

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
PROVISION FOR THE DELIVERY OF LEGAL SERVICES
COMMITTEE MEETING

December 4, 1993

The Legal Services Corporation
750 First Street, N.E.
THE BOARD ROOM, 11th Floor
Washington, D.C.

Board Members Present:

Hulett H. Askew, Chairman
John T. Broderick, Jr.
John G. Brooks
LaVeeda M. Battle
Douglas S. Eakeley
Maria Mercado
F. William McCalpin
Nancy H. Rogers
Thomas Smegal, Jr.
Ernestine P. Watlington
Edna Fairbanks-Williams

Staff Members Present:

John P. O'Hara, President
Emilia DiSanto, Vice President
Patricia Batie, Secretary
David Richardson, Treasurer & Comptroller
Edouard Quatrevaux, Inspector General
Victor Fortuno, General Counsel
Susan Sparks, Director, Office of Program
Evaluation Analysis & Review
Ellen Smead, Director, Office of Program Services
Lauren Fuller
Paul Mensah-Kane
Richard Hannibal

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(202) 296-2929

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P R O C E E D I N G S

1
2 CHAIRMAN ASKEW: This is the meeting of the
3 Provision for the Delivery of Legal Services Committee. I'd
4 like for the record to reflect that the other two committee
5 members -- Edna Fairbanks-Williams and Nancy Harden
6 Rogers -- are here. Other Board Members are here and I
7 encourage them to actively participate in the discussion that
8 we are about to hold.

9 The first item on the agenda is the approval of
10 today's agenda. Do I hear a motion?

MOTION

11
12 MS. FAIRBANKS-WILLIAMS: So moved.

13 CHAIRMAN ASKEW: A second?

14 MS. ROGERS: Second.

15 CHAIRMAN ASKEW: All those in favor, say aye.

16 (Chorus of ayes.)

17 CHAIRMAN ASKEW: The agenda is approved. The
18 second item is approval of the minutes from the last
19 Provisions Committee meeting which was held September 9,
20 1993.

21 Before we vote on that, let me tell you that I've
22 called Blakely Hall, who was Chair of this committee up until

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1 the time we were confirmed, and had a discussion with him
2 about the committee's work.

3 We went over a number of things, but the main thing
4 I'd like to report to you is I asked him if there was any
5 pending business before this committee that we needed to take
6 up, and he reported to me that there is not; that the last
7 two or three meetings of this committee, they were mostly
8 hearing staff reports.

9 There were no items taken up at the September 9th
10 meeting that called for action. I think the minutes reflect,
11 basically, that they were hearing staff reports. As we talk
12 about items later in the agenda, I may report to you what
13 Mr. Hall recommended to me about some of those items, but in
14 terms of the minutes, they are pretty straightforward.

15 Do I hear a motion that we approve the motions from
16 the last meeting?

17 MOTION

18 MR. EAKELEY: I move that we accept the minutes.

19 CHAIRMAN ASKEW: Accept the minutes?

20 MR. EAKELEY: It is consistent with what the
21 Operations Regulations Committee did with this item on their
22 agenda. They did not approve them, but just accepted them.

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1 CHAIRMAN ASKEW: We have a motion to that effect.
2 Do I hear a second to that effect?

3 MS. BATTLE: Second.

4 CHAIRMAN ASKEW: All those in favor?

5 (Chorus of ayes.)

6 CHAIRMAN ASKEW: The ayes have it. The minutes are
7 accepted.

8 The next item on the agenda is consideration of the
9 Corporation's current approach to monitoring, evaluation,
10 complaint investigation and technical assistance. The item
11 after that is future approaches. I'd like to introduce both
12 of these items with a few remarks, and then we're going to
13 hear from several panels.

14 Section 1007(d) of the Legal Services Corporation
15 Act says that, "The Corporation shall monitor and evaluate
16 and provide for independent evaluations of programs to ensure
17 that the provisions of the Act are carried out." What are
18 the provisions of the Act that this section is referring to?
19 Section 1001 of the Act speaks of equal access to justice,
20 high quality legal assistance, improving opportunities for
21 low income persons.

22 Section 1007(a)(1), (2) and (3) speak to high

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1 quality of service and professional standards, the
2 preservation of the attorney/client relationship, and the
3 protection of the integrity of the adversarial process.

4 Those sections also speak of local priority setting
5 and they speak of economical and effective delivery sections.
6 Of course, other sections of the Act place restrictions on
7 the activities of both programs and the staff that they
8 employ, so it's clear that LSC has a statutory obligation to
9 monitor and evaluate programs and to ensure compliance with
10 the provisions of the Act.

11 Since 1975, the Corporation has invested a large
12 percentage of its management administration budget and a
13 large amount of its staff time and energy into implementing
14 Section 1007(d). This effort has not been without
15 controversy.

16 I would like to say that the way it was done in
17 1978, '79 and '80 was perfect, because I had some personal
18 responsibility for that, but I cannot say that because it
19 wasn't perfect. I would like to say that the way we do it
20 today is perfect, but I think we can all acknowledge that
21 it's not. It's been an evolving process over the 18 years of
22 this Corporation's existence and it's still evolving today.

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1 This committee has a responsibility, under the new
2 Chair's delegations, for oversight of the monitoring,
3 evaluation and complaint investigation and technical
4 assistance efforts of the Corporation. This meeting today is
5 the beginning of a process of education and review for this
6 committee and more broadly, for the Board, of where we have
7 been, where we are today, and where we should be going.

8 It is also the beginning of a dialogue that was
9 called for by D. Miller in his 1991 speech to the Providers
10 Conference, a candid dialogue about "quality legal services
11 and LSC's appropriate role in ensuring it and providing for
12 it." It is my belief that in reviewing these efforts, we
13 need to constantly remind ourselves of the mission statements
14 of the Act, if you will.

15 How does what we are doing here support and further
16 the provision of high quality legal assistance to clients and
17 how can it do a better job of that? How does what we do in
18 monitoring evaluation in these efforts preserve and protect
19 the attorney/client relationship and the adversary process?
20 How can we do a better job of that?

21 How does what we do preserve and protect local
22 decision making and priority setting? More importantly, how

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1 does what we do improve the opportunities and provide access
2 to justice for our clients? Those are the measuring sticks
3 that we're looking for. That is not to say that compliance
4 with the Act and Regs is not important. It's absolutely
5 critical.

6 Compliance with the regulations alone does not
7 ensure high quality legal assistance to clients. What
8 ultimately this committee and the Board will consider is what
9 the future of these efforts should be. However, in order to
10 plan for the future, we have to understand the past.

11 Susan Sparks and her staff are going to help us
12 today by reviewing for us the history of the monitoring
13 effort and its current status. I've also asked her to share
14 with us the staff's ideas for the future of these processes.
15 Are there changes that should be made? How can we do this
16 better? Are we meeting the provisions of the Act? If not,
17 what should be changed?

18 We have made an effort to invite in representatives
19 of clients, the organized Bar, field programs and others, to
20 share with us their perspectives on these same issues. What
21 is the history of monitoring and evaluation from their
22 perspective? How has it worked for the programs? What

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1 changes or improvements are necessary from your perspective,
2 and how can we make it better for the Corporation and for its
3 grantees?

4 I want to thank those of you who have given up your
5 weekend to be here with us today. I want to make sure that
6 you have the opportunity to speak fully to us, and that we
7 give you enough time to do so. I have a fear that I've
8 crammed too much into a four-hour agenda this afternoon.

9 For that reason, in a very southern and gentile
10 way, I'm going to try to keep my eye on the clock and move
11 things along. I will try to ask you to keep your eye on the
12 clock and also stick within the time frames that we've set,
13 and I want to thank all of you for being here.

14 With that, I'm going to ask Susan and her staff to
15 come forward, who will make the first set of presentations
16 and then I'll introduce the second two panels after they have
17 concluded.

