tempting offers
12 of powerful and unscrupulous individuals who would
13 soon assert complete control over their lives.

14 That control might be maintained through the
15 threat of criminal sanctions, through physical force
16 as practiced in the Booker case. It is disturbing
17 that such involuntary servitude was assisted by the
18 silent and even collaborative acquiescence of local
19 communities.

20 It is for this reason that Congress extended
21 jurisdiction to encompass these crimes, despite the
22 availability of state remedies for kidnapping and
23 false imprisonment.

1 In short the statute...and that's the statute,
2 the anti-slavery statute enforcing the 13th
3 Amendment...must be read not only render criminal the
4 evil Congress sought to eradicate so long ago, but as
5 well it's 20th century counterpart.

6 That, ladies and gentlemen, is migrant workers
7 of North Carolina.

8 I would also submit for the record a copy of a
9 deposition in the action of Haywood against Barnes,
10 which was a class action lawsuit recently settled
11 against the largest sweet potato grower in the world.
12 It may have no bearing on the interest that Mr.
13 Eargin has in this matter or it may.

14 But in that action there is a deposition of a
15 person who had been shot with a pistol by a farmer
16 and I think that that must show something about the
17 desperate power relationship between the people who
18 we represent and the persons who Mr. Eargin speaks
19 for.

20 I also will submit to you an affidavit of a
21 person who...in which it was the professional
22 judgment of a client...of a lawyer representing a
23 client in our office that the name could be disclosed

1 in an initial demand letter for the following reason.

2 The farmer or the adverse party in this matter
3 had settled cases the previous growing season. The
4 relationship between the farmer, his counsel and our
5 lawyer had been amicable in settling those matters.

6 Frankly, Lillian and I have been putting
7 pressure on the program to see is there something
8 that you could do to...that we think you're right on
9 the law, we think you're right on ethics, but you
10 know, what about this name thing. Somehow, not
11 identifying a person for whom you speak sounds funny.
12 Why can't you do that?

13 A lawyer in the circumstances which he thought
14 were highly appropriate revealed the name of the
15 client and here's the affidavit of the client who was
16 retaliated against by a crew leader in South Carolina
17 three days later, seeking the withdrawal of the
18 complaint and seeking to make that person withdraw
19 their retainer with us.

20 I'll also introduce into the record an order
21 entered by Judge DuPre, Federal District Court Judge
22 in the Eastern District of North Carolina in the
23 action of Ramerez against Hollingsworth which

1 sanctions a lawyer in eastern North Carolina.

2 The facts in that case are, we represent two
3 folks. A couple who are farm workers, in a typical
4 case, and in the middle of the night, 9:00 or 10:00
5 o'clock at night, the Defendant picks up our clients,
6 puts them in the back of a pick-up truck, drives to
7 his lawyers office. Our clients sign dismissals
8 dismissing our lawsuit which are filed with the
9 Federal Court with no notice to us.

10 And this order which I'll submit to you
11 sanctions that lawyer under Rule 11 and strikes the
12 pleadings. And I think it shows you something about
13 the desperate relationship.

14 That was in September of 1986, ladies and
15 gentlemen. I think it's important that you realize
16 the kind of fact patterns that are present in these
17 cases.

18 This is also something...another thing which I
19 will submit to you is a letter to now deceased
20 Senator John East from North Carolina and an
21 identical letter was sent to Jesse Helms from Legal
22 Services Corporation.

23 Tom Opsette, who was then the Director of the

1 Office of Compliance and Review in...and I'll see the
2 date of the letter to Senator East...it was October
3 24th, 1984 and this letter pertains to an
4 investigation which went on for about a year, from
5 October of '83. A secret investigation. We had no
6 notice of it until six or eight months after the
7 Corporation investigators were engaged actively in
8 involvement with adverse parties and pending matters,
9 which we found to be inappropriate. Nonetheless,
10 this letter is to Senator East from Tom Opsette.

11 It goes into the question in great detail of
12 whether or not in failing to disclose the name of the
13 client in a demand letter or in pre-settlement...or
14 pre-litigation settlement negotiations was
15 inappropriate and it finds and I quote, a full review
16 of the complaints and the responses to those
17 complaints would tend to indicate that while the
18 actions of FWLSNC, or Farm Workers Legal Services of
19 North Carolina, might be distressing to your
20 constituents, there has been, to this point, no
21 violation of LSC Act or rules or regulations
22 promulgated thereto.

23 In the beginning of the letter it goes on to

1 find that the policy of...the demand letter policy
2 constitutes the type of lawyer's professional
3 judgment in rendering services to his clients
4 mentioned at the outset of this report.

5 At this stage, LSC will not presume to impose
6 its judgment on those of FWLSNC and the operation of
7 this policy, as such, does not constitute any
8 violation of LSC Act or regulations.

9 So, ladies and gentlemen, I looked into this.
10 I've talked to our Congressional Delegation about it.
11 I've talked with your staff about it. Your staff
12 found...gave us a clean bill of health on the
13 question. People who were sued, who violated the law
14 and were made to pay damages were not happy about it,
15 I'll admit that.

16 But you found it to be all right. The courts
17 which have jurisdiction over these matters have found
18 it to be all right. Still the public relations war
19 against us continued, so in this past summer Lillian
20 O'Briant convened the Blue Ribbon Committee of bar
21 and community and agency leaders to look into the
22 question. We decided to seek the ethics opinion. We
23 did not do that in any secrecy whatsoever. We

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1 notified the Congressional people. We notified
2 anyone that we felt would be interested about it as
3 it has been noted here. It's a proposed opinion.
4 The comment won't become final...if it does become
5 final...until April 17th. There is time to deal with
6 this.

7 When we were monitored extensively this fall on
8 this and several matters between us and the LSC
9 monitors we offered to take any issue in which
10 there's an ethical question, where our lawyers feel
11 like professional ethics will prevent them from doing
12 what their adversaries or what your monitors want.

13 But we'll take any of those questions to the
14 regulatory agency which governs our professional
15 conduct, the State Bar and all requests for documents
16 and all matters which the monitors had relating to
17 this, where we felt there was an ethical matter, were
18 withdrawn and we renew that offer.

19 If there is any question about professional
20 ethics and if somebody else wants to phrase the
21 inquiry, we would be delighted to proceed with such a
22 thing.

23 MRS. O'BRIANT: I'd like to

1 say just one thing. I discussed this matter also
2 with Commissioner Brooks, the elected Commissioner of
3 Labor of North Carolina and he told me don't stop
4 doing anything you're doing. Your Farm Workers
5 Program is doing a great job.

6 MR. TAYLOR: Let me just say
7 one thing, Bob, if I could and that is that...I'd
8 like to put one more thing in context and then I'm
9 through.

10 LSNC is a large legal services program. We're
11 the third largest recipient of funds from the
12 Corporation. I think we're well governed. I think
13 we are accountable. I think we're well connected
14 with the community and the bar. We have about 100
15 lawyers at any given time operating out of 19 offices
16 across the state.

17 Three of those lawyers represent migrant farm
18 workers. Their total budget is \$279,000. The
19 amassed wealth of the growers in North Carolina it
20 would seem to me to be far greater and the
21 ability...I mean, I think that you people may be
22 concerned about the wrong party to these actions.

23 I don't think that this is a major...the other

1 thing I'd like to say is that LSNC is also very much
2 involved in trying to protect low income people in a
3 rural environment. Most of the work we do that
4 relates to the farm economy is to represent farmers.
5 We're actively involved in the North Carolina Bar
6 Association's efforts to help farmers and illegals
7 and aliens with remedies under the Immigration Act to
8 the extent that we can under the restrictions which
9 you know we're under.

10 We fund a land loss prevention project at North
11 Carolina Central Law School through the North
12 Carolina Association of Black Lawyers and I would not
13 want you to think that the thrust of our program in a
14 state which is principally rural is anything but to
15 fight to preserve a quality of life for rural people
16 who are of low income.

17 MR. WALLACE: Mr. Chairman?

18 I've got a question for the witnesses.

19 I take it from your testimony that you believe
20 that, with no exceptions you're aware of, that the
21 cases that you file on behalf of your clients are
22 substantially justified, is that correct?

23 MR. TAYLOR: There has been no

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1 case filed in North Carolina by our Farm Worker
2 Program in which we did not prevail. I am aware of
3 no fact situation or no...that is correct, Mr.
4 Wallace.

5 MR. WALLACE: All right. So,
6 if Congress were to amend the law to apply to you the
7 Equal Access to Justice Act, which applies to every
8 other outfit that brings lawsuits with federal funds
9 and which requires the agency to pay the Defendant
10 \$75 an hour in attorney's fees if the judge finds
11 that the suit was not substantially justified, I take
12 it that such an amendment to the statute would have
13 no effect whatsoever on your operations in North
14 Carolina. You'd never lose?

15 MR. TAYLOR: It may not. We
16 would not be in favor of that and I'm not here to
17 speak to that.

18 MR. WALLACE: Well, because we
19 have a problem. I'm as frustrated as you are that we
20 can't seem to get a final monitoring report on your
21 activities. I don't know what the truth is and I
22 don't have any way to know what the truth is.

23 MR. TAYLOR: Well, we were

1 monitored in 1984 extensively and there was no
2 report. We were investigated extensively in 1985.
3 There was a draft report to which we responded about
4 lobbying and there was no final report.

5 There was...I understand that Congressman
6 Castameyer has been informed that you spent \$167,000
7 monitoring us last fall and I would assume with that
8 expenditure that we should expect a report, Mr.
9 Wallace.

10 MR. WALLACE: Well, I share
11 your frustration, Mr. Taylor and I hope we get one.
12 It seems to me that the best people who are in a
13 position to see whether or not the work you are doing
14 is justified are the judges that you practice in
15 front of every day, much more so than the monitors
16 we've sent down here on a periodic basis.

17 Why in the world wouldn't you be delighted to
18 justify the suits you bring before the judges before
19 whom you bring them?

20 MR. TAYLOR: Why are you not
21 asking that question of Mr. Griffith against whom
22 there have been several summary judgments in migrant
23 cases entered against him in the last several weeks?

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1 MR. WALLACE: Would you
2 support that amendment to the law, Mr. Griffith?

3 MR. GRIFFITH: Probably. My
4 problem is the clients that will fight it don't have
5 a good case and the clients that want to get out of
6 it and settle it have got the best cases.

7 MR. WALLACE: If you had a
8 chance to get your fees back it might make a change
9 in the equation, wouldn't it?

10 MR. GRIFFITH: No. The ones
11 that want to fight it are the ones that don't have
12 the fees anyway. Four quick points because I know
13 we've taken up enough time on this.

14 The problem on disclosure of identification,
15 Dick, is not the initial demand letter. The problem
16 is in the negotiation in the letters that follow
17 that.

18 There is still no disclosure. Dealing with an
19 attorney, dealing with the farmer or anyone else.
20 There is no disclosure of names until suit is filed
21 or settled, whether there are attorneys involved or
22 not.

23 The second point I would have, quoting from

1 depositions, I quote the Legal Services attorney who
2 looked at a Co-Defendant who was at a deposition of a
3 Co-Defendant and shouted at him, quit whispering the
4 answers or I'll have you sworn and convict you of
5 perjury right now.

6 As far as the statements he made concerning the
7 first case in the Order from Judge DuPre, the quote
8 from the Order is substantially correct. Mr.
9 Taylor's comments about 9:00 or 10:00 o'clock at
10 night in the back of a truck are not supported by the
11 affidavits in that case by his clients. There is a
12 gross misstatement of the facts in that case.

13 I agree with you that there are some questions
14 both ways in that case, but it was not 9:00 or 10:00
15 o'clock in the back of the pick-up truck.

16 MR. TAYLOR: Well, you may
17 be....

18 MR. VALOIS: I'm going to
19 bring this...thank you. Thank you. I'm going to
20 bring this panel to an end and it's not for debate
21 and surrebuttal is not permitted and we're going to
22 call on Dr. Martin.

23 While Dr. Martin is approaching the Chair, I

1 want to tell my fellow North Carolinians that I
2 continue to be concerned about this. You all have
3 not reached a solution. My motions to the court have
4 been ignored and we will talk about it some more
5 privately.

6 MR. MARTIN: Thank you.

7 I'm Philip Martin and I'm Professor of
8 Agricultural Economics at the University of
9 California Davis.

10 What I want to do is just take a very few
11 minutes of your time and just briefly bring you
12 up-to-date on status, the purposes, the procedures
13 and the comments on the migrant study.