18 Let me make one other thing clear. We are going to
19 be covering a lot of territory today, and we've invited in a
20 number of people who have been gracious enough to come.
21 Those of you in the audience who would like to speak to some
22 of these issues, there may be time at the end of this to hear

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1 public comment. If there is not, let me assure you that this
2 is going to be a continuing process, and there will be
3 opportunities in the future to hear from you.

4 Susan, will you introduce yourself and tell me a
5 little bit about your background, and then I'm going to ask
6 each of your panelists to introduce themselves.

7 Presentation by OPEAR Staff

8 MS. SPARKS: Okay. For the record, my name is
9 Susan Sparks. I'm Director of the Corporation's Office of
10 Program Evaluation, Analysis and Review. I've been with the
11 Corporation for nine and a half years. I have a background
12 in public administration, including a Master's Degree from
13 the University of Kentucky and three years of Ph.D. course
14 work at Virginia Tech in the area of policy analysis and
15 review.

16 I'm joined today by three managers who work with me
17 in PEAR, as we refer to ourselves. In their statements, Mr.
18 Chairman, they will be providing a little bit about their
19 backgrounds and their current job responsibilities. If you
20 recall our organizational chart, the interlocking circles,
21 you'll know that our work among the four of us is integrated.
22 Lauren Fuller's work as manager of the Program Monitoring and

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1 Evaluation Division is integrated with Paul Mensah-Kane of
2 the Review and Analysis Division, and Richard Hannibal of the
3 Compliance Division.

4 For purposes of our panel discussion today, we're
5 going to be highlighting four processes that we carry out as
6 a management team to further the purposes of the Act, as
7 Mr. Askew laid out at the beginning of his meeting today. We
8 see monitoring and evaluation and compliance and assistance
9 as all part of these processes.

10 If you recall, in the materials provided to you
11 over Thanksgiving, these processes include the on-site review
12 process, which includes pre-site, on-site and report
13 development as process one. Process two is the corrective
14 action process, which includes follow-up and assistance. The
15 third process is the complaint review and resolution process,
16 and the fourth is the desk review process.

17 Now, these processes that we center our work
18 around, they cut across divisional lines, but each of the
19 managers who you'll hear from today, each have primary
20 responsibility in managing their particular aspects of those
21 processes.

22 Just to give you a sense of where we're heading

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1 with our few minutes with you today, after the managers
2 conclude their statements, I'll provide you a bit of
3 information on our view of some of our -- the context of our
4 development and then we will talk about some of our
5 recommendations for your consideration for the future. We
6 are available at any point to stop and answer any questions
7 you have.

8 So, we'll begin with Lauren Fuller today.

9 Presentation by Lauren Fuller

10 MS. FULLER: Thank you, Susan. Good afternoon.
11 I'm Lauren Fuller. I'm the manager of the Program Monitoring
12 and Evaluation Division. I have primary responsibility for
13 the on-site review process, which includes essentially two
14 functions, the on-site visit itself as well as the report
15 development phase. I also have some involvement with pre-
16 site preparation, which is overseen by Paul's Division, the
17 Review and Analysis Division.

18 CHAIRMAN ASKEW: Lauren, excuse me.

19 MS. FULLER: Yes.

20 CHAIRMAN ASKEW: Could you give us a little
21 statement of your background before you joined the
22 Corporation?

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1 MS. FULLER: I'd be happy to. Briefly, my
2 educational background includes a law degree from the
3 University of Oklahoma in 1977. I'm licensed to practice law
4 in both the District of Columbia here in Washington as well
5 as Oklahoma. I've spent 17 years in the practice of law in
6 both the federal as well as the private sector.

7 I came to LSC in late 1986 as a consultant, so I've
8 spent a number of years working as both a team member, a team
9 leader, a compliance staff attorney here at the Corporation,
10 as well as a member of this management team. I've led more
11 than 30 on-site reviews of both monitoring and compliance
12 visits and I've integrated regularly throughout the country
13 and over the years with consultants, program boards, program
14 directors, program staff, community leaders, as well as
15 judges, throughout the country.

16 In my work at the Corporation, I've certainly drawn
17 heavily on my own background. For instance, I served for 10
18 years on the Board of Directors for the Federal Bar
19 Association, D.C. Chapter. There, I've served as its
20 president, as well as Chairperson of the Legal Assistance
21 Committee. Our efforts in that regard included trying to
22 involve more federal attorneys in handling pro bono cases

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1 here in the District, as well as seeking increased funding
2 for Legal Services program.

3 I've also drawn somewhat on my own private practice
4 background, which includes litigating commodities fraud
5 cases, handling some domestic relations matters, employment
6 discrimination matters and some Native American land claims.
7 I've also handled my share of pro bono cases, assisted
8 clients in preparing testimony when lobbying Congress, as
9 well as a number of other things along those lines, certainly
10 the every day issues that face a small law practice.

11 I've also drawn somewhat on my federal sector
12 experience as an administrative judge adjudicating employment
13 cases, and in that capacity, I believe I had the opportunity
14 to observe the quality of both the oral and the written
15 advocacy of the attorneys who appeared before me.

16 I'd like to take just a moment today to talk with
17 you about PEAR's approach to on-site visits. It's a process
18 that has continued to evolve over the past two years,
19 certainly, to support the purposes of the Legal Services
20 Corporation Act, but I think very much at the heart of this
21 is an effort to strive always to ensure that clients receive
22 the highest possible service in terms of level of service

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1 possible.

2 So, to do that, on-site visits include an
3 assessment of compliance as well as program performance. On-
4 site visits also include assistance to programs, and these
5 activities, I think, work together hand in hand, and have
6 resulted in more focused and helpful visits for our
7 recipients.

8 In particular, we assess the quality of program
9 performance in terms of the legal work, as well as the
10 management systems that exist to support that legal work.
11 Each on-site visit typically includes an entrance conference,
12 interviews, document review, as well as an exit conference.
13 I think one of the hallmarks of our process has been the
14 continuous feedback that has occurred in the context of those
15 on-site visits.

16 I think that teams are very mindful that facts must
17 be accurate; that facts must be corroborated; and that facts
18 must be discussed with an executive director before leaving
19 the site. I think, of course, the importance of this is in
20 the fact that those programs then have an opportunity to
21 provide additional information at that point, if that's
22 necessary, and I think they also have an opportunity to

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1 clarify any misperceptions that can occur in those reviews.

2 I think it's also important to note that
3 recommendations and assistance do exist throughout the on-
4 site visit. They typically can fall in the categories of
5 things such as client service, legal work management systems,
6 management systems overall, as well as fiscal systems and,
7 certainly, compliance.

8 We've continued to get feedback from our programs
9 in that regard, acknowledging the helpfulness of that
10 assistance, and I think that we find that the recommendations
11 and assistance do go somewhat hand in hand, as a natural
12 follow-up to any concerns or issues that may arise on site
13 and, in fact, I think we provide recommendations and
14 assistance in those instances where programs are already
15 operating at a high level of service.

16 Just quickly, let me say with regard to PEAR's
17 reporting function, we've continued to attempt to streamline
18 the issuance of those draft and final reports, certainly in
19 an effort to ensure clarity in those reports, but also in an
20 effort to ensure timely issuance of those reports.

21 We've had many programs tell us that the reports
22 themselves are one of the most important aspects of the

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1 process, and we've seen the valuable role of those reports
2 played out in the arena of fund raising activities of many of
3 our programs, as they tell us they do use those reports in
4 those fund raising activities.

5 Generally, you'll find that each report includes a
6 discussion of the areas that were assessed on site, as well
7 as innovations and accomplishments of programs, certainly any
8 areas of corrective action that need to be addressed, as well
9 as recommendations.

10 Let me take just one final moment to address some
11 of the thoughts we have for the future with regard to on-site
12 reviews and report development. I think we need to continue
13 to experiment with a shorter report format to ensure that
14 reports are provided to programs as quickly as possible, and
15 I think this would, of course, help then to address any
16 recommendations or areas of concern as soon as possible.

17 I think we need to continue to develop a base of
18 information and resources so that we can better assist our
19 programs, both during on-site reviews as well as after those
20 reviews.

21 I think we need to continue to recruit qualified
22 consultants who can bring a diversity of experience to

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1 assisting programs and improving program performance and I
2 think we need to expand the staff and consultant training, to
3 ensure that our staff and our consultants are kept abreast of
4 current developments in poverty law issues. This is an
5 initiative that we attempted to institute early last year in
6 1992 and, unfortunately, due to some budget constraints, we
7 had to disband this project.

8 Finally, let me say that due to my continuing
9 participation as a staff member of the advisory group of the
10 Comparative Demonstration Project, I certainly plan to
11 continue to assess whether there is anything more that we can
12 do in addition to the things that we are already doing on
13 site, and I think that this project provides a very
14 interesting opportunity in that regard. So, with that, I
15 thank you.

16 CHAIRMAN ASKEW: Let me ask a question or two if I
17 could.

18 MS. FULLER: Yes, sir.

19 CHAIRMAN ASKEW: In your goals for 1993, one of the
20 goals was to conduct a training event, I assume, for staff
21 and consultants both on quality assessment, performance
22 assessment. Is that one of the things that you had to forego

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1 because of budget cuts or did that happen this year?

2 MS. FULLER: We've done a lot of in-house training
3 this year, Mr. Askew, and we've done a lot of discussion
4 about quality and how to go about that and how to assess it.
5 We've had some discussions at a round table in December of
6 1992, I believe, in Denver, Colorado, on that subject with
7 our consultants.

8 CHAIRMAN ASKEW: But the formal training event that
9 was planned, or was it ever intended to be a formal training
10 event, that didn't occur this year?

11 MS. FULLER: We haven't had the money to actually
12 bring people in from all over the country, no.

13 CHAIRMAN ASKEW: In terms of assessing quality, is
14 there a short way to describe for the committee how you go
15 about doing that or how you instruct your staff to do it? Is
16 there a set of standards, for instance, that you utilize or a
17 set of procedures, specific procedures, that you use to
18 assess the quality and performance of programs?

19 MS. FULLER: First, let me address how we go about
20 it and then we can address the standards. Basically, each
21 team is expected to review the legal work of the programs
22 which entails reviewing cases, public pleadings -- we're

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1 certainly mindful of the attorney/client privilege -- and
2 assess those in terms of local community standards, in terms
3 of the LSC Act and the regulations, any state requirements
4 for practice, things such as the Harvard Blue Book, if you're
5 getting into the actual writing and the product and the
6 presentation.

7 That also -- that quality review also entails
8 discussions with judges on site who are in an excellent
9 opportunity to view the work of the programmed attorneys that
10 practice before them. It also entails a review of systems of
11 programs, systems of oversight, whether the program has a
12 system in place with the litigation director or the managing
13 attorneys or the executive director overseeing the work of
14 the program attorneys and paralegals, conflict systems, all
15 kinds of systems in that regard.

16 CHAIRMAN ASKEW: And the standards?

17 MS. FULLER: Well, as I mentioned, I think we're
18 relying on the LSC Act, the LSC regulations. In terms of an
19 actual set of nation-wide standards that's been applied to
20 this process, no.

21 CHAIRMAN ASKEW: Susan was asked at the last Board
22 Meeting about the ABA Civil Standards for Providers. Those

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1 are not utilized by monitoring teams; is that correct?

2 MS. FULLER: No, they are not currently utilized
3 directly by monitoring teams; however, we do use a lot of the
4 information that's in those standards in our process. I
5 think that a number of those standards are directly related
6 to certain provisions of the Act and the regulations, as
7 well.

8 CHAIRMAN ASKEW: The reauthorization bill, the one
9 that's pending, calls for the Corporation to adopt standards
10 for monitoring. The standards you currently have, from my
11 review, are mostly procedural guidelines or give deadlines,
12 steps that you go through in conducting a visit. How far
13 along would you be in developing standards for monitoring if,
14 in fact, the reauthorization bill becomes law?

15 MS. SPARKS: The draft standards that you're
16 referring to, Bucky, we sent out in August. Some of the
17 comments we received, particularly from Alan Houseman and
18 Linda, gave us some more ideas. That's what the information
19 we provided to you on the guidelines for the assessment of
20 compliance and performance, we see as an integral part of the
21 standards in the next cut, the attachment to that, if you
22 will, to lay out the standards of our review.

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1 I think that maybe gets closer. Where we are in
2 that process is I think we need to sit down with
3 representatives of the field and their representatives and
4 keep working at them. I think the reason we've been working
5 on them for about a year, I think we are well along in that
6 process, and I don't think we're that far away.

7 CHAIRMAN ASKEW: Lauren, are you responsible -- let
8 me ask, do other members of the committee have questions?

9 MS. ROGERS: You mentioned that you were looking at
10 the comparative demonstration project results. I understand
11 that you used a peer review process in that comparative
12 demonstration, and I wondered whether you found that to be
13 effective.

14 MS. FULLER: Yes, I have been a participant in that
15 project, and I think it is something that's been effective
16 and I think it's something that we're all looking very
17 closely at to see what its continued effectiveness will be
18 and how it will play out over the next 18 months when we do
19 the return visits.

20 CHAIRMAN ASKEW: Doug, did you have a question?

21 MR. EAKELEY: Your first goal, Lauren, for 1994,
22 was to try and -- did I hear you correctly?

1 MS. FULLER: I'm not sure it was a goal.

2 MR. EAKELEY: Objective or whatever it was.

3 MS. FULLER: One of our thoughts for the future,
4 yes.

5 MR. EAKELEY: But it was to compress the period for
6 assessment?

7 MS. FULLER: For shorter report formats, yes.

8 MR. EAKELEY: Just report formats?

9 MS. FULLER: And reports themselves.

10 MR. EAKELEY: The duration and intensity of the
11 visits has been a source of concern over the years, and I'm
12 just wondering whether you are thinking about or looking at
13 going beyond compression of formats. For example, there was
14 a debate for some time about whether or not requests for
15 information or documents needed to be guided by a reasonable
16 and necessary standard or something like that.

17 Just getting back to a user friendly approach, or
18 not back to it, but is there a way to make the visits less
19 expensive for the corporation, less intrusive for the
20 grantee, while assuring the corporation that we're
21 discharging our responsibilities?

22 MS. FULLER: Absolutely. I think we're working

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1 very much in a direction of trying to find ways to spend less
2 time on site and be less intrusive, as you say. Susan can
3 talk with you a bit about some of the studies we've done and
4 cluster analysis and where we're going in that respect, which
5 I think will lessen the amount of time on site.

6 We have gone to four types of visits now, some that
7 are cycle and time driven, as well as some that are issue
8 driven, in an effort to try to reduce that on-site visit
9 time.

10 MR. EAKELEY: Thank you.

11 CHAIRMAN ASKEW: I don't want to interrupt your
12 presentation, but I'm afraid I may miss something if we move
13 on. Who is responsible for recruiting, hiring, consultants
14 and staff to do the visits? Is that Lauren?

15 MS. SPARKS: Recruitment of consultants is
16 primarily driven out of the Office of Human Resources.

17 CHAIRMAN ASKEW: Okay.

18 MS. SPARKS: You'll notice in the materials we
19 provided to you that our last formal recruitment, we
20 recruited Jack to do that, to tap into some more legal
21 services, the legal service community, but basically, it's
22 out of the Office of Human Resources, and they are

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1 responsible for the recruitment aspect and the screening of
2 resumes. That was instituted about three years ago to ensure
3 proper segregation of duties. Those resumes were provided to
4 us and then, Lauren, your shop.