14 As you know, the draft study was presented at
15 the January, '87 meeting in Washington. This draft
16 report was circulated for comments. The report will
17 be revised, submitted as final in April and that, as
18 you know is several months early and that's very
19 unusual in the world of doing consulting reports.
20 So, just let me review briefly what the purpose of
21 the study was and then address the comments.

22 The purpose of the study was to develop a
23 formula to distribute migrant activity across states.

1 Not just any formula. The formula that satisfied
2 several criteria that were set out by the Legal
3 Services Corporation.

4 The formula was to reflect the duration of
5 migrant activity in each state. That is, if a
6 migrant lives in south Texas, but only does migratory
7 farm work in Wisconsin, he or she is counted in
8 Wisconsin, but not in Texas. Okay? That's not my
9 rule, that was the decision rule that was given to
10 me. Count migrants where they work, not where they
11 live, to the extent possible.

12 Then the second criteria was to use the same
13 data in the same way in each state. That is, we were
14 instructed not to say that, for example census farm
15 worker data for North Dakota is bad, but migrant
16 education data in North Dakota is good, so we're
17 going to substitute migrant education data for census
18 data for North Dakota, but no other state.

19 The reason for that instruction is presumably
20 because judgments on which data is best are very
21 difficult to make. It's awfully hard to update
22 judgments in future years.

23 Third criteria was, the distribution formula

1 should be easy to understand and to update and, of
2 course, after seeing...or hearing this morning, you
3 may find that hard to believe, but in my opinion,
4 this is a formula very easy to understand and very
5 easy to update.

6 What I should emphasize is that we developed not
7 just one, but four formulas and what you heard
8 about...we designated one the preferred formula,
9 because that satisfied best, in our opinion, the
10 criteria which were given to us.

11 The preferred formula best distributes migrant
12 farm worker activity across states in a way which
13 reflects the duration of that activity in each state,
14 is easy to understand and easy to update. There are
15 also other formulas that are detailed in the report
16 and I won't discuss them.

17 The fourth formula is based on the Census of
18 Agriculture data for 1982 and 1983 and we all know
19 that census of population does not do a good job of
20 counting migrant farm workers and we thought, in my
21 opinion, the Census of Agriculture is the second best
22 solution.

23 But probably the easiest way to understand that

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1 is to understand that the methodology in the study is
2 180 degrees different from the methodology in the
3 previous migrant study. This methodology is what's
4 called the top down approach.

5 What you do is, you take the best data available
6 that includes information on both migrants and on
7 seasonals and you try to isolate out the migrant
8 subcomponent of overall farm worker activity. Okay?
9 So you're going top down.

10 Much more familiar is what was done before and
11 that's a bottom up approach. What that is, is to
12 take some numbers of migrants...some actual number of
13 migrants that are believed to be working in a state
14 at a particular time and then say ah, but that's an
15 undercount and then start adjusting it upward and
16 adjust it upward because of unemployment and bad
17 counts and all that kind of stuff. That's a bottom
18 up approach.

19 The bottom up approach was not used here because
20 those adjustments up from the bottom are just about
21 impossible to make. For example, in 1982 the basic
22 source of data said that there were zero migrants in
23 the state of Wisconsin. Now, there are statements in

1 the file saying I can guarantee you that there are
2 more than zero migrants in this state, but how does
3 one start to adjust from the bottom up when the base
4 number is zero.

5 I believe that for 1985, the Department of
6 Labor, this base source data which is normally used,
7 reported zero migrants in Texas. Several of the
8 letters say there are more than zero migrants in
9 Texas. How does anyone begin adjusting up from zero?
10 Okay? If you knew how to adjust up, you would use
11 that other data series from the start. You wouldn't
12 start with this data series that says zero.

13 So that one problem is, the basic data source is
14 so bad, for about 20 states now it reports zero
15 migrants, that there is no way for anybody, as far as
16 I know, to do an adjustment up from the bottom. The
17 distinction between top down and bottom up is very
18 important to the comments that have been received.

19 I've received to this date two kinds of
20 comments. Comments directly from farm labor experts,
21 the GAO, General Accounting Office, USDA, Department
22 of Labor and various universities. And I've received
23 comments submitted to Legal Services from several

1 migrant service programs.

2 The comments from the government and university
3 farm labor experts are generally quite positive.
4 Their tenor is something like this.

5 You were asked to do an almost impossible job,
6 but the draft report is the best study that's been
7 done to date and it's the best that can be done given
8 the data and budgetary constraints.

9 The comments that were sent to Legal Services
10 are not quite as positive, in fact, you could say
11 they're quite negative. And I classify these
12 negative comments in a couple of different ways.

13 One is criticism which is simply not germane to
14 the purpose of the report. For example, we're
15 criticized for not addressing the special legal
16 problems of migrants. And that's true. We didn't.
17 I'm not qualified to. I did not say I did. That's
18 one kind of criticism.

19 A second kind of criticism says the report does
20 not...the report uses the wrong definition or the
21 wrong criteria for counting migrants. Now, I say
22 that criticism does not reflect a careful reading of
23 the report. We were given the definition. We were

1 given the instruction to count where they work, not
2 where they live. And there are different ways to do
3 definitions, as you all know. There are different
4 ways to count, but we counted as we were instructed
5 to count, the best of our ability.

6 And the third criticism is really a criticism of
7 primarily the data used in the formula. And, I guess
8 that what this third criticism...it makes me a bit
9 uncomfortable for two reasons. The authority which
10 is most...the authority most often cited to prove
11 that the data used in the formula is wrong is usually
12 articles written by a person named Philip Martin,
13 Professor of Agricultural Economics at the University
14 of California at Davis. And I'm happy to see that
15 my publications are read, but I'm also surprised by
16 some of the things that I'm alleged to have said or
17 more likely inferred in those publications.

18 In other words, I'm quite familiar with the data
19 sources and I've criticized them regularly, but that
20 brings me to the second source of my discomfort with
21 some of these criticisms. And that is that none of
22 the criticisms include an alternative to the
23 preferred formula, other than presumably maintaining

1 the status quo.

2 In other words, my own reviews and criticism of
3 farm labor data are cited to indicate that the
4 preferred formula I developed is flawed, but there is
5 no alternative offered. I mean, this type of
6 criticism reminds of Sam Rayburn's old aphorism that
7 any jackass can kick down a barn, but it takes a
8 carpenter to build one up and I would sense that most
9 of these criticisms reflect...do not reflect a great
10 deal of carpentry skills.

11 Let me conclude just to summarize two key
12 points.

13 First, there is no single and reliable source of
14 data on the distribution of migrant farm workers
15 across states. Therefore, one has to combine data
16 from several sources and I believe that the top down
17 approach, which was used, is, in my opinion, the best
18 way to distribute migrant activity across states,
19 given limited budgets for doing research.

20 And let me also end on the note that I, of
21 course, will never object to doing more studies. In
22 the opinion of an academic who lives by doing
23 research and doing studies, I am always of the

1 opinion there is a need for more research and more
2 data and more studies.

3 So, I will in no way go against that particular
4 argument, but I will say that given the constraints
5 in terms of time, money and data, I would do exactly
6 the same thing again that I did now.

7 Let me just have two specific comments on what
8 was raised this morning. It is true that at the last
9 minute the Census of Agriculture for '87 pulled the
10 question on seasonal jobs, which was a part of the
11 formula.

12 The flip side of that is, there is a quarterly
13 survey, also done by the U.S. Department of
14 Agriculture, which asks the question on seasonal jobs
15 and that survey has been expanded. In part because
16 that data has been litigated up, down and around and
17 will be a key component in the program which will be
18 used...the waste data of that is the key component of
19 the program that will be used presumably, or may be
20 used presumably to import temporary workers under the
21 new immigration reformat.

22 So, there is an alternative data series. I am
23 not happy that the Census has dropped the question,

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1 but that's something that did happen, there is an
2 alternative.

3 Secondly, the hired farm work force report...the
4 hired farm work force data has real problems.
5 However, what I should say about it is, it can be
6 regionalized, even if USDA does not regionalize,
7 simply by getting the tape from the census.

8 And I guess the final note on that and then I
9 won't bore you any more with it is, that the very
10 first statistician who... in the file, that commented
11 on this report, concluded his comment by saying, the
12 hired farm work force data, for all it's problems, is
13 probably the best data available for this job.
14 That's not me. That's the statistician hired by, I
15 think it's Texas Rural Legal Aid, who commented on
16 this report. Okay?

17 So, we're dealing here with a situation where
18 everybody would like to have better data. That's
19 true on all kinds of important social questions, but
20 what this report tries to do is take the second best
21 data available and use it to do what we're asked to
22 do, which is distribute migrant activity.

23 Thank you.

1 MR. VALOIS: Fellow Board
2 members? Tom? Any questions of Dr. Martin?

3 MR. WARREN: Could I make one
4 request, a question?

5 MR. VALOIS: Certainly.

6 MR. WARREN: A lot of the
7 academic people that have introduced comments to LSC
8 and myself and some other people in particular, have
9 been inquiring about the appendix to the report and
10 it hasn't been made available to us and I'm wondering
11 if it could and if so, when it will be available?

12 MR. MARTIN: It will be with
13 the final report, which will be mid April.

14 MR. VALOIS: Obviously, you're
15 welcome to have a copy of that.

16 Dr. Martin, before I forget, if you don't mind
17 returning my file before you leave, I will see to it
18 that you get a copy of that.

19 MR. MARTIN: Okay. Thank you,
20 I will.

21 MR. VALOIS: I think where we
22 are on this matter is that we are going to entertain
23 a motion to refer this to John Bayly for review and

1 recommendation, to come back to us. We do have our
2 report. It is here. We have looked forward to it
3 for quite some time. We've talked about this subject
4 over and over again. We've repeated some of what
5 we've been saying for the last several years again
6 today and I think that the correspondence that I got
7 today was...or that we've talked about it, is again
8 somewhat some of what we have seen before, but all of
9 it needs to be evaluated and if I can have a motion
10 on that?

11 MRS. MILLER: I make that
12 motion.

13 MR. MENDEZ: I'll second it.
14 I've got some discussion, though.

15 MR. VALOIS: All right.

16 MR. MENDEZ: I've expressed to
17 the migrant groups who came in before us today and
18 I'm very concerned that I don't want to have anybody
19 that's been granted funds thus far severely damaged
20 or...and I want to ensure that there's some method of
21 ensuring that they have...they're protected into the
22 transfer.

23 Now, if it takes us one or two years to transfer

1 into the new formula and it has to be a step process
2 to ease the distribution changes, I want to bring
3 that to your attention.

4 I also asked them to come up with a...to meet
5 with you or talk to you and present some sort of
6 plans or some sort of method of doing the
7 alternative. Bob, maybe we can ask you to do the
8 spearheading of the conversations with Mr. Bayly.

9 MR. WARREN: First of all, I
10 have no authority to accept such a responsibility. I
11 will do what I can, but...

12 MR. MENDEZ: No...

13 MR. WARREN: I think
14 that...and we did have a conversation to that effect
15 and I understand what you're saying.

16 Quite frankly, the problems in terms of the
17 field programs, it seems to me that before we get to
18 making proposals or the possibility of making
19 proposals, we might think about it in terms of
20 redistribution under a funding formula that is
21 reported in the study.

22 First we need...in terms of the validity of the
23 funding formula that is in this study and we kind

1 of...you're trying to put us in a position of the
2 cart before the horse.

3 Our question is the validity of the study and
4 the formula, if it's invalid you don't get to the
5 second part. I think we need to address one thing at
6 a time or, at the very least simultaneously.

7 I'd like to ask, in addition, Mr. Valois, if
8 it's going to Mr. Bayly for review and analysis and
9 then back to the Board, to have some sense of the
10 time frame, because obviously, you previously invited
11 us to make any supplemental or additional comments we
12 had to Mr. Bayly concerning those remarks today.

13 So, we need to have some idea when that needs to
14 be done by.

15 MR. MENDEZ: How long will it
16 take you to get your remarks in?

17 MR. WARREN: My remarks or how
18 long will it take to put the word out? I mean, if
19 you're talking about you want to have everything
20 analyzed, final report and everything in April...

21 MR. MENDEZ: Tomorrow?

22 MR. WARREN: It's impossible
23 to do by tomorrow. I mean, you have to understand

1 the time frame. You're talking about...