5 MS. FULLER: We then conduct the reviews of the
6 different applicants and we request writing samples. We
7 request at least two writing samples from each applicant as
8 well as authorization to contact their references. At that
9 point, we would then refer it back to Human Resources to
10 check the references of each applicant.

11 CHAIRMAN ASKEW: Is there a prohibition on hiring
12 especially lawyers, but anyone with Legal Services
13 experience, to be a consultant in the monitoring evaluation
14 process?

15 MS. FULLER: I think the closest thing we have to a
16 prohibition is simply a two-year rule of separation that
17 we're now currently operating under, which I think Susan
18 mentioned to you at the first Board Meeting.

19 MS. SPARKS: There is no prohibition on people with
20 Legal Services experience except for this two-year
21 separation.

22 CHAIRMAN ASKEW: And that rule is because there's a

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1 perceived conflict if someone has been working on a program
2 within the last two years?

3 MS. SPARKS: It's historically based. On my desk
4 are the next 16 copies for the next mailing, to give you the
5 background of that. I think that's a safe analysis of the
6 historical context of that.

7 In late -- between '87 to '88, largely in response
8 to concerns from the field, the president at that time
9 expanded recruitment to included Legal Services attorneys,
10 and it was during that process that this two-year rule became
11 what was comfortable by management at that time.

12 We have continued that to date and from my
13 viewpoint, we have that in place to ensure independence and
14 avoid any appearance of a conflict of interest. We have also
15 in the last two years increased the number of former Legal
16 Services attorneys. Now they comprise about one-third of the
17 attorney consultants who we use.

18 MS. ROGERS: When you use the word "rule," you
19 don't use it in its legal effect?

20 MS. SPARKS: No.

21 MS. ROGERS: It was a memo that established a
22 policy?

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1 MS. SPARKS: It is our policy. It is an internal
2 policy. We have selection criteria that are certainly within
3 the purview of the office to change it.

4 MS. ROGERS: And when you use "conflict of
5 interest," you use that in the sense of that was the prior
6 Board's view of the policy, I take it, in that the
7 comparative demonstration project was conducted without any
8 conflict of interest in the ethical sense, problems with the
9 use of peer review?

10 MS. SPARKS: That's correct.

11 CHAIRMAN ASKEW: You said one third of the people.
12 I did review the resumes of both staff and consultants that
13 you sent me, and it looked to me like I think it was either
14 58 or 59 resumes for both legal, fiscal and management
15 consultants. Six had prior Legal Services experience. Now,
16 some had other nonprofit experience or things maybe related
17 to Legal Services, but direct Legal Services experience,
18 approximately, I think there were six out of those 59.

19 MS. SPARKS: And of the consultants, most of the
20 attorneys, most of those who had Legal Services experience
21 are attorneys, which is -- that's where the third comes from.

22 CHAIRMAN ASKEW: They were all attorneys, the six.

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1 MS. SPARKS: Since that time in October, we have
2 added an additional three through training that weren't
3 incorporated in the time frame.

4 CHAIRMAN ASKEW: Have you had trouble recruiting
5 prior Legal Services people to do this work?

6 MS. SPARKS: We've had trouble getting them on
7 board due to not being able to train. We do it through the
8 telephone and availability is always an issue when you try to
9 get consultants. Right now we're using nine that are fairly
10 regularly available. It appears at this point we have talked
11 with Jack about another recruitment.

12 CHAIRMAN ASKEW: Okay.

13 MS. SPARKS: What you need to balance it with is
14 you need to have work to provide to them once you bring them
15 into the pool. So, with a reduced visit schedule, you just
16 want to be able to use a consultant enough so that they make
17 the commitment, learn the material, and then become someone
18 who can produce helpful reports.

19 CHAIRMAN ASKEW: Jack wants to make one comment.
20 Ill just express a bias of mine. Especially if you're doing
21 quality assessments, I think it's very, very difficult to do
22 quality assessments with people who have never had any Legal

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1 Services experience. A peer review, I think, by definition
2 probably requires people who have had this kind of
3 experience, but even just in the regular monitoring process,
4 I think you would be better served to use more people with
5 prior experience. On the whole issue of the conflict, maybe
6 we can discuss at a later time whether there is a conflict,
7 but I would encourage you to be more aggressive about that in
8 the future. Jack?

9 MR. BROOKS: Thank you, Mr. Chairman. Ms. Rogers
10 hit on a point, very observant, about the peer review is for
11 the comparative demonstration project, and fortunately we
12 were able to receive about 80 some odd resumes from people
13 out in the field who wanted to participate in the peer review
14 part of the program.

15 I have to say at this point that, from what I've
16 seen, I think we're going to have a lot more attorneys with
17 Legal Services to add to their consultant group, based on
18 what I've seen and what I've heard from the project directors
19 who have been either monitored by these people or have been
20 in contact with them. I know of nine right off the top of my
21 head that I would love to have as consultants, so that the
22 pot is growing.

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1 CHAIRMAN ASKEW: I interrupted your presentation.

2 Do you want to go back to where we were?

3 MS. SPARKS: I think we'll move on to Paul.

4 Presentation by Mr. Paul Mensah-Kane

5 MR. MENSAH-KANE: Good afternoon. For the record,
6 my name is Paul Mensah-Kane and I'm the Manager of the Review
7 and Analysis Division. I have a degree in Accounting and
8 Financial Management. Before I joined the Corporation, I
9 also have a background in auditing and banking. Before
10 joining the Corporation, I was an accountant for a consultant
11 doing business with the federal government.

12 I became associated first with the Corporation in
13 1986 as a fiscal consultant, and then later on served as team
14 leader. I've done over about 75 visits involving about 50
15 grantees. In 1998 (sic), I joined the Corporation as a staff
16 member, senior auditor. In 1991, I was promoted to my
17 current position.

18 My primary responsibility involves monitoring the
19 desk reviews of independent audit reports. This entails
20 verifying that LSC funds are properly reported, identifying
21 or resolving any discrepancies in all the reports in terms of
22 format and presentation, following up on any findings from

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1 independent auditors regarding the grantee reports, and also
2 we identify deficits and fund balances and PEI expenditure
3 requirement shortfalls to the Office of Program Services for
4 further action.

5 Together with my Assistant Manager, I also oversee
6 the review of initial documents submissions from the field
7 for on-site visits, and also the preparation of briefing
8 books and work plans for our team leader's review. One of
9 the key elements of the Corporation's focus on managing its
10 resources has been our attempt to streamline and also control
11 the pre-site preparation for the visit.

12 We have realized the better our pre-site
13 preparation, the more focused our visits are, and the less
14 time we need on site. Pre-site preparation also involves
15 coordinating and getting in touch with program directors in
16 terms of scheduling staff, and making sure they know what to
17 expect. It helps us to plan better and it helps, also, the
18 programs to plan better.

19 In my position as the manager of this division,
20 I've tried to bring into the process a careful balance
21 between what the Corporation needs to know and the program's
22 apprehension and sometimes fear about what to expect. I

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1 would realize there is stress on both sides, and to the
2 extent that we can alleviate that, we do that.

3 I explain to programs that there is a reason for
4 wanting something and there is no one way. One of the assets
5 I bring into this office is that effective monitoring
6 requires that we listen, listen to program's reasons and ask
7 questions, rather than assume answers. The point is to help
8 grantees do what they do better, and help those who are not
9 doing it better find a better way to do something.

10 For example, I have no concerns about going to my
11 Director and making my case as to why we should visit a
12 program sooner than later. It just depends on what I'm
13 seeing in my view of audit reports and monitoring reports,
14 also.

15 My Division also serves as a resource for programs
16 and auditors. We encourage programs to feel free to call us
17 with questions. We find that through these questions we are
18 able to resolve a lot of issues. A prompt response by phone,
19 we have found, helps the programs to realize that it's okay
20 to ask, that we are human. They can trust us, and we trust
21 them also, and that we understand and we do care.

22 It is always gratifying to be told by one program

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1 that another program has suggested that they call us because
2 we have been helpful. I realize, also, that what most of the
3 field knows about the Corporation is what they see with our
4 reviewers. To the extent that we can make a difference, it
5 becomes a part of my Division's focus.

6 I'm on the phone with programs every day resolving
7 issues, clarifying issues, and resolving concerns. Although
8 our relationship with the programs is changing, I believe
9 that some things don't change; that debits and credits have
10 to balance with a good audit trail. These fundamental
11 requirements of accounting and financial management provides
12 a professional and objective standard of accountability.

13 Over the past two years, I have seen a lot of
14 changes in our relationship with the programs which has
15 benefitted both sides. We are listening better and grantees
16 are sharing concerns with us better, and also seeking our
17 assistance. We are reaching out to directors more to help
18 them understand the fiduciary responsibilities, which some of
19 them take for granted.

20 We are assisting programs in accounting for their
21 funds in a more effective and efficient way through
22 computerizing accounting systems, implementing better budget

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1 and long-range planning and cash flow analysis, and ensuring
2 that financial training is provided for managers and
3 directors.

4 These developments are so new to many programs, and
5 much more work is needed to bring all the programs up to the
6 highest standards that is being expected of all nonprofit
7 agencies in the '90s. We know we have a long way to go, but
8 I think we're getting there. Thank you.

9 CHAIRMAN ASKEW: Thank you, Paul. Does anyone have
10 any questions of Paul?

11 MR. EAKELEY: Does the Comptrollers Office provide
12 or fulfill an audit function, as well, or is it your office
13 that provides, among other things, an audit function with
14 respect to grantees?

15 MR. MENSAH-KANE: I have to ask you to define what
16 you mean by audit function. We get --

17 MR. EAKELEY: How are you using the term?

18 MS. SPARKS: We don't do auditing.

19 MR. EAKELEY: I thought I heard the word "audit" a
20 couple of times. That's why I asked the question.

21 MR. MENSAH-KANE: We get the audits from the
22 grantees.

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1 MR. EAKELEY: Yes, and you review them?

2 MR. MENSAH-KANE: And we do desk reviews, right.

3 MR. EAKELEY: Now, does the Comptroller's Office
4 also review them?

5 MR. MENSAH-KANE: No, no.

6 MR. EAKELEY: So, in terms of Legal Services
7 Corporation review of independent audits of grantees, that's
8 within your division?

9 MR. MENSAH-KANE: Correct.

10 MS. SPARKS: Just to clarify, there are two things
11 that are happening on the audits that come in from our
12 grantees. We do the desk reviews. There is also a quality
13 assurance review that is handled by the Inspector General's
14 office, so independent audits are provided to the Inspector
15 General.

16 MR. EAKELEY: Just another unrelated question. To
17 what extent do you find the issue of accounting for private
18 attorney involvement funds coming up in your desk reviews?

19 MR. MENSAH-KANE: Relatively small. Most programs
20 I think attempt to meet that requirement and if they don't,
21 there's a procedure for asking for a waiver from the Office
22 of Program Services.

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1 MR. EAKELEY: Okay.

2 CHAIRMAN ASKEW: Do you have occasion very often to
3 disqualify a local auditor? That is within your authority,
4 is it not?

5 MS. SPARKS: It's the Inspector General's authority
6 to review any complaints on the quality of the work of the
7 auditor.

8 CHAIRMAN ASKEW: Okay.

9 MS. SPARKS: If we see concerns in our work, we'd
10 make that referral to the Inspector General.

11 CHAIRMAN ASKEW: Wasn't that formerly a part of the
12 Audit Division's work before the divisions were merged?

13 MS. SPARKS: Yes.

14 CHAIRMAN ASKEW: But that's now been shifted to the
15 Inspector General?

16 MS. SPARKS: Yes.

17 CHAIRMAN ASKEW: Any other questions?

18 MS. ROGERS: Yes.

19 CHAIRMAN ASKEW: Nancy.

20 MS. ROGERS: I have been trying to understand where
21 your work ends and the Inspector General's work begins, and I
22 wonder if there is any function that is done twice as the

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1 result of an overlap.

2 MS. SPARKS: In this audit area, we did work out a
3 memorandum of understanding, which I should have provided to
4 you, and didn't, in those materials, that lays out this
5 particular -- the audit-related functions. I don't think
6 there is any duplication in that area.

7 MR. McCALPIN: Let me follow that up. Are you
8 saying that the Inspector General does performance audits of
9 individual grantee programs?

10 MS. SPARKS: No, I haven't even gotten into that,
11 Mr. McCalpin. The Inspector General does quality assurance
12 reviews of independent audits.

13 MR. McCALPIN: Independent financial audits?

14 MS. SPARKS: Yes, sir.

15 MR. McCALPIN: But the Inspector General does not
16 overlap you in the sense of doing operational audits of
17 grantee programs.

18 MS. SPARKS: To date, I have not encountered that.
19 I do not think I am qualified to answer that question,
20 because I think that the Inspector General could do a
21 performance audit of our programs. I don't think it has
22 happened to date. I think he could.

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1 MR. McCALPIN: Of an individual program?

2 MS. SPARKS: I would defer to him on further
3 answering your question.

4 MR. McCALPIN: I was just trying to explore your
5 overlay.

6 MS. ROGERS: Another question, that is, how do you,
7 assuming there's not a complaint or you don't notice
8 something in a report that causes you concern, how do you
9 decide how often an on-site fiscal review needs to be done?

10 MS. SPARKS: We don't have any time frame on an on-
11 site fiscal review. Each of our reviews entails a fiscal
12 review, so where we have a monitoring and evaluation review
13 which is somewhat time driven, after 18 months, it begins to
14 be on the computer, but now we're probably at about 28 to 32
15 months, so that would entail a fiscal review.

16 A review that would be totally fiscal would be
17 based on concerns we're seeing either in a monitoring report
18 that Rich's office has looked at, sees concerns, refers it to
19 Paul. Paul would look at that and, as he said, he has no
20 hesitancy to coming in and saying, "We need to go on site and
21 look at these books."

22 MS. ROGERS: When you extended those on-site review

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1 periods by about 14 months, did any new problems arise? In
2 other words, did you find that there was more fraud or more
3 something else that you didn't detect, as a result of
4 lengthening the period between on-site reviews?

5 MS. SPARKS: Just to clarify, we don't look at
6 fraud. Any of that would be referred to the Inspector
7 General. We would review the audits that come in on a yearly
8 basis. I would tell you that nothing has jumped out at me,
9 but programs that are further along in the cycle are there
10 because the monitoring of their program said it was a good
11 program, and that it was meeting its requirements, and that's
12 why it's further along on the cycle, so the two go hand in
13 hand.

14 MR. BRODERICK: Does that mean that if budget
15 constraints required us to look at finding a means of
16 savings, that we could possibly explore some further
17 lengthening of the review cycle?

18 MS. SPARKS: Yes. There are programs now that,
19 based on their last visit and our continuing in-house review
20 of them, are at 38 and 39 months. At some point, you want to
21 go back and visit, but those programs that, let's say, are at
22 26 months and we're comfortable going to 38 months, that's

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1 where you could have some savings.

2 MR. EAKELEY: That also relates back to the desk
3 review process and the quality and effectiveness of that?

4 MS. SPARKS: That's right. I think you can go
5 longer between visits if you do balance that, for sending
6 that one or two-person team if that problem arises, and I
7 think you can do that, just allocating your resources more
8 effectively, but at the same time saving the bulk of those
9 resources.

10 MR. EAKELEY: Would it be possible to lengthen site
11 visits and encourage regional peer review in the interim?

12 MS. SPARKS: That's a new approach that would be,
13 you know, we can always learn from it. We could give it a
14 shot. We could try it.