2 MR. MENDEZ: Three weeks?

3 MR. WARREN: The final report
4 is not going to be out until April and I don't
5 understand. To have to comment on a...we have to
6 comment on a final report or we have to comment
7 before the final report? When do we get the
8 appendix? Those issues relate to the amount of time
9 that we'll need to respond.

10 MR. MENDEZ: About when will
11 you have your final?

12 MR. MARTIN: It should be in
13 before mid April, but mid April at the latest.

14 MR. WARREN: We can have it 30
15 days after the final report.

16 MR. VALOIS: Well, that puts
17 it up to May 15th and we're meeting when, John?

18 MR. BAYLY: I think we're
19 meeting on the 22nd or the 29th of May...

20 MR. MENDEZ: What date do we
21 have scheduled for May?

22 MR. BAYLY: The 22nd or the
23 29th it is, tentatively.

OFF THE RECORD

1

MR. VALOIS: Dr. Martin,

2

what's the earliest you can make your final available to us, with attachments?

3

4

5

MR. MARTIN: Well, I'll try to

6

do it before April 15th, but I mean, most of the attachments aren't going to deter from the substance of the report. That's already there. It's going to be extratraditional data...it won't...it's not going to change things radically.

7

8

9

10

MR. WARREN: I believe what I

11

12

referred to as the appendix, it's my understanding

13

that when you have a consultant's report that

14

involves statistics and everything else, that the

15

appendix is, indeed, one of the most important parts, because it explains things that aren't necessarily in the body that are of a statistical nature.

17

18

That's a significant part of this report that we haven't had, because it's been in draft form.

19

20

MR. VALOIS: Dr. Martin, can

21

you get it to us by Friday, April the 10th or Monday April the 13th?

22

23

MR. MARTIN: I can try for the

1 10th or the 13th.

2 MR. VALOIS: All right. If
3 you can get that to us by April the 13th, I would
4 like for anything that...any further public comment
5 which is promulgated by Bob Moore by...how about May
6 the 1st, which will give John a couple of weeks, will
7 give us a couple of weeks to take a look at it. I
8 mean, you have the report. You're going to have the
9 comments. The only thing you don't have is the
10 appendix.

11 MR. MARTIN: The appendix will
12 not be...to the extent you want to question the
13 current population survey or the Census of
14 Agriculture, we can Xerox the technical appendices to
15 those and put them in the report.

16 I don't think that's necessary for any, you
17 know, you've looked at them already, so the
18 appendices are really going to be additional data
19 which are somewhat peripheral, but they won't
20 be...I'm not sure exactly, you know, the technical
21 appendix as to the source of this data and that sort
22 of thing. It's from official publications and the
23 technical aspects of that are all there.

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1 MR. WARREN: Well, the purpose
2 of responding in a reasonable way to concerns that
3 have been expressed to me...not to me, but as I
4 understand it have been expressed in some of the
5 comments from other academics, is that they have to
6 have the whole thing in order to see exactly what's
7 there.

8 I don't understand, because I can't examine it
9 in that way, but the comments reflect that these
10 things are important for a final comment to come in
11 from the people that are interested from the academic
12 community.

13 So, at the minimum, it seems to me, Bob, we need
14 three weeks. By the time it gets to LSC, it gets to
15 either me or somebody else and then it gets out to
16 people who have even just already commented, they
17 have to digest and analyze it, see where its
18 different, see if they want to supplement their...

19 MR. VALDIS: All right. I'm
20 cutting John's time down, but I'm going to hold him
21 to the same standard as everybody else.

22 Okay, Dr. Martin is going to try and get his
23 report to us by April 13th. We're going to Xerox

1 whatever is necessary to send out, I suppose and we
2 would like your comments and any other member of the
3 public to be received by May 8th and John will get us
4 a compilation of whatever he wants us to consider.

5 MR. WARREN: Might I suggest
6 that we put a notice in the Federal Register that
7 this thing is available. That it's a study and what
8 it concerns and it's available for comment.

9 MR. VALOIS: I don't have any
10 problem with that. John?

11 MR. BAYLY: That's not
12 necessary to do, though.

13 MR. WALLACE: It might not be
14 necessary, but what's it hurt?

15 MR. VALOIS: I'm sorry?

16 MR. WALLACE: I said it may
17 not be necessary, but what's it hurt?

18 MR. VALOIS: I don't have any
19 problem with it. I mean, we are dealing with a
20 technical matter. Unfortunately, we lay people are
21 going to have to make a judgment about a technical
22 matter and any technicraft that wants to make a
23 comment, I'm glad to listen to.

1 MR. WARREN: I suggest that
2 because my recollection is, for example, when the Job
3 Partnership Training Act or whatever, when they've
4 done some of these studies on migrant health, they
5 say, we've done a study on this. It's available for
6 comment and they just put a notice in the Federal
7 Register so anybody that's interested, if they want
8 to, can comment.

9 MR. VALOIS: Mr. Baker, will
10 you see that that is done? A notice in the Federal
11 Register, what we're considering and a closing date
12 for receipt of any comments.

13 Thank you, very much.

14 MR. WARREN: Three weeks from
15 when, when it's...

16 MR. VALOIS: Whatever you
17 submit to us and other members of the public, by
18 May 8.

19 MR. WARREN: Thank you.

20 MR. VALOIS: All right, the
21 next item on the agenda is the CALR report. Mr.
22 Rathbun? Mr. Rathbun had been assigned other duties
23 in the interim, but he'll be here.

1 Are there any other members of the public that
2 want to talk about CALR?

3 MR. CRAVEN: Mr. Valois, I'm
4 Thorns Craven with North Carolina. My question would
5 be, at least initially, whether the Board intends to
6 this afternoon to take action on the CALR report.

7 If the Board wants to entertain taking action,
8 we certainly would like to speak at length. If the
9 Board does not decide to take any action in the
10 budget sense, we have filed a written report and we
11 hope the Board members have received it and we
12 certainly...we'd like to follow whatever further
13 study or further thought is given to the CALR issue.

14 MR. VALOIS: My sense of the
15 Board, subject to reversal, is that we will also
16 refer this matter to Mr. Bayly for further
17 recommendation to compare the comments received by us
18 from you Thorns.

19 MR. MENDEZ: Mr. Bayly, I sort
20 of second that and I also would like you to pay
21 particular attention to a third recommendation
22 because that sort of appeals to my sense.

23 MR. RODGERS: Mr. Valois, just

1 so I understand what Mr. Mendez is saying, what was
2 the third recommendation?

3 MR. MENDEZ: The third
4 recommendation. You've got the...let me see if I can
5 phrase it correctly.

6 MR. RODGERS: You're talking
7 about the Tritan report?

8 MR. MENDEZ: Yes. That's
9 correct. Just so that I can make it a little bit
10 clearer, they made three different alternative
11 recommendations that you can do three different
12 things. I specifically want Mr. Bayly to address the
13 third one as well in each area.

14 MR. VALOIS: The panel has
15 assembled. If you all would identify yourselves for
16 the public and for the record?

17 MR. FERRI: Mr. Chairman, my
18 name is Albert Ferri, Jr. I'm accompanied with Sonny
19 Bloom, the co-principle of the study with me.

20 MR. VALOIS: And you all are
21 the authors of the Triton Corporation report
22 concerning CALR?

23 MR. FERRI: Yes, we are, Mr.

1 Chairman.

2 MR. VALOIS: Proceed, please.

3 MR. FERRI: Given the hour of
4 the day and the report that follows, we kind of
5 invariably abbreviated comments on the study.

6 As you know, the study grew out of a litigation
7 in 1984/85 dealing with the funding of the CALR
8 grantees and we approached the problem of looking at
9 the CALR study from the context of not simply looking
10 at the grantee issue, but the whole context of
11 computerized legal research.

12 In the course of our discussion we used kind of
13 two terms. One, computerized legal research, which
14 is basically the state of the art definition for the
15 use of computers to do legal research, whereas in
16 referencing the grantees, we used the CALR, computer
17 assistant legal research.

18 When these grantees were established in
19 basically the 1979, 1980 time frame, as far as the
20 quality improvement projects, that was the going term
21 and so we'll use that term to refer to them and CLR
22 to refer basically to the overall issue of
23 computerized legal research and its technological

1 activity or technological impact for the Legal
2 Services Corporation.

3 Essentially, we conducted a five-one study which
4 followed three basic tracks. We looked at what the
5 Legal Services Corporation was doing, not only
6 through the computer assisted legal research
7 grantees, but also in terms of field developments
8 with the computerized legal research.

9 A lot of local programs in the last basic eight
10 years have been doing the research on their own or
11 developing local kind of activities using Weslaw and
12 Lexis.

13 We also took a look at what the private sector
14 was doing throughout the same time frame and
15 currently and thirdly, we looked at what the other
16 public sector activities were doing. Department of
17 Defense, Department of Labor, et cetera and then when
18 we collected, basically, these three data collection
19 efforts, we met with the grantees on two occasions.

20 One, at the outset of the study to get their
21 input and to our design and methodology and then
22 secondly, at the end of the study, to basically kind
23 of share with them what our responses, what our

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1 information was and the kinds of recommendations we
2 were looking at.

3 Through this process we ended up with, as has
4 been discussed here, three basic options. Option
5 One, which is basically to stop the computer assisted
6 legal grant projects entirely.

7 Option Two, which was basically to take a look
8 at the current alignment and with minimal adjustment
9 take into effect the changes that occurred over the
10 last eight years and Option Three, or Recommendation
11 Number Three, which is basically to look at a kind of
12 transition effort to look at the computer assisted
13 legal research grantees and the overall context of
14 the technological developments the Board has been
15 doing, such as the location of around 300 computers
16 in the field. To look at the field programs which
17 have been innovating their own projects. To look at
18 some of the regional activities that are going on,
19 such as the private brief bank and in that transition
20 process, realign and look to see how one can sort of
21 harmonize this technology activity within the
22 Corporation.

23 Mr. Bloom is going to kind of summarize some of

1 the findings and focus a little more on the details
2 of the methodology for the purposes of the Board.

3 MR. BLOOM: Okay. Just real
4 quickly because I know we've met with several of you
5 before. We would like to take a second just to give
6 you a sense of the extent of the nature of the
7 methodology in terms of input.

8 Al mentioned we have talked at length with the
9 existing six grantees both at the beginning and
10 formally towards the end of the project as well as
11 ongoing discussions and input and we site visit them.

12 In addition, though, we have contacted directly
13 several private sector law firms, other agencies
14 directly. We site visited approximately 20 to 25
15 field programs, many of whom are currently using the
16 existing six CALR's, others are doing things in-
17 house, others were really doing nothing in the way of
18 computerized legal research and perhaps the biggest
19 effort was in the area of a formal mailed out survey
20 to a sample cross-section of about 80 or 90 of the
21 field programs to approximately 800...

22 MR. MENDEZ: Mr. Bloom, have
23 you seen the written responses?

1 MR. BLOOM: Yes.

2 MR. MENDEZ: To your report
3 recently?

4 MR. BLOOM: Yes. I'm not sure
5 if that's...we have approximately eight or nine
6 letters of comment that we have seen that we
7 understand is the total response to the actual report
8 as opposed to our survey, which had like 400 plus
9 response.

10 Yes, we've looked at those as well. They all
11 came, I believe, from existing users of the six
12 CALR's programs. We have looked at those.

13 So, basically, one of things we looked at
14 critically, in terms of what direction to take was
15 the response of the field attorneys. We had over a
16 50 percent response rate, so some 400 plus attorneys
17 at varying levels of seniority in urban, rural, using
18 in-house legal research, computerized legal research,
19 using the CALR's, responded to the study and took the
20 time to comment at length about what they're doing,
21 what they would like to do.

22 That in a nutshell, to try to give you a sense
23 of depth and range of the things we try to look at,

1 rather than simply confining ourselves to what's
2 going on in LSC or what are the Corporation's
3 perceptions or even the six CALR grantees.

4 I just want to spend maybe about two minutes,
5 because you all have the study and it's a lengthy
6 one, in terms of back-up data.

7 Some of the key things that I think we came away
8 with from the study and we want to share with you is
9 first of all, I think we got a clear indication from
10 the public and private sector that computerized legal
11 research is an integral part of many of the law
12 practices, both in the public and private sector.

13 Now, there is no doubt about it that depending
14 on what the nature of the practice is, either it's a
15 large percent of the daily activity or it's a very
16 small percent but I think we tended to hear one
17 thing, is that when it was appropriate to use, it was
18 a critical part of that particular case and that
19 particular research.

20 And we heard the same things from folks within
21 the field programs. A very small percentage of the
22 absolute number of cases may have...or apply to them,
23 but when it is time to use it, there really is no

1 substitute was what we sort of heard from folks in
2 the field.

3 Some specifics, to give you a little profile,
4 probably in any given...in the course of a given
5 month, there's about 325 field programs, just to give
6 you a sense of the magnitude. Probably in any given
7 month, half those programs are doing some sort of
8 computerized legal research and that's split between
9 calling up one of the six CALRs for a telephone type
10 of consultation and/or doing it in-house by having a
11 direct account with Weslaw or Lexis.

12 Which I might add, at present, has no direct
13 incremental cost. LCS as a corporation has paid the
14 maximum fee for training so there is no cost for
15 training to the field programs and in addition there
16 is no longer a requirement to rent or lease a
17 terminal specifically from Lexis or Weslaw. As long
18 as you have essentially any kind of a word processor
19 or PC you can establish an account.

20 So, you've got that group. In addition, and
21 this tends to be the smaller programs, the more rural
22 programs, you probably do have about 40 percent of
23 the programs that tend to really not come into

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1 contact with computerized legal research.

2 And one of the things in our recommendations is
3 we, you know and I think that the six existing
4 grantees would agree and I think it's something for
5 the Board to consider, is if it's important and if
6 it's part of the legal profession, how can we get
7 that access to those folks as well and we really
8 don't have, you know, except from the responses from
9 the survey, the kind of insight to kind of tailor the
10 type of process so they can have access to
11 computerized legal research also.

12 I think we tended to find that over the last six
13 years or so since the existing CALR program is in
14 place, perhaps it's simply because that's the nature
15 of how the program evolved, each of the existing six
16 grantees has tended to kind of go their own way in
17 terms of how to structure themselves and how to
18 respond to needs, perhaps on a more localized basis
19 because that's what they tend to deal with more
20 frequently and on the other hand, so if you might
21 see, we sort of have like three worlds that have
22 developed for one reason or another.

23 Those that have been sort of regularly in

1 contact and dealing with the six grantees, those that
2 have gone on and done their own thing in terms of
3 internalized computerized assisted legal research and
4 then that 30 to 40 percent who pretty much have
5 stayed out of that whole area one way or another.

6 And hence, in a sort of evolved fashion, maybe
7 not with any kind of necessarily a policy direction,
8 which is one of the reasons we're before you all, we
9 kind of have these three worlds developed. I think
10 where we've come to now is we've seen enough
11 indications from the half of the programs that do use
12 computerized legal research in their...and one of
13 things they tend to agree on irrespective of how they
14 should get it, is that when they do get the service
15 it is absolutely critical to the cases that they use
16 it on and that it is extremely valuable to their own
17 case research.

18 Then obviously, the challenge is or the question
19 is therefore, if that's the response, what do we do
20 about the other half? If anything, or is there a
21 role from the corporate level?

22 Hence the three options that kind of span that
23 spectrum that we presented here and you know, we're

1 available, obviously, to respond to some more
2 specific questions about past performance that we saw
3 out there on the field and future directions and I'm
4 going to stop right here.

5 MR. VALOIS: Members of the
6 Board, questions of Mr. Bloom?

7 MR. MENDEZ: He gets off easy
8 because it's late in the day.

9 MR. BLOOM: Our flight isn't
10 until tomorrow morning, sir.

11 MR. MENDEZ: Do you...well, I
12 mean, we have all gotten the report and read it.
13 We've heard from you. Do you have a recommendation
14 that you...

15 MR. WALLACE: I was going to
16 say, is there a bottom line in here somewhere?

17 MR. MENDEZ: Do you have a
18 recommendation that you want to make to us?

19 MR. FERRI: Our bottom line is
20 essentially Option Three and the reason why we think
21 that the Board in adopting the study should basically
22 direct the implementation of Option Three is that, as
23 we said, CLR really needs to be seen in the context

1 of a lot of the other technological developments that
2 have had an impact upon the legal profession and
3 Legal Services Corporation. And that in Option
4 Three, you can sort of tailor and develop a
5 transition plan which more or less will take the best
6 of what's come out of the current projects and look
7 in terms of what's happened at the local levels and
8 look at some of the other developments, such as the
9 computers that have been placed out in the field and
10 through this kind of transition phase, come up with
11 an alignment which is probably more locally based,
12 but which kind of builds the good and then changes
13 some of the inefficient kinds of activities.

14 Option Three also talks in terms of looking at
15 some of the resources, such as Mr. Bloom pointed out
16 with Weslaw and Lexis. There are some immediate
17 savings that could occur. The Weslaw and Lexis
18 prices have fluctuated a lot. You are one of the
19 biggest buyers of the services and you really should
20 kind of negotiate with them to get either a lot of
21 training or also a lot of lesser time, since when you
22 sign these contracts you kind of buy into it
23 regardless of how much you use.

1 And that's why it would kind of...if you look at
2 Option Three, there are a series of sequences and
3 steps in which we can talk at length about, but more
4 or less they stop the process of tying the threads
5 together.

6 Otherwise, one can end up with field offices
7 investing in hardware and software and national
8 offices investing one way or another and these things
9 will become somewhat incompatible and you end up
10 spending much more money without kind of developing a
11 coherent plan to deal with this.

12 MRS. SWAFFORD: Did I
13 understand you to say that we already have access to
14 Weslaw?

15 MR. FERRI: Yes.

16 MRS. SWAFFORD: That it would
17 not cost the field program anything if they have...

18 MR. BLOOM: Yes. Not at all.
19 At the corporate level, the Corporation has a
20 contract both with Weslaw and Lexis and there is a
21 certain maximum training fee charged per client.
22 That is paid for so that in effect no individual
23 program who chooses to want some training has any

1 additional cost.

2 In other words, it's already picked up and...

3 MR. MENDEZ: There is cost,
4 though, involved on the actual research time.

5 MR. BLOOM: Excuse me?

6 MR. MENDEZ: There is cost
7 involved as to actual research...

8 MR. BLOOM: Yes. We're just
9 talking about training.

10 MR. MENDEZ: We're talking
11 about training.

12 MR. BLOOM: That's right.
13 We're talking about training and the acquisition of
14 hardware. Obviously, for a person to spend time to
15 get proficient, there is an absolute cost. I mean,
16 that person is doing something when perhaps, if they
17 were using traditional...temporarily traditional
18 research memos they would be, you know, quote, in the
19 short run more productive.

20 MR. FERRI: But even in terms
21 of some of the research cost we found out in looking
22 at the profile of Lexis and Weslaw usage that there's
23 literally been a kind of open fluctuation of the

1 prices that Weslaw and Lexis have charged the
2 Corporation. Since you are one of the largest
3 buyers, if there was a kind of attempt to negotiate
4 with them, one could probably save or reach some kind
5 of savings in terms of the research cost.

6 MR. MENDEZ: When's their
7 contract up with either one of them?

8 MR. BLOOM: One...well, I know
9 the one with some of the staff, I think...I don't
10 know. One of them was signed...was renewed back
11 about last September or October. I forget whether
12 that was Weslaw...

13 MR. MENDEZ: Are they annual?

14 MR. BLOOM: Yes. I have a
15 hunch though, there is a degree of flexibility in
16 that obviously, because of the size of the client
17 so-to-speak. So, I mean, I'm sure if somebody were
18 to say well, we want to talk about things, they are
19 not going to say sorry...

20 MR. MENDEZ: I would really
21 like to have Weslaw and Lexis...some representative
22 from either one of them come in and speak to us.

23 MR. VALDIS: I'm sure they

1 would be glad to do that. We have Weslaw in our
2 office and they do train and whether or not that's
3 the best thing or whether or not our own people are
4 as good to train them or better is an open question I
5 think. Well, you've implied several times that we're
6 not getting the best deal for our money on rates
7 apparently.

8 MR. BLOOM: Well, I think it's
9 certainly...let's put it this way. The rates have
10 gone up, they haven't really fluctuated, they've gone
11 basically...I think the six CALR grantees can verify
12 that from their own experience.

13 And let's put it this way there's been never an
14 attempt to intervene in an active, pro-active way in
15 that process so at worst, maybe you won't go any
16 better, but it certainly is worth a try.

17 MR. VALOIS: If by all of this
18 we generate more time usage of Weslaw, I think we
19 need to talk to them about rates per minute. Okay.
20 Unless there are other questions from the Board, I'm
21 going to excuse these gentlemen with our thanks and
22 invite Allan Rodgers and Thorns Craven.

23 MR. RODGERS: Mr. Chairman and

1 members of the Board, my name is Allan Rodgers. I'm
2 the Executive Director of the Massachusetts Law
3 Reform Institute, which is a state support center and
4 also one of the six CALR grantees for the region of
5 New England and parts of New York.

6 With me is Martha Bergmark, who is Co-Chair of
7 the Funding Criteria Committee of PAG and Thorns
8 Craven, who is the Executive Director of Legal Aid
9 Society of Northwest North Carolina. Also a CALR
10 grantee for the southeast.

11 We'll be very brief because as I mentioned, we
12 have submitted a fairly detailed paper setting out
13 our position on the various points raised in the
14 Triton report. Also making a number of suggestions
15 for possible changes for things that the Corporation,
16 we and the programs can do together, I hope, to try
17 to improve this system.

18 Our basic position is that in the main, the
19 system has developed, even though there has been some
20 lack of coordination and there has been local
21 development...has worked reasonably well.

22 The field programs, as shown by the survey, have
23 been generally pleased with the services that they've

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1 obtained, but we do have a system that has a number
2 of components and it does seem to us as well, as
3 Triton, that there should be some efforts to try to
4 bring it together, make some improvements, get some
5 savings. We totally agree that we ought to be able
6 to get better prices from Lexis and Weslaw.

7 In fact, informally, it has been suggested to us
8 that we might be able to get large reductions in the
9 hourly rates of at least Lexis usage if we were to go
10 to Lexis, need data and insisted we get the same kind
11 of treatment that we understand that other agencies
12 get who similarly have large amounts of usage.

13 We would like to work with the Corporation staff
14 or with anybody else to go over our recommendations
15 and I think we are prepared to do so.

16 MR. MENDEZ: Allan, I want to
17 have those people in and I think that that's the
18 perfect place for us to negotiate is across an open
19 room and table. They would be on our territory and I
20 think we ought to be able to extract some concessions
21 from them at that time. If you have some dollar
22 rates from some other large corporations, that would
23 be very helpful for our use when we're negotiating

1 with them.

2 MR. VALOIS: Agency rates. I
3 mean, that ought to be public information.

4 MR. RODGERS: Yes. We have
5 some...the source can't be revealed, I guess, but we
6 do have some indications of rates at least half of
7 what we're paying now on Lexis.

8 MR. MENDEZ: I would really
9 like to see those types of things if you would give
10 it to us when we have them in. A little bit ahead of
11 time; I'll make sure that we'll put them on the hot
12 seat.

13 MR. VALOIS: Mr. Bayly?
14 We might consider some former requests of some sister
15 agencies.

16 MR. WALLACE: Mr. Chairman, I
17 was going to say, I would have thought that an open
18 meeting would be an absolutely awful place to try to
19 negotiate a price rate but I'll do it, if you want
20 to.

21 MR. MENDEZ: I really think
22 that we should get them out here where they are
23 defenseless and not at all accustomed to coming in.

1 I think we might have a real...

2 MR. VALOIS: I tend to agree
3 with Mr. Wallace. I would say that probably the most
4 useful bargaining chip might be to find out what
5 they're selling their services to other people and on
6 what basis. And if they're selling 20 hours a month
7 to somebody else for \$49.95, then we'll talk about
8 that.

9 MR. CRAVEN: If I may, if you
10 picked a critical element in negotiating might be a
11 better awareness of the usage in field programs. The
12 element that's been missing in the context hasn't
13 been negotiated at all. The price has just been
14 raised and there's been no notice to the ultimate
15 users, both field programs that were doing in-house
16 services and grantees that are providing the service
17 on a call-in basis even if the price increases.

18 And there also have been technological
19 improvements on our submissions to the private
20 library which we've sought permission to deal
21 directly with Lexis and Weslaw to make those
22 submissions electronically rather than with hard
23 copies and have never gotten approval for those

1 things.