15 MR. EAKELEY: Actually, I was thinking somewhat
16 irreverently of Howard Dana's suggestion that we require as
17 an additional grant condition that every executive director
18 from a grantee give us one week for a peer review of another
19 program.

20 MR. BROOKS: We need three.

21 MR. EAKELEY: We need three weeks? Well --

22 MS. SPARKS: Maybe we could just ask for volunteers

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1 first and then go to them if we don't get any.

2 CHAIRMAN ASKEW: Yes. I'll expand a little bit on
3 Doug's question in the sense that if, as a result of the
4 audit appropriation committee review and budget discussions,
5 we find that we do need to find some cost savings this year,
6 what we'd look for is a way to save some money but still be
7 able to ensure, the Corporation being able to ensure, to its
8 grantees, to the Congress and to everyone else, that we are
9 still providing an appropriate level of oversight, an
10 appropriate level of compliance review, that sort of thing.

11 What I would look to you to -- what I would ask you
12 is: Can we do that? Can we find these ways of cost savings
13 beginning fairly soon, but still maintain an appropriate
14 level of what we have to continue doing in the way of
15 oversight?

16 MS. SPARKS: I think our four-visit types that
17 we've put in place are in contemplation of that. I think as
18 long as the Corporation has the flexibility to go to the
19 program, that the facts say there is a problem, which is not
20 the most effective way of monitoring and evaluating programs
21 and program performance.

22 Keeping that in mind, you can meet, in my view, a

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1 good part of your statutory responsibility, so the answer is
2 yes, in terms of desk reviews. We need to responsibly review
3 these audits and if problems arise, we need to be able to
4 responsibly visit the program.

5 Complaints, we can, of course, continue to do at
6 the same level, because that doesn't generally involve on-
7 site resources. Following up with programs where we would
8 need the assistance of our programs, there may be more
9 documentation you might want or more paper, if you're going
10 to not use that on-site visit.

11 I think in that sense, with our relationship with
12 programs, that can work, and that's why we -- our number of
13 compliance reviews, we did one last year. We did maybe two
14 or three the year before that. That's why that has gone to
15 such a minimal level.

16 Where you want to just grapple with is this
17 expanding number of months, so if you might want to say,
18 "Susan, let's target the resources at the 36-month mark,"
19 because when you go on site and it's been 36 months, you're
20 not all of a sudden looking at a \$3 million grantee. You're
21 looking at a grantee that has expended \$9 million.

22 But, we can put a process in place, some status

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1 reports. I'll be talking a little bit later about self
2 assessment tools, and we can put that in place, knowing that
3 that paper requirement may increase, but we can certainly
4 save some money and still meet our obligations.

5 CHAIRMAN ASKEW: Okay.

6 MS. ROGERS: Susan, to the best of your
7 recollection, what was spent for the consultant part of these
8 reviews last year?

9 MS. SPARKS: I had all that in my head the last
10 meeting. Let's just say the proposed budget for this year
11 was about the same, \$420,000, maybe --

12 CHAIRMAN ASKEW: 460.

13 MS. SPARKS: 460? Okay.

14 CHAIRMAN ASKEW: Interestingly enough, the travel
15 and per diem was practically the same. I mean, it was pretty
16 close to equal, so if you cut one, you're cutting the other,
17 probably.

18 MS. SPARKS: That's right.

19 MS. BATTLE: Have you had any attrition of your
20 staff over the last year so that you've got positions that
21 were part of the budget based on those people being in the
22 positions and they're no longer there?

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1 MS. SPARKS: Yes, we've had some attrition. I
2 think we've probably had seven people leave over the last
3 couple of years. We have not replaced them, and we've been
4 able to maintain our workload. My sense is we can continue
5 the productivity and the quality of our work for the next
6 year without filling a couple of vacancies.

7 I'm concerned about bringing another auditor, but
8 from the standpoint of our on-site work, because we're going
9 on shorter visits, staff can do two visits, where before they
10 could do one, because maybe they're only going to be on the
11 road for two or three days at a time. Then we can ask them
12 to do a little more traveling, so that's also a big savings
13 when you send a staff person versus a consultant.

14 MR. EAKELEY: An issue came up in the last
15 committee meeting about the fact that your division has its
16 own -- or you have, or the division director has her own
17 counsel. We had some discussion about the potential for
18 conflicting interpretation or applications of the same
19 regulations over time. How long has the division had its own
20 counsel? How did that originate?

21 MS. SPARKS: I believe Keith Simmons has been in
22 that position for the last two years. The division has

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1 always had attorneys. That was the first time it was ever
2 formalized as a counsel to the director.

3 The primary responsibility that he has is under the
4 regulations, Part 1630, there is a process in place, where
5 the Corporation can question cost. It's an administrative
6 process that requires that to be done by my office. Keith
7 handles all of that in preparing the Notices of Questioned
8 Costs, and working with the programs informally to resolve
9 those or to recover funds, so that's his primary
10 responsibility.

11 During the course of our on-site work and, Rich,
12 join in on this subject.

13 CHAIRMAN ASKEW: Rich is going to run out of time
14 before he even starts to talk.

15 MS. SPARKS: Rich is going to have his time and he
16 can come in on this. In the CAP process, in the on-site
17 review process and in the complaint process, we all
18 understand that in the event there is an issue that arises
19 that we don't feel comfortable with, and that we feel the
20 program is saying "A" and we're saying "B" and we're not
21 quite sure what the reg means on the issue, we routinely make
22 referrals to the Office of General Counsel for guidance. We

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1 probably in the last year have made 30 or so referrals for
2 clarification.

3 Keith is involved in writing requests for opinions.
4 Oftentimes, given the resource problems in other divisions,
5 Keith may lay out some research of his own, that this is his
6 sense of the issue.

7 MR. EAKELEY: Susan, I think the source of my
8 concern was the advice we received, which was that division
9 counsel has at times or often would render legal opinions in
10 response to external inquiries, not refer them to the Office
11 of General Counsel, but actually render opinions or, in
12 effect, render advice that would yield a position vis-a-vis a
13 field program. Is that not accurate?

14 MS. SPARKS: I've never characterized it in that
15 way.

16 MR. EAKELEY: No, it is definitely my
17 characterization but that's my understanding.

18 MS. SPARKS: I think to the extent that Keith, I
19 mean Keith doesn't -- all of the 1630s, I mean, he would have
20 his view of the 1630 under the regulation, so to the extent
21 that that could follow, I think you're right. The fact that
22 we asked for corrective action to be taken in certain areas,

1 we are making an interpretation and asking a program to take
2 corrective action.

3 MR. HANNIBAL: But typically, if the program
4 responded with a contrary view of the regulation and
5 expressed a desire that the General Counsel's Office review
6 it, of course, we would refer that to the General Counsel's
7 Office.

8 MS. BATTLE: But I guess what we are hearing is
9 that if that request comes from the field, that it be
10 referred to General Counsel, that you do. If it doesn't come
11 from the field that it be referred, do you routinely refer
12 those, as well.

13 So that the concern that we have as a Board is that
14 there be one voice that speaks to interpret the regulations,
15 so that we don't send contrary messages to the field as to
16 how the regulations ought to be interpreted. We are trying
17 to get a sense as to whether, in implementing your function,
18 you are sending potentially one message when General Counsel
19 might have another view, and we want to really see if there's
20 a way to clarify that.

21 CHAIRMAN ASKEW: Let me ask this. If there is a
22 dispute on site between a monitoring team leader and a

1 program over access to certain documents -- somebody just
2 decided to plug in. They found the plug. I've never been
3 told my voice is too low. It's unique.