2 So, I think one of the difficulties has not been
3 the unwillingness of vendors to negotiate good
4 prices, it's been just a lack of understanding and a
5 lack of awareness on the part of whoever, if anyone,
6 was dealing with the vendors on what the actual usage
7 and what our patterns were and what kinds of
8 concessions we might extract from them.

9 The training point has been made that somehow
10 more training. Our finding has been that the Weslaw
11 representatives, themselves, and I'm not familiar
12 with the Lexis people, but they don't have a very big
13 understanding of the data base usage that we have.
14 Number one, the private library in which we've
15 created our own data base and number two, the subject
16 matters, because their commercial calls don't deal
17 with those areas of law.

18 We think that our own training and development
19 of search techniques and query formulation and all
20 the technical kinds of things possibly could be
21 handled better, but that means that if West and Lexis
22 are making money on using training time as a come-on
23 in their sales pitches, that we ought to be able to

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1 extract concessions there and either get paid...get
2 rebates for the lack of training that we're using or
3 get support in some other ways.

4 But I think the involvement of people who
5 understand what's going on would be a terrific
6 progress.

7 MR. MENDEZ: I really agree
8 with that and we'll see what we can do. John, talk
9 to these two guys about that.

10 Martha?

11 MISS BERGMARK: I'm up here
12 exclusively to let you know that the continued
13 funding of CALR in the manner it's been done is
14 consistent with PAG's position on CALR funding and,
15 in fact, if our marks before Congress were endorsed,
16 there would be an increase in CALR funding and that
17 this has been a very successful component of the
18 support that goes to field programs. I would refer
19 you in detail to...for details to the paper that's
20 before you.

21 MR. VALDIS: Thank you.
22 Unless there's anything further from the public, I
23 don't know what's the pleasure of the Board. Do you

1 simply want to refer Option Three to John Bayly, plus
2 the input of Thorns Craven and so forth, to work this
3 out.

4 MR. MENDEZ: I move that we
5 ask Mr. Bayly to review the report and bring back to
6 us a position about what direction he wishes this
7 corporation to take, but I don't want to tell him
8 which one he has to do. I would just specifically
9 tell him that coming from this Board member I want to
10 have that one area explored and an option prepared
11 with that because...and a costing out of how much
12 that would run with regard to Option Three, for me,
13 so that I can make that...I'm sold on that one.

14 But if you have another one, that's fine. I
15 just want to have some numbers for Option Three.

16 MR. VALOIS: Well, I agree
17 with all that and also, I would like, John, for you
18 to take into account the suggestion that we can do
19 our own training probably better and perhaps use it
20 as a bargaining tool on rates and so forth. I know
21 Thorns and Allan would be glad to cooperate with you
22 on that.

23 If we need a second, I second the motion for

1 referral. Any other questions, comments?

2 All those in favor of Pepe's motion say aye.

3 (Chorus of Ayes.)

4 MR. VALOIS: Opposed? Motion
5 carries. Thank you, very much.

6 Fellow members of the Board, do we have three
7 things left? The public comment and the Executive
8 Session that we haven't done.

9 MR. SMEGAL: What about
10 Item 5?

11 MR. VALOIS: We did that.

12 MRS. SWAFFORD: We do have
13 some public comment.

14 MR. VALOIS: We do have some
15 public comment, I am told. We will now...the Chair
16 will turn it over to Mr. Mendez and I will take five.

17 MISS BERGMARK: Before we
18 leave the previous topic on the agenda, just one
19 further point of clarification.

20 It's my understanding from what has happened
21 today that when the Legal Services Corporation goes
22 before Congress next week, it will be with Page 24 of
23 the Board Book as its requested mark, is that

1 accurate? That's Appendix 1?

2 MR. MENDEZ: That's correct.

3 MISS BERGMARK: All right, and
4 that...

5 MR. MENDEZ: We're talking
6 about the FY '88 request?

7 MISS BERGMARK: Yes, sir. And
8 that the asterisks that are there, do they remain or
9 not remain?

10 MR. MENDEZ: They are
11 still...they will still remain, because we're still
12 reviewing the study.

13 MISS BERGMARK: So that the
14 presentation to Congress then, if I'm...

15 MR. MENDEZ: All right, let's
16 talk about the presentation to Congress.

17 We'll be asking for these specific dollar
18 amounts.

19 MISS BERGMARK: And telling
20 them that there may be revision in those amounts
21 subsequently?

22 MR. MENDEZ: If we advise them
23 that...yes. That there may be some revision.

1 MISS BERGMARK: But these are
2 the amounts incorporating the \$5 million dollar cut,
3 to basic field?

4 MR. MENDEZ: That's correct.

5 MISS BERGMARK: Thank you.

6 MR. WALLACE: Mr. Chairman,
7 with all due deference to public comment, my
8 apologies, I've got to check out and catch a plane
9 and I appreciate it and I know others have had to
10 leave and I'm sure we'll get a full report during the
11 minutes and I just apologize, but I've got to get to
12 Mississippi.

13 MR. MENDEZ: Okay, thank you.

14 Ma'am?

15 EMGOT GOTOS: My name is Emgot
16 Gotos and I'm here from Asheville.

17 MR. MENDEZ: Please.

18 EMGOT GOTOS: I would like to
19 comment here to respond on two things, but first of
20 all, I'm in support of the Legal Services funding and
21 I would like to tell you why.

22 MR. MENDEZ: Please.

23 EMGOT GOTOS: I'm a displaced

1 homemaker. President Reagan keeps on talking about.
2 us and I'm still waiting to be placed according to my
3 capabilities...still waiting. It's through a
4 divorce, see, I've been thrown in this situation and
5 the legal office right now has been trying very hard
6 to recover some money that I had lost from a
7 fraudulent business transaction and I say fraudulent,
8 from my point of view.

9 And that action contains mobile homes. I'm not
10 the only one. I rounded up nine other people that
11 this has happened to, so we have a law here that
12 discriminates. The law on one hand says to this
13 person, oh yeah, oh gee, we feel sorry for you, you
14 really been took, huh? Like, come on, we'll help
15 you.

16 On the other hand, another person comes by and
17 says, oh, gee, isn't that too bad, you've been took.
18 Well, you should have known better. Okay? And they
19 don't help you.

20 So now, perhaps there are several reasons for
21 the rejection. There's lack of funds to get an
22 attorney, because if the legal office looks for an
23 attorney in a poor person, these attorneys do not

1 work for minimum wages. They still want to be paid a
2 good wage.

3 And so, a good attorney is hard to come by
4 because it has to be an attorney that is
5 knowledgeable on these things and you can't just get,
6 you know, one of these young attorneys that is fresh
7 out of law school. It's impossible. They wouldn't
8 be on top of it, because they read the law one way
9 and some others read it another way.

10 Anyhow, these laws do not favor the consumer.
11 Now, the laws are developed to protect the business
12 people. The ones that have property and own property
13 and the sellers, et cetera.

14 So, it does take a knowledgeable lawyer to be on
15 top of it all and to represent us. With a lack of
16 money, we do not recover our loss and this is not
17 justice. Now, I am looking for justice, too.

18 For instance, when we buy an article in the
19 store, we have three days to return it and get our
20 money back, but when you make a down payment on a
21 mobile home, the mobile home is tossed back and
22 forth.

23 Only when it's taxable. Is it taxable as a

1 regular house and any other time? However the
2 seller, you know, sees fit and the bank, you know,
3 sees fit what to do with it and this is consumer rip
4 off.

5 So, we need to stabilize our laws here. Now,
6 within three days I called the bank to nullify this
7 contract and the bank says, oh, you can't do that.
8 You can't nullify this. That has to come from the
9 other end. I said, I am the buyer, I want to nullify
10 it. They wouldn't do it. Impossible. So, she
11 refused.

12 So, the law does not apply to mobile homes.
13 Yet, if I did not receive...I still didn't receive
14 the trailer. You see, I still haven't got the
15 merchandise. I didn't, at the time that I made
16 the...that I wanted to nullify the contract, okay? I
17 didn't have it. So there was nothing to take back to
18 begin with.

19 The law protects the bankers. Now, by hook or
20 by crook some of these people, you know, for money
21
22
23

1 they step right over the regular consumer at the
2 expense of the innocent consumer and I urge this
3 committee to emphasize to our President the urgency
4 of the much needed funding that helps protect us so
5 we can obtain a good lawyer. Not only just emphasize
6 that the funding is needed, but everything else has
7 gone up. We need more than just the last fiscal year's
8 allocation because...was not taken care of, this fiscal
9 year's monies. There was not enough to go around. So,
10 we need about double the amount what we had the last
11 year.

12 Now on the other, that's enough on that. Now on
13 the other. There is a conflicting law where the spouses,
14 ex-spouses of military are concerned. It's a displaced
15 homemaker's act and it shows up under the defense
16 authorization bill. I've written letters over the last
17 two years. It was about two years ago that the new law
18 came out that women who had been married for ten years,
19 between five and ten years, could take the ex back to
20 Court and receive by Court order up to 50% of ex's
21 retirement money. Us girls who have been married for
22 28 and 30 years, we don't have that option. They
23 excluded the older girls, and our representatives don't

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1 want to know anything about this. Evidently there's
2 just a minority involved here, you know, no big...a
3 minority never had a big clout. So, I think this needs
4 to be rectified and this has to come, I think, from our
5 President because...our representatives ignore this
6 because I want to have the same option but the Judge up
7 there tells me that...you are not taken care of under
8 the law. I'm not taken care of under the law. The
9 younger ones are. The younger ones who are readily, you
10 know, can get a nice paying job. The older girl does
11 not and that is discrimination believe you me. That's
12 age discrimination.

13 So, this law has to be either amended, rectified
14 in any way, shape or form to include the women who have
15 been married...as it stands it says if divorce took
16 place before '81. Between now and '81 you may take your
17 ex back and, you know, get percentage of their retire-
18 ment. However, if your divorce was before '81 you don't
19 qualify. It is the older girls who really need it. We
20 are in a dilemma.

21 So, those are two sections that I wish you would
22 truly emphasize to our President, where the help is
23 needed.

1 MR. MENDEZ: Thank you very
2 much.

3 MRS. GOTOS: Yes, thank you.
4 Thank you.

5 MR. VALOIS: Are there any
6 other members of the public who wish to comment?

7 MR. WAYSTACK: I thought we
8 were calling names so I remained patient.

9 Mr. Chairman and members of the Board, I am Phil
10 Waystack. I'm grateful for your courtesy in giving me
11 an opportunity to speak.

12 I have to say it is a little distressing that
13 Mr. Durant isn't here because a number of my comments
14 are addressed directly to him. So, I will address them
15 to his empty chair in his absence.

16 A little bit about me. I'm a partner in a two man
17 law firm in rural northern New Hampshire, right along
18 the Canadian border. It's New Hampshire's poorest
19 county. I also serve as president-elect of the New
20 Hampshire Bar Association. My interest in preserving
21 legal services for the poor stems from my day-to-day
22 experiences in New Hampshire's most rural county and
23 my involvement as a board member in New Hampshire's

1 pro bono referral system.

2 While recruiting private lawyers for our pro bono
3 board, presumably a thankless task, I was and continue
4 to be amazed at the strength of the commitment of New
5 Hampshire lawyers concerning the provision of legal
6 services to the poor. My tasks, to my surprise, con-
7 clusively prove to me that there is a deep and rapidly
8 growing rekindling of the fire of social consciousness
9 among American lawyers.

10 We as lawyers and leaders of the organized bar
11 associations have a very special responsibility to
12 insure that constitutional guarantees of equal justice
13 for all are not merely hollow slogans for there is no
14 justice if there is not justice for all. You have heard
15 these words before. I expect that you will hear them
16 again.

17 As I am sure you are all aware, 1987 marks the
18 celebration of the 200th anniversary of the United
19 States constitution. I find it ironic that your chair-
20 man, Mr. Durant, has chosen this year to suggest the
21 replacement of the Legal Services Corporation. I might
22 add at this point that I'm kind of sorry that Mr. Wallace
23 isn't here because I would like to answer him about his

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1 remark about John Ross's scurrilous comments.

2 MR. VALOIS: Maybe you ought
3 to come back when they're both here. In fact, I'd
4 almost prefer that, frankly.

5 MR. WAYSTACK: Well, I'll
6 tell you sir I spent a lot of time traveling here. I
7 waited very patiently all day. It's not my problem
8 the two of them left early. I'm sure though, Mr. Chair-
9 man, if you will convey my remarks, I will be happy to
10 submit a written copy of my testimony.

11 MR. VALOIS: Thank you.

12 MR. WAYSTACK: I have in my
13 hand a copy of the speech that your Chairman, speaking
14 as your Chairman, gave to the Board of Governors of
15 the American Bar Association. I quote, today I am
16 calling for the replacement of the Legal Services
17 Corporation. It cannot be reformed in its present
18 context.

19 I am here to tell you that we, the leaders of the
20 organized bar, will not permit that to happen. With
21 the heightened awareness not only among the legal pro-
22 fession, but among the public at large on the importance
23 of the rights of freedom and justice that our Federal

1 constitution guarantees comes a swelling of national
2 pride. This nation's commitment to equal justice for
3 all transcends the actions of individuals or groups
4 of individuals who would do it disservice.

5 Cuts in funding, freeze funding, cuts in programs
6 such as support centers and the like are evidence that
7 this board has not gotten that message. Political
8 maneuvering, provocative rhetoric serve only to under-
9 score the lack of serious intentions to carry out the
10 high privilege and special responsibility which member-
11 ship on this board bestows on each one of you. For that
12 reason we will not go away quietly. In fact, we will
13 not go away at all. Instead our numbers swell in
14 direct proportion to the efforts of any members of
15 this board to dismantle or eviscerate the Legal
16 Services Corporation.

17 Mr. Durant's attitude, words and actions create
18 the catalyst to coalesce an ever growing movement of
19 responsible lawyers who are unswervingly dedicated
20 to preserve the constitutional ideals which we all
21 hold to be irrefutable.

22 Mr. Durant said in his speech to the ABA Board of
23 Governors in New Orleans and I quote, whenever LSC

1 is challenged its champions insist that the poor
2 deserve the same opportunities for high quality legal
3 services as everyone else. We hold this argument to
4 be self-evident. Mr. Durant, however, missed the point.
5 We do not come to challenge the Legal Services Corpora-
6 tion. We come to challenge Mr. Durant's leadership of
7 the Legal Services Corporation and, for that matter,
8 to any other board members who do not disavow his
9 ill-conceived plans. Those of you who remain true to
10 those ideas are to be commended for your integrity and
11 your courage.

12 I am proud to be a lawyer and I consider myself
13 fortunate to be a citizen of this great nation. I
14 truly believe that ours is a government of the people,
15 by the people and for the people and for that reason I
16 call upon Mr. Durant to resign as chairman of this
17 board. He is out of touch with the very people who he
18 was appointed to serve and protect. Likewise, any
19 members of this board who have forgotten the importance
20 of the guarantees of equal justice for all should also
21 resign.

22 We will not stop in our criticism of Mr. Durant's
23 leadership. We will not stop our vigilance. We will

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1 fight him at board meetings, in the halls of Congress
2 and anywhere else that he or any members of this board
3 try to reek havoc on the access of the poor to the
4 competent, high quality legal services that LSC funding
5 provides. Those of us who follow in the leadership of
6 John Ross, Mike Greco and Bill Whitehurst share their
7 common goals. We will not allow anyone or anything to
8 stand in the way of preserving the ideals for which
9 this country was founded. Not now, not ever.

10 I think in particular concern with respect to
11 Mr. Durant's comments my understanding goes some members
12 have already disavowed those comments. I seriously
13 question to you how he can continue to lead this board
14 when you spend all day in considerable debate about the
15 happenings and the goings on of the Legal Services
16 Corporation. A Corporation who four, five short weeks
17 ago he suggested by disbanded. I call upon you to do
18 that.

19 MR. VALOIS: Anything further?

20 MR. WAYSTACK: Nothing further.

21 MR. VALOIS: Thank you.

22 MRS. BERNSTEIN: Bob, I just...I
23 just want to make one short comment. Much of Mr. Durant's

1 speech and this is, I certainly defend anyone's right
2 to give their opinions about things. Much of Mr. Durant's
3 speech regarding the different access to justice modes
4 including the abolition of the unauthorized practice
5 of law statutes, voucher programs, the pre-paid legal
6 services, a lot of the alternative delivery mechanisms
7 were espoused in close to 50 speeches that Tom Erlich
8 made between 1975 and 1978. Tom Erlich was the first
9 president of the Legal Services Corporation and he
10 used the Corporation presidency as a bully pulpit to
11 stimulate debate. He says in those speeches the bar
12 doesn't like these things, but we are going to have to
13 drag the bar along because clients deserve something
14 other than a corporation that is simply set up to
15 serve the lawyers.

16 Now, Mr. Erlich may have been a little more tactful
17 than Mr. Durant. I think Mr. Durant was pretty direct.
18 To go directly to the lawyers themselves and say we
19 really need to think about a different structure. The
20 Corporation was a successor organization to OEO Legal
21 Services. Strangely enough what Mr. Durant has suggested
22 looks an awful lot like OEO Legal Services. It would be
23 an agency of the government that would be set up with an

1 administrator. That's exactly how the OEO Legal Services
2 was set up. Without commenting whether or not I believe
3 that's the best structure or not, I certainly don't
4 think that Mr. Durant's statements make him unfit to
5 serve as Chairman of the Board. I certainly would
6 think that especially the clients among you would be
7 grateful to him for asking lawyers to think about
8 whether there are better ways to do it than just the
9 ways that have been done before.

10 When he said I think that the Corporation ought
11 to be replaced, he didn't say that the funding ought to
12 stop. If you've been told that, that's an inaccurate
13 representation of what was in the speech. What he said
14 was there should be a different structure, we need to
15 start from scratch because this one doesn't meet the
16 needs of clients, isn't open enough to the things we
17 need to be doing.

18 Now, with that sten...that, that statement I think
19 we, we simply need to welcome these debates rather than
20 pooh, pooh and try to make personal attacks on indivi-
21 duals because we don't happen to like what they said.

22 MR. WAYSTACK: I'm not making
23 any personal attack on Mr. Durant. I talked to him

1 earlier today. I told him I have great difficulty
2 with what he said. Probably as much difficulty with
3 the fact that he represented to the American Bar Associ-
4 ation Board of Governors that he spoke as your Chairman,
5 ma'am, and that concerns me greatly.

6 I didn't come here to defend lawyers or the concerns
7 about whether or not the unauthorized practice of law
8 committees should be disbanded. I came only in the
9 context of how his remarks affect the legal services
10 for the poor, and when he states that he's calling for the
11 replacement of this Corporation and that it cannot be
12 reformed and suggests, as he did suggest, the speech
13 is here. I'm sure you have it. That paraprofessionals
14 should replace lawyers in providing legal services for
15 the poor, I cannot agree with that statement.

16 MRS. BERNSTEIN: I think still
17 that that's a mischaracterization of the entire speech.

18 MR. WAYSTACK: The report is
19 here for us all to read.

20 MRS. BERNSTEIN: I saw it. I
21 saw it.

22 MR. SMEGAL: Mr. Chairman, I
23 have a motion. I move...

1 MR. VALOIS: Excuse me. I...

2 MR. SMEGAL: Pardon me.

3 MR. VALOIS: I was going to
4 speak further to Mr. Waystack, but it's okay.

5 MR. SMEGAL: I'm sorry I
6 didn't...

7 MR. VALOIS: I had just some-
8 thing I want to say to the witness, thank you.

9 Mr. Waystack, the use of paralegals or paraprofes-
10 sionals, if you like, is a subject which didn't, at
11 least in this state, has met with some acceptance.
12 Specifically, paralegals are permitted to appear before
13 the Employment Security Commission in our state and to
14 serve the needs of the poor. That has expanded and
15 multiplied the services in North Carolina to people who
16 need such services. So, I mean you just, you just made
17 a statement which I think is probably broader than you
18 intended, but it's not an idea that's foreign and it's
19 not, you know.

20 MR. WAYSTACK: Lest you think
21 I be affected by tunnel vision, in my law office, sir,
22 I have three paralegals. I am mindful of the good work
23 that paralegals do in New Hampshire legal assistance.

1 My concern is that in the reading of the speech
2 and clearly the sense in which this speech was delivered
3 he suggested the replacement of lawyers with paralegals.
4 Paralegals have a place in the system, not to the
5 exclusion of lawyers.

6 MR. VALOIS: Well, I didn't
7 read it that way and don't now understand it that way,
8 but in fact, I mean, in the example that I cite and
9 there are many others in our system, where non-lawyers
10 appear before an agency or commission instead of a
11 lawyer. That is permitted and sanctioned and frankly
12 encouraged.

13 MR. WAYSTACK: I have no
14 problem with that as a general proposition. However,
15 most of the time that that occurs, Mr. Chairman, it is
16 with the advice or under the tutelage of a lawyer.
17 The paralegal is not the final authority on the situation.
18 That's the concern I have here in his remarks.

19 MR. VALOIS: Well...

20 MR. WAYSTACK: Excuse me.

21 MR. VALOIS: Mr. Smegal?

22 MR. SMEGAL: Yes, I've got a
23 motion, Mr. Chairman. I move that this Board go on

1 record and make it clear in this public meeting that
2 it does not support the abolishment or replacement of
3 the Legal Services Corporation. If there's a second,
4 I'll speak to it.

5 MRS. MILLER: I'll second that.

6 MR. SMEGAL: You all got a
7 copy of the letter I wrote to Clark on March 13th. I
8 did not write to him as I might have immediately after
9 his outrageous speech to the mid-winter meeting of the
10 ABA. I waited a considerable period of time to let
11 the dust settle, and I think the part we've got to
12 focus upon here is not what Clark said and whether he
13 had the right to say it to LeaAnne as personal views, but
14 what he...appeared to be, not only to the ABA but to the
15 television audience in...or the television on the Today
16 Show, that he was somehow speaking for me and speaking
17 for the rest of you.

18 His views were his own. He failed to make that
19 clear. He has misrepresented to the public the basis
20 for his quote policy statement to the ABA. He did not
21 speak for me. I make that clear now and I think the
22 only way we can clarify that issue is to vote affirma-
23 tively for my motion which would make it clear that this

1 board stands for what it was nominated and confirmed
2 to do, not to second or stand in the background while
3 Clark Durant gives speeches that are ill-advised.

4 MRS. BERNSTEIN: Could I get
5 clarification on what your motion entails? Is it the
6 Legal Services Corporation Act that you, that with the
7 exact structure that it has right now, with no changes,
8 with the money going strictly to lawyers that you want
9 us to say that we are not interested in changing?

10 MR. SMEGAL: LeaAnne, I'll
11 repeat my motion. You can vote anyway you want. Does
12 not support the abolishment or replacement of the Legal
13 Services Corporation. I don't serve on the Legal
14 Services Corporation Act. I serve as a board member of
15 the Legal Services Corporation. I don't think it could
16 be clearer.

17 MR. VALOIS: Would you mind
18 repeating it, Tom, so I can write it down?

19 MR. SMEGAL: That this Board
20 goes on record that it does not support the abolishment
21 or the replacement of the Legal Services Corporation.

22 MRS. BERNSTEIN: I move to table.

23 MR. MENDEZ: I'm goin to

1 announce myself as support for Mr. Smegal's motion.
2 Mr. Durant, there was a lot of things in his speech
3 that is, I agree with but I don't particularly...I
4 don't particularly, I specifically don't agree with
5 that language.

6 I think that the Corporation, we're trying to do
7 the best we can. There's a lot of things that I
8 would do differently if it was, if it was in my power
9 to do it. Congress has decided in its wisdom that some
10 of the things and some of my suggestions are not right,
11 and I'm willing to abide by it. I think that a combina-
12 tion of minds is speaking fairly eloquently on this
13 thing from the Senate and the House and our Board, and
14 I'm still willing to work and attempt to make the
15 changes that I think are appropriate.

16 I've always been, I think, out front in saying
17 what I think I want to change and when I lose, I lose.
18 I hope I lose fairly gracefully. Sometimes I don't,
19 but I, I lose. At the present time I think that we
20 can make the appropriate changes. If in the future we
21 can't, I'll make that determination at some, some other
22 time. Right now and in the past I think it's done a
23 fair job. It's not the best, it's not the job that I

1 would have, do or the way that I would do it exactly,
2 but I'm willing to live with it.