4 If there is a dispute on site between a team leader
5 and a program over access to certain documents, not even a
6 regulatory issue so much as access to certain documents,
7 client files, employee records, that sort of thing, and the
8 dispute comes to your attention, are you required or do you
9 refer that dispute to General Counsel for an opinion about
10 how your division is deciding to pursue this, or with your
11 own counsel, decide how you're going to handle that issue?

12 MS. SPARKS: Four years ago, the answer was yes.

13 CHAIRMAN ASKEW: Yes, you referred it?

14 MS. SPARKS: Yes. Under an old resolution of the
15 Board that this whole issue was at a heightened level, that
16 would have been referred to the Office of General Counsel
17 and, in fact, under that resolution, there were some actions
18 undertaken by the Corporation.

19 In the last two years, access to records has not
20 been a major problem. If a team leader calls me from site
21 and says, "We're not getting original fiscal records because
22 client names are in the fiscal records," we discuss it and

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1 the scenario would go: Ask the program if they could put
2 tape over the client's name, get some substitution so we
3 could get an audit trail and see if that works.

4 I don't ask for guidance on that. That's just our
5 practice. We don't look at client files, so that's not an
6 issue. It just hasn't come up in the last two years that it
7 has even needed to go to that level. It's much more -- the
8 interaction with the Office of General Counsel is much more
9 in the corrective actions process, where a program believes,
10 or we see an issue that's coming up repeatedly and we seek --
11 a good example, let me just give you an example.

12 Should a client grievance procedure be explained to
13 an applicant when they call in on the telephone? Well, the
14 regulations don't contemplate telephone intake on client
15 grievance procedures. So, when we start seeing a pattern of
16 this concern, we ask for an OGC opinion. We got an OGC
17 opinion. Then, we tell our programs that that is the
18 interpretation, that in this instance, they needed to do
19 that, so that's a routine function.

20 When there are situations where we might ask for an
21 OGC opinion, the opinion comes and we don't agree with it, we
22 would ask for reconsideration, setting forth our concerns,

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1 and we would have the Counsel look at that. He looks at all
2 the OGC opinions and would raise any issues that he'd have
3 with me, and I would encourage him to write a memorandum on
4 that.

5 MS. BATTLE: I just, from a structural standpoint,
6 wonder if all of the divisions, including yours, could
7 function with legal counsel coming from OGC? I mean, in
8 other words, structurally, so that the way that we've got our
9 staff organized would allow any of the divisions to have
10 someone who is assigned from the OGC to provide them with any
11 kind of legal direction that they need.

12 CHAIRMAN ASKEW: It's time for me to be gentile.
13 We're about 10 minutes over. We want to hear from Rich and
14 then, Susan, I'd like maybe to conclude this by you speaking
15 some about the future, your perspective on where we might go
16 in the future.

17 Presentation by Mr. Richard Hannibal

18 MR. HANNIBAL: Thank you. My name is Rich
19 Hannibal. I'm the Director of the Compliance Division. I'd
20 like to begin by providing you a little information about my
21 background, particularly with regard to my involvement in the
22 mission of providing legal assistance to low income clients.

1 I received my law degree in 1982 actually just a
2 few blocks from here over at Georgetown Law School, but my
3 first exposure to Legal Aid as a career choice occurred when
4 I was in college when I did a law internship with an attorney
5 in the inner city of Chicago, who was running a storefront
6 Legal Aid clinic.

7 Upon completion of law school, I spent seven years
8 doing litigation with a small law firm here in D.C., whose
9 mission was to serve primarily low income clients. We
10 attempted to do that through an innovative delivery system,
11 that being charging clients on a sliding scale based on what
12 they were able to afford.

13 Although I handled a variety of types of cases, the
14 bulk of my work was in the housing area, representing tenants
15 and tenant groups in D.C. Superior Court and in rent control
16 cases before the local administrative agency. Our law office
17 was located in a building operated by the Community of Hope,
18 which is a nonprofit, social services operation that provides
19 shelter for the homeless, as well as other services here in
20 D.C. I was legal counsel to the Community of Hope with
21 regard to much of the operation of its homeless shelter.

22 During my time at the firm, I worked closely with

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1 attorneys from the Neighborhood Legal Services, our LSC-
2 funded program here in the city, as well as attorneys from
3 other legal aid organizations, in cases where we represented
4 tenants in the same buildings and worked together on
5 strategies of litigation.

6 Moreover, I regularly attended and participated in
7 working groups that met at the Neighborhood Legal Services,
8 to address the more global issues that are facing low income
9 tenants. Seven years ago, I began doing some occasional
10 consulting work for the corporation in terms of evaluating
11 program performance. In 1989, I was hired by LSC in its
12 Monitoring Division and then in 1991, I began managing the
13 Compliance Division.

14 With regard to our current responsibilities, the
15 Compliance Division basically has two major functions, that
16 being the review and resolution of complaints and following
17 up on report findings to ensure programs take necessary
18 corrective action.

19 With regard to the corrective action process, prior
20 to the issuance of final reports, the Compliance Division
21 reviews the reports to ensure that the conclusions are
22 factually supported and that they are consistent with LSC

1 regulations. Moreover, the Division prepares a cover letter
2 which highlights areas upon which we will follow up.

3 With regard to certain violations, we specifically
4 request that the programs provide us information reflecting
5 that corrective action has been taken. With regard to other
6 items that may affect program performance, we may simply
7 request that the program provide us an update.

8 By this means, we are able to follow up on a
9 variety of matters at a relatively minimal cost. In most
10 cases, after one or two letters back and forth with programs,
11 we are able to reach the conclusion of a corrective action
12 process.

13 I believe we have come a long way since I was first
14 associated with the Corporation. At that time, in some
15 cases, a review team might go on site and find concerns
16 identified in a prior report had not been addressed. The
17 follow-up process that has been developed and refined over
18 the past few years ensures that necessary corrective action
19 has been taken, while at the same time doing so in a
20 relatively informal manner.

21 Also through the corrective action process, we
22 identify areas in which the programs can benefit from

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1 assistance, such as developing a needs assessment or
2 improving PAI recruitment or its efficiency or possibly
3 strengthening case review systems. We coordinate, also, with
4 other Divisions as necessary regarding these types of issues
5 that have been identified in the follow-up process.

6 Once the corrective action process is completed, it
7 actually feeds then back into the Review and Analysis
8 Division, which reviews the corrective action issues in the
9 future when they prepare for the next on-site review for the
10 next time they go in that cycle.

11 The second significant function of our division is
12 the review and resolution of complaints. We review about 250
13 complaints about our programs each year and they come in
14 basically four different areas, the first being denial of
15 assistance; the second having to do with the quality of
16 assistance of our programs; the third relate to complaints of
17 opposing parties, and these typically involve either an
18 allegation of harassment by our programs or that a program is
19 representing a client who is financially ineligible for
20 service; and, finally, those complaints that relate to
21 program management, and these typically come from current or
22 former staff members as well as Board Members of our

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1 programs.

2 Through our review of our complaints, we are able
3 to assure the general public and Congress that our programs
4 are conducting themselves in compliance with the Act and
5 regulations. This is what we find in well over 90 percent of
6 the complaints that we review. In addition, through the
7 complaint process, we are able to ensure that programs are
8 providing clients with their grievance rights, as outlined in
9 Part 1621.

10 Furthermore, on occasion, we are able to identify
11 areas requiring corrective action. For example, last month,
12 as we concluded a review of a complaint, a complaint came in
13 that the program had taken over three months to make a case
14 acceptance decision and eventually declined the case.
15 Although there were some extenuating circumstances, as a
16 result of the complaint, we made certain recommendations to
17 the program just to strengthen their case acceptance
18 oversight.

19 In rare cases, complaints have led to on-site
20 compliance reviews. Most complaint reviews, however, are
21 resolved through correspondence and the occasional telephone
22 follow-up. Moreover, we strongly encourage complainants to

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1 work with programs to resolve their concerns, where possible
2 and appropriate.