3 MRS. BERNSTEIN: I think the
4 debate is being mischaracterized. I, you know. Once again
5 we are mixing up the concept of the delivery of Legal
6 Services with a specific structure.

7 I am serving on this Board as someone who has taken
8 seriously my oath to support the delivery of legal
9 services, and I will abide by and I have abided by the
10 Legal Services Corporation Act and enforcing that while
11 I'm on this Board. That does not mean that I do not
12 have the right to speak out where I think clients have
13 gotten shafted in the past because the money has not
14 necessarily gotten to the delivery of legal services,
15 and it doesn't mean that I should not speak out if I
16 think there's a better way to do it and if that better
17 way means that we somehow need to reformulate this then
18 I think I should do it. Just as those folks who decided
19 to speak out during the period in which OEO Legal Services
20 was transferred over and there was a new concensus built
21 for a Legal Services Corporation. Maybe there's a time
22 for us to think of a structure that will do it better.
23 As time passes needs change, technology changes, access

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1 to justice can be delivered in different ways.

2 The number of lawyers now in this country has
3 increased dramatically since the time that this Corpora-
4 tion was founded. When this Corporation was begun,
5 there was not attorney advertising. Do you know that
6 the president that I talked about, Tom Erlich, despite
7 the fact that he was for unauthorized...repealing the
8 unauthorized practice of law statutes, he was against
9 getting rid of attorney advertising. Getting rid of
10 attorney advertising brought the cost of legal services
11 for everybody, including the poor, down in this country.

12 I think we've got to be open to these things or
13 we're not doing our, we're not carrying out our fiduciary
14 duty. I really recent the fact that Mr. Smegal has put
15 this forward in such a way that he is trying to charac-
16 terize a lack of blind allegiance to a specific struc-
17 ture as a non-devotion to the concept of delivery of
18 legal services for poor people. For that reason I will
19 tell you I will abstain on this vote because the way
20 he's structured it, it's one of those situations where
21 you simply cannot properly cast a vote.

22 MRS. SWAFFORD: I'm going to
23 second your motion. Tell you not because I am for

1 abolishing Legal Services because I have already taken
2 a position on that when I testified before the sub-
3 committee before Congress. I simply distrust the
4 manner and the method in which, that I believe Tom,
5 with all due respect to you, that you just sort of seem
6 to have a desire to trick this Board into doing things
7 that I find less than respectable.

8 MR. VALOIS: I believe hidden
9 agenda is Mr. Smegal's terminology.

10 MR. SMEGAL: If you'll notice
11 my motion is all of about 15 words, Claude, and if
12 that's trickery...

13 MRS. SWAFFORD: Well, Tom,
14 you can say a lot in 15 words. So, you know, I...

15 MR. SMEGAL: Whatever.

16 MRS. SWAFFORD: I'm going to
17 second the motion to table.

18 MR. VALOIS: The motion to
19 table has been noted and seconded and I know that calls
20 now for an immediate vote, but I am nonetheless going
21 to make a comment.

22 Like Claude, when I testified before the Senate
23 committee that had my confirmation under consideration,

1 I told them that I had no design to do away with the
2 Legal Services Corporation and that I supported the
3 concepts of it and so forth. I still hold that view.
4 I think that your motion, Thomas, is quite ingenuous
5 and asks us frankly to make statements that are
6 unnecessary.

7 MRS. MILLER: I second Tom's
8 motion. So, I have to...

9 MR. VALOIS: Well, there's
10 been a motion made to table and it's been seconded
11 and we'll now vote on that motion. Hortencia?

12 MRS. BENAVIDEZ: To table it,
13 yes.

14 MR. VALOIS: Yes.

15 MRS. MILLER: To table it,
16 yes.

17 MRS. SWAFFORD: To table it,
18 yes.

19 MR. MENDEZ: Mr. Chairman...

20 MRS. SWAFFORD: We're voting,
21 Mister...

22 MR. MENDEZ: I would request
23 that we have a little bit more discussion here because

1 the motion to table means we're not going to discuss
2 this anymore.

3 MRS. SWAFFORD: Right, we're
4 ready, Mr. Mendez.

5 MRS. MILLER: We're aware of
6 that.

7 MR. SMEGAL: I don't think
8 some of the Board members understand what's on the table.

9 MRS. SWAFFORD: I don't know
10 they don't...

11 MR. MENDEZ: If they want to
12 play parliamentary procedure, I'll play parliamentary
13 procedure.

14 MRS. MILLER: Yes.

15 MR. MENDEZ: Then I vote yes
16 and I'm going to ask for a reconsideration, and I want
17 to have some discussion on it.

18 MR. VALOIS: How do you vote,
19 Tom?

20 MR. SMEGAL: I vote no.

21 MRS. BERNSTEINSTEIN: Yes.

22 MR. EAGLIN: I vote no to
23 table.

1 MR. MENDEZ: Under parliamen-
2 tary rules, if you vote in affirmative on the winning
3 side you can ask for a reconsideration based on the
4 aspect of the vote, and at this time I want to explain
5 what that motion means. The motion to table.

6 I'm asking for a reconsideration of it because
7 what you've done is prevented Tom's motion from being
8 heard.

9 MR. VALOIS: That's right.
10 I...the motion to table...

11 MRS. MILLER: That was my
12 misunderstanding.

13 MR. MENDEZ: That may be your
14 misunderstanding and now at this time, Mr. Chairman, I
15 ask for reconsideration on this motion.

16 MRS. BERNSTEIN: I'll withdraw
17 the motion.

18 MR. VALOIS: All right. The
19 motion to table has been passed and then withdrawn. So
20 we'll continue the debate. Go ahead.

21 MR. MENDEZ: Mr. Chairman, I
22 have a great reliance and great faith in Dr. Martin and
23 his statement about it takes a jackass to kick a barn

1 down, but a carpenter to build it is very apropos here.
2 Until we have a better barn that we can see, and I think
3 that we ought to continue and support this and when the
4 barn is, we see a better barn in the future I'm willing
5 to look at it. Until we see a better barn in the future
6 I'm going to vote for this, sustaining this Corporation.

7 MR. VALOIS: Again I will say
8 that all of this is very interesting and perhaps ful-
9 fills some ambitions some people have, but Congress is
10 the one who passed the Legal Service Corporation Act
11 and Congress is the one that's going to have to repeal
12 it and they don't let us vote on that.

13 Aside from that, I mean, what are we doing?

14 MR. MENDEZ: Mr. Chairman, if
15 I, I don't have any hesitancy at all of going to
16 Congress when I see a better method of delivering
17 services to the poor and telling Congress that my
18 opinion has changed and this is the better barn that
19 I see.

20 The moment I see that I will go to the Congress
21 and tell them that, but until I see a better barn I'm
22 not going to go to Congress and I'm not going to change
23 my opinion about Legal Services until I see something

1 better. I just don't do things unless I think there's
2 a better method of doing it. That's, I hate to say
3 this and hold this up to the field because I always
4 feel like that the major gripe I have with them is that
5 when we make a suggestion is that they just shoot at it
6 and they don't suggest that there's another alternative
7 that's better. Frequently they just say that we don't
8 want to have anything else and that's the exact same
9 thing that I, that bothers me, many times about them
10 that bothers me about this motion. About this refusing
11 to say this and about trying to say that we don't
12 support this organization. When there's something
13 better along, I'm going to vote for it. When it's not,
14 until it's not, as long as there's nothing better I'm
15 not going to go with anything else.

16 MR. VALOIS: Anybody wish to
17 say anything further on the motion? If not, lets vote
18 on it. Hortencia?

19 MRS. BENAVIDEZ: I got to
20 understand.

21 MR. MENDEZ: We're now on
22 Tom's motion...

23 MR. VALOIS: We're voting on

1 the main motion which is Tom Smegal moves that the
2 Board go on record that it does not support the
3 abolishment or replacement of the Legal Services
4 Corporation. Have I stated the motion correctly?

5 MR. SMEGAL: That's correct,
6 yes.

7 MRS. BENAVIDEZ: I go with
8 Tom.

9 MRS. MILLER: Yes.

10 MRS. SWAFFORD: I vote yes
11 with reservation because it would be inconsistent of
12 me to have testified before Congress under oath to do
13 otherwise, and I certainly am not going to go on record
14 as doing negative to what Tom suggests.

15 Tom, I'll just have to tell you that I know that
16 you've got an ulterior reason and I know if I were to
17 vote otherwise you'd use it in some method to harass
18 me and intimidate me. I just am going to go ahead and
19 vote yes, but I certainly hate to.

20 MR. SMEGAL: Thanks for the
21 vote, Claude.

22 MRS. SWAFFORD: No, no thank
23 you.

1 MR. VALOIS: Let me just
2 adopt Claude's comments and vote aye.

3 MR. MENDEZ: Aye.

4 MR. SMEGAL: Aye.

5 MRS. BERNSTEIN: Abstain. It's
6 not properly worded and it's too ambiguous in terms of
7 its intention and meaning for a proper vote to be cast
8 either way.

9 MR. EAGLIN: I vote yes.

10 MR. VALOIS: The objection,
11 if that's what it is, to the form of the motion...

12 MR. MENDEZ: Mr. Chairman,
13 I vote we adjourn.

14 MRS. KENNY: Mr. Chairman,
15 I've been waiting all day.

16 MR. VALOIS: We have an
17 Executive Session.

18 MRS. KENNY: As a point of
19 personal privilege, some of the remarks I want to make
20 have cropped up...I will.

21 My name is Gail Kenny. I'm the Executive Director
22 of the New Hampshire Bar Association. Let me just say
23 for a minute how difficult it is to get from where I

1 live in New Hampshire to here.

2 First of all, you have to take a small plane from
3 rural New Hampshire to Boston. Then you get on a plane
4 you go to Charlotte, and then you get in another plane
5 and go over the North Carolina mountains and get here.
6 The Legal Services Corporation itself has spent
7 thousands and thousands of dollars bring all of you
8 folks here. Bringing the staff here. Paying for the
9 stenographer, etcetera, and the people in this room
10 have spent thousands and thousands of dollars coming
11 from California, Texas, Maine, etcetera, everywhere,
12 to follow you here. To listen to what you have to say
13 and to make presentations to you and in the course of
14 seating here all day it's very disturbing and it's
15 almost insulting. More than that it's really unfair
16 to everybody who's trying to play your game, your way
17 and follow you around wherever you announce public
18 meetings with the opportunity for public comment that
19 practically as soon as you get here you say to people,
20 well, we don't really have time to listen to your
21 remarks. Can you hurry it up, we don't have time.

22 It seems as if, you know, I wonder why you go to
23 places like Asheville where it's difficult to get to

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1 and where you're anxious to get out if your priority as
2 soon as you get here, and probably I'm speaking more to
3 the people who aren't here than who are at this point,
4 but that your priority as soon as you get here is to
5 get back out of town. That's not fair to the people
6 who have come great distances to have an opportunity to
7 have the public say, which is what the notice of the
8 meeting implies. That the public will be able to
9 comment.

10 I really apologize for extending your meeting
11 at this point. I know you're all anxious to get out
12 of here, but I...

13 MR. MENDEZ: Miss Kenny, I
14 didn't know that there was anybody else that wanted to
15 speak.

16 MRS. KENNY: Okay.

17 MR. MENDEZ: Otherwise I
18 wouldn't have made that statement, but because I
19 thought...

20 MRS. SWAFFORD: I might add
21 she's preaching to the choir.

22 MRS. KENNY: As I said, that
23 this was more to the people who have already left, but

1 noneththeless it's part of the record and I wanted to
2 make those statements since this is what's been going
3 on all day.

4 Secondly, as a matter of personal privilege,
5 Mr. Wallace started off the meeting with remarks
6 attacking John Ross in the ad hoc, and I emphasize
7 that. Ad hoc effort known as Bar Leaders for the
8 Preservation of Legal Services for the Poor. Some of
9 you may know that I more or less serve as a staff
10 coordinator, totally unpaid, totally voluntary for that
11 particular ad hoc effort, and therefore, as I said, as
12 a matter of personal privilege I ask to be heard, just
13 for a minute to respond to what Mr. Wallace said in
14 opening up this meeting because he made attacks on that
15 organization.

16 Bar Leaders for the Preservation of Legal Services
17 for the Poor is not a formal group. It's not a member-
18 ship organization. It is not something to which one
19 pays dues. It's not something that one joins in an
20 organizational sense. It is simply an effort, indivi-
21 dually or collectively, of elective bar officials to
22 support, protect, defend and enhance legal services.

23 The list Mr. Smegal referred to of bars that have

1 passed resolutions, etcetera, is simply a method, a
2 methodology of communicating the numbers and the names
3 of bar associations who have gone on the official
4 record by resolution or by letter or by some other
5 means as supporting Legal Services. When they send to
6 me their resolution or their letter or whatever it is
7 that they do to communicate that with me, they're doing
8 it so they can make the list and that's what the list
9 is all about.

10 They are not joining some non-existent organization,
11 but they are supporting legal services. Then once they
12 let me know that they are supporting legal services in
13 that way, they are considered to be in the forefront
14 of preserving legal services, and they are.

15 If the Mississippi Bar, as Mike Wallace indicated
16 that perhaps he would like, wishes to say that they no
17 longer wish to be listed somewhere as being in the
18 forefront of preserving legal services, that's okay
19 because there are other bars that are adding their
20 voices every week to that type of list. I would also
21 say that I'd be very, very surprised if I ever heard
22 that the Mississippi Bar informed their local project
23 directors such as Martha Burk, Margaret Harris and

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1 McGiver that they were ever for a second retreating
2 from their strongly articulated support for legal
3 services. We have never asked bar associations to
4 pass resolutions relating to the name Bar Leaders for
5 the Preservation of Legal Services for the Poor. Our
6 focus is not on building an organization and it never
7 will be that.

8 Mr. Wallace can obviously sit here and read into
9 the record or say into the record a questioning of
10 anybody's credibility anytime he wants to and that's
11 fine. I really do regret that he's personally angry
12 about this individualized and this collective bar
13 leader effort to support legal services, but I simply
14 think that he has misinterpreted the language when we
15 say or when John Ross said so many bars have in quotes
16 joined us. Again, I truly regret the anger but I'm
17 not going to engage in a debate with Mr. Wallace or
18 anybody else trying to prove anything about that
19 particular effort. I just simply want to say that the
20 effort will continue and that's Bar Leaders for Preser-
21 vation.

22 Finally, the real reason I came here and took that
23 puddle jumping, those puddle jumping planes across the

1 mountains of both New Hampshire and North Carolina
2 is because I'm appearing on behalf of John Ross. He
3 wanted to convey some more comments to you, and speci-
4 fically you have to understand that this is the first
5 meeting that this Board has after Clark made his
6 remarks and Bar Leaders have wanted to convey their
7 concerns about his remarks. Some of what you just did
8 in your vote colors what John Ross wants to say to you,
9 but not completely. So I'm going to read it anyway.

10 Now obviously I'm not John Ross and again as Phil
11 Waystack said earlier, some of the comments as John
12 wrote them are directed to Clark and they say Mr. Chair-
13 man, you this and so, Mr. Valois, I'm not addressing
14 you as the acting chairman of this particular board
15 right now. I'm addressing Clark's name plate and for
16 the record these remarks go to Clark, but I'm not going
17 to change John Ross's remarks the way he wrote them.

18 Secondly, if John Ross were here he would thank
19 this board, the people who are still here. He would
20 specifically thank Mr. Smegal and Mr. Mendez for their
21 leadership in caring out the vote that just took place.
22 So, understand that some of the things that are being
23 talked about are not addressed to the people who just

1 spoke so eloquently a few minutes ago. Nonetheless,
2 Mr. Ross feels very strongly that he wants this to be
3 a part of the record. This is his statement.

4 I wish that I could delivery this statement to you
5 in person so that I might convey the depth of feeling
6 that I have about the issues before you. I have tried
7 in the past to be circumspect in my description of
8 this Board and in particular its chairman so as to
9 convey what in my opinion has been an accurate picture
10 of this Board.

11 After Mr. Durant's performance in New Orleans
12 before the American Bar Association Board of Governors
13 there are not words strong enough to describe his
14 attitude towards legal services to the poor. Mr. Chair-
15 man, Mr. Durant, your remarks as the ABA president
16 characterized them were dangerous and unfounded. You
17 have demonstrated a complete lack of understanding of
18 the manner of delivery of legal services to the poor.
19 You are out of touch with the nature of the problems
20 faced by these people and the issues that you were
21 chosen to manage.

22 I have in the past told others that it was my
23 impression of you and your role as chairman that you

1 have some antiquated notions about the delivery of
2 legal services to the poor, but that you are basically
3 well meaning. You have demonstrated that I was wrong.
4 You have finally brought out in public for all to see
5 your private agenda. Your private agenda is to clearly
6 destroy that which you are charged by law to nurture in
7 a fiduciary manner. You have done us all a favor by
8 at least doing so in public so that we might know what
9 you stand for, but having done so you should resign.

10 Your comments about replacing LSC funded staff
11 attorneys with unlicensed entrepreneurs are a disgrace
12 to your office and an insult to the people who are
13 working so hard with so little to delivery legal services
14 to the many in this country who need it.

15 Your action has placed this Board in a very diffi-
16 cult position. Might I add, a position that I think
17 that you've corrected yourselves on today. Continued
18 silence by the Board can only be interpreted by those
19 on the outside as concurrence in what you have said.
20 Thank you very much, Claude.

21 Continued silence on this issue and the failure to
22 call for your resignation can only mean agreement with
23 your point of view. Any board member that personally

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1 agrees with the statements that you have made and the
2 position that you have taken should resign. There is
3 no compromise on this issue. You can rest assured that
4 this message will be brought to Congress by Bar Leaders
5 who care about this program, not only as it may affect
6 oversight and budget, but as it may impact renomination
7 appointments before the Senate.

8 Mr. Durant, your remarks to the American Bar Associ-
9 ation and your defense of them on the Today Show and on
10 public television have always been cloaked with your
11 title as Chairman of the Board. You have made no
12 significant effort to indicate that you were espousing
13 only your personal, private thoughts. The manner of
14 your presentation has tarred each and every member of
15 this board, something again which you have corrected
16 today and I thank you for that.

17 You have done so I understand without their con-
18 currence or even their knowledge of what you were going
19 to say. You have done them a significant disservice.
20 I fail to see how you can ever lead them again or have
21 their confidence.

22 I challenge this Board to reconsider its budget
23 mark and I would like to see it adopt a budget mark of

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1 391 million. I challenge Mr. Durant's right to vote
2 on that issue any longer. The rest of you should too.

3 When I was last before you in January 1987, you
4 considered a cost of living increase for your
5 Washington staff. I recall the committee chairman
6 indicating that it seemed only fair and proper to
7 give the people who work directly under you a cost of
8 living increase. If that is true, then the people in
9 the field programs and the support centers and the
10 other people that your appropriation supports through
11 specific field program grants are entitled to the same
12 courtesy from you.

13 How can you go before Congress and suggest that
14 it is right and proper for those who work in Washington
15 to get a cost of living raise, but those who are actually
16 out there doing the work with the people that are
17 supposed to benefit from this program are only entitled
18 to cuts? There is something heinous and internally
19 inconsistent about such a view.

20 If it is not your view, then you should amend the
21 budget accordingly and you should make sure that there
22 is enough money in the budget you propose to Congress
23 to treat those who work out there in the field in at

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1 least the same manner as you would treat those who work
2 in Washington.

3 The time has come to stop the surreptitious
4 maneuvering about support centers. The time has come
5 to put on the table your real agenda. Mr. Durant has
6 done us all a favor by telling us his agenda. You
7 should do the same when you attack national and state
8 support centers. Everyone of us who knows anything
9 about this area, anyone who is involved in its use and
10 the provision of service from these centers has told
11 you unequivocally that your plan concerning purchase of
12 service is wrong. All of us have told you the national
13 and state support centers serve a very direct function
14 in support of delivery of legal services to the poor,
15 and the only way that they can survive and do their
16 job properly is by adequate direct national funding.

17 Your consideration in quotes, of this issue is
18 a subterfuge. The proposals that you were considering
19 are a travesty and a joke. They are a smoke screen to
20 hide an effort to destroy those centers. This is not
21 a place for you to play ideological, political games.
22 You have a statutory responsibility to do what is right
23 here.

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1 Mr. Wallace forcefully told me when I was last with
2 you that he was not out to destroy Legal Services. His
3 statement will be judged by his actions. I hope that
4 he will convince the rest of you that it's time to stop
5 doing the things that Congress has told you not to do.
6 That the bar has asked you not to do, that the field
7 has told you would be a big mistake and to get on as
8 Board members to lead the Legal Services Corporation
9 toward the provision of legal services for the poor.

10 Please stop playing games. Get out on the stump
11 and say something that is meaningful. Go to Congress
12 for more money and tell them that they have to restore
13 LSC to a level of adequate funding before they can
14 apply Gramm-Rudman cuts.

15 You have a new president. He is a careful,
16 competent lawyer. I believe that he wants to do a care-
17 ful, competent and meaningful job. You should let him
18 do that. You should begin to let him pursue the better-
19 ment of the programs that we have. To go out and to be
20 an advocate for the people that he oversees and the
21 programs that he is to monitor. Stop the war and become
22 part of the team so that all of us working together can
23 work towards what should not be an ideal, but a fact.

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1 Equal justic for all. Onbehalf of John Ross, I thank
2 you.

3 MR. VALOIS: Mrs. Kenny, I'd
4 like to ask Mr. Ross a question and I'll look forward
5 to hearing his reply. I'd like to know whether or not
6 he would support the abolishment or replacement of the
7 Legal Services Corporation if he thought there was a
8 better way to do it.

9 MRS. KENNY: He doesn't
10 believe there's a better way to do it.

11 MR. VALOIS: That doesn't
12 answer my question.

13 MRS. KENNY: I will not speak
14 for Mr. Ross on that point.

15 MR. VALOIS: I didn't ask you
16 to.

17 MRS. KENNY: He does not
18 believe there's a better way to do it.

19 MR. VALOIS: Didn't ask you
20 to. I just asked you to get me his answer.

21 MRS. KENNY: Okay, I will do
22 that Mr. Valois. I'll pass that on.

23 MR. VALOIS: Thank you, Gail.

1 MR. VALOIS: Is there any-
2 thing further?

3 MRS. SWAFFORD: Can I move
4 that we adjourn?

5 MR. SMEGAL: I have another
6 motion, Mister...

7 MR. MENDEZ: ...question since
8 Gail was so...are there, what about these farmers that
9 indicated that they had an interest in speaking? Are
10 there any farmers that have any interest in speaking
11 at this time? They've left? Okay, wear them down.

12 MR. SMEGAL: Mr. Chairman,
13 I have another motion to make which hopefully will go
14 a little faster than the last one.

15 MR. VALOIS: Tom, I think
16 we've...

17 MR. SMEGAL: No, I think this
18 is appropriate.

19 MR. MENDEZ: Motion to
20 adjourn on the...

21 MRS. SWAFFORD: I made a
22 motion that we adjourn.

23 MR. SMEGAL: I don't believe

1 the business of the meeting is over with and until
2 that's completed...

3 MR. VALOIS: I'm sorry?

4 MR. MENDEZ: We have an
5 Executive Session. We can go on and adjourn.

6 MR. SMEGAL: Oh.

7 MR. VALOIS: Go ahead.

8 MRS. MILLER: I second the
9 motion.

10 MRS. SWAFFORD: You second
11 the motion to adjourn?

12 MRS. MILLER: Yes.

13 MR. MENDEZ: To an Executive
14 Session?

15 MRS. MILLER: Yes.

16 MR. VALOIS: We have to vote
17 on that I guess. Motion on the floor to adjourn to
18 Executive Session. Paul?

19 MR. EAGLIN: No.

20 MR. VALOIS: Tom?

21 MR. SMEGAL: No.

22 MR. MENDEZ: Yes.

23 MR. VALOIS: The Chair votes
yes.

MRS. SWAFFORD: Yes.

MRS. BERNSTEIN: Yes.

MR. VALOIS: Motion carries.

We go to Executive Session.

(WHEREUPON, the proceedings were concluded.)

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C E R T I F I C A T E

STATE OF VIRGINIA:

AT LARGE:

I, Sandra A. Moser, Notary Public for the State of Virginia At Large, do hereby certify that the foregoing was reported by stenographic and mechanical means, which matter was held on the date and at the time and place set out on the title page hereof, and that the foregoing constitutes a true and accurate transcript of same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

GIVEN under my hand and seal this 24th day of March 1987.

My Commission Expires:

December 3, 1989


Notary Public