3 One recurring problem we face is that complainants
4 often think that we have more authority than we do. It is
5 not unusual for us to get calls requesting that we demand
6 that a program provide them an attorney or replace the
7 attorney that they have.

8 To address this situation, we are attempting to
9 better educate complainants about LSC regulations as well as
10 our role in the complaint review process. This past year,
11 we've developed a one-page informational sheet describing
12 LSC, which we provide to complainants. Through this
13 informational sheet as well as our communication with
14 complainants, we hope to reduce complainants' confusion, as
15 well as use our resources wisely.

16 In conclusion, through the complaint review
17 process, we seek to ensure that programs maintain the highest
18 quality of service and that clients obtain the best possible
19 service. Thank you.

20 CHAIRMAN ASKEW: Rich, let me ask you something
21 just to clarify something about complaint investigation.
22 This is something that used to be quite controversial with

1 the field a few years back, and I think you may have policies
2 in place now that change this, but a few years back, I think
3 there used to be allegations, at least, that the Corporation
4 investigated complaints without giving notice to the program,
5 frequently investigated complaints that did involve
6 violations of the Act or regs, and would issue findings
7 and/or conduct interviews without the program ever being on
8 notice that a complaint had been filed against it.

9 Under your current practices and policies, does
10 that occur? Does the program always get notice that a
11 complaint has been filed and given the opportunity to explain
12 or respond to the complaint?

13 MR. HANNIBAL: Programs do get notice of complaints
14 unless they are so baseless that they are not even worthy of
15 our further inquiry. Otherwise, we would advise the program.
16 We would indicate that we're reviewing a particular
17 regulation at issue and their compliance with it, and would
18 give them an opportunity to respond. Then, of course, when
19 we would conclude our review, we would provide them with a
20 copy of the letter of findings to the complainant or a
21 separate letter of findings.

22 MR. McCALPIN: Is that true even if the complaint

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1 comes from a member of Congress?

2 MR. HANNIBAL: Typically, the complaints that we
3 receive from the members of Congress are on behalf of
4 constituents. Often, we've already gotten a separate letter
5 from the constituent. We would provide a letter of findings
6 to the program in those cases.

7 MR. McCALPIN: Not only of findings, but would you
8 tell them as soon as you got notice of the complaint?

9 MR. HANNIBAL: That would --

10 MR. McCALPIN: Would you tell them that the
11 complaint had been filed?

12 MR. HANNIBAL: Yes, as soon as we had gotten
13 necessary information from the complainant so we knew what
14 the issues are, we would then write to the program, indicate
15 we had received this complaint, these were the specific
16 allegations, and then we would request specific information
17 from them to address those concerns. Now, that process might
18 take two or three weeks before they would be notified as
19 we're doing our internal review but yes, they would get
20 notice very quickly.

21 MR. EAKELEY: Just on a related point, are there
22 procedures or policies in place to help screen staff from

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1 political pressure, whether it's from the Congress or I'm
2 assuming that some of your other complaints might come from
3 state or local government, who are on the receiving side of
4 legal services?

5 MR. HANNIBAL: Nothing that I'm aware of, other
6 than the Act and regs.

7 MR. EAKELEY: Is there a need for it?

8 MR. HANNIBAL: I don't believe so.

9 MS. SPARKS: A couple of scenarios come into mind
10 that may touch on that, and the Act and regs are quite clear,
11 when you can simply say to someone, "There is no authority
12 under the Act for us to do what you're asking us to do."

13 CHAIRMAN ASKEW: Okay, Susan.

14 MS. SPARKS: The future.

15 CHAIRMAN ASKEW: Right.

16 MS. SPARKS: Perhaps, some day, we'll talk about
17 the history.

18 CHAIRMAN ASKEW: That's right.

19 MS. SPARKS: Just to preface our discussion of the
20 future, when we were putting our thoughts together, we did
21 decide that one of the most essential lessons we've learned
22 is the importance of flexibility, creativity and

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1 adaptability. We've all been at the Corporation for awhile
2 and it's essential.

3 I've worked under seven presidents for the past
4 nine and a half years, and you do learn to remain flexible
5 but, more important than that, when you're working with 324
6 programs across this country with different delivery systems,
7 different populations, different priorities, different goals,
8 you have to remain flexible. Some ideas work well in some
9 programs, and they'd be silly in other programs, so that type
10 of flexibility we're used to and we recognize.

11 We also recognize the changing times and the nature
12 of our programs and our work here, so in that sense, some
13 thoughts for the future. We continue to believe that the
14 processes we've described to you can be streamlined and made
15 more effective, and we see that the people who benefit from
16 that are the clients. If the processes are more streamlined,
17 it means more time that the programs can be freed up to do
18 what they do best, which is to serve clients.

19 We see that we can streamline our processes to the
20 next level with increased automation and computer resources.
21 From a budget standpoint, what we would set forth is by
22 putting a little more money in some automation and computer

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1 resources, I think you'd spend a little less money going on
2 site. That's how we see those two playing hand in hand.

3 For example, through more systematic data gathering
4 capabilities, once we get that material in-house, we think we
5 can focus more on those programs needing oversight and
6 assistance and allocating resources to those programs, while
7 we can continue to fulfill our statutory obligation to those
8 who don't need that continuing follow-up and assistance.

9 MS. ROGERS: Susan, how much money invested in
10 computers can save how much?

11 MS. SPARKS: I never thought that question was
12 coming. I think at our last -- the last time we had this
13 conversation, it was: Could I please just have 10 more
14 networking cards that I think run \$100 a piece. But, going
15 beyond that, I see \$20,000 to \$30,000 as taking us to another
16 level, and that's -- those are the numbers that I keep in my
17 head.

18 We think that more enhanced automation would help
19 us to more readily, as Paul talks about this, the similar
20 problems faced by programs, we could have a system in place
21 that we can match that up quicker and get the help out to
22 programs who have found solutions to problems that another

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1 program is facing.

2 In addition to that, we'd like to continue our work
3 in the areas of measurement, with quotes around that, and
4 risk assessment. If you had heard some earlier about
5 history, you'd hear a little bit more about this concept of
6 risk assessment, but about a year and a half ago, we started
7 a two-phase project in then-MAC that I was trying to
8 envision, and we did complete phase one.

9 Phase one, we contracted with a Ph.D. in the area
10 who conducted a cluster analysis. The purpose of this
11 cluster analysis was to identify those grantees that shared
12 similar characteristics based on about 17 criteria, all
13 objective criteria, a number of poverty population, amount of
14 LSC funding, that kind, number of staff, number of branch
15 offices, so that we could see was there a statistically sound
16 way to have groups of programs, groupings of programs for
17 comparative purposes.

18 Now, that's only phase one, and it worked, and we
19 came up with about eight or nine clusters of programs that,
20 from a statistical standpoint, were comparable. Now, we
21 stopped at that point, but what I'd see in going to phase
22 two, all of this being built on an allocation of resource

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1 issue. This is not on who does best quality. In phase two,
2 you would introduce some other, more subjective, measures or
3 criteria. I would call them benchmarks of case closures, of
4 "Now, in this group, these programs, how many cases do they
5 close a year? How many clients do they serve? Staff turn-
6 over, how many staff leave per year?"

7 So, you could establish some means. Again, you'd
8 get your statistician in to establish the benchmark within
9 clusters. At that point, you then, at least, from some type
10 of statistically sound basis, would be able to see those
11 programs falling below those benchmarks that need to be
12 lifted up for the resources.

13 You could say to Congress, "We have a statistically
14 sound basis of allocating resources to these programs
15 underneath these benchmarks," so that you create the
16 documented trail that's necessary for accountability, but you
17 can further target your resources for evaluation purposes.

18 Right now, the evaluative measure that we use in
19 looking at programs' performance is trend analysis. We look
20 at performance of programs over time against itself. I think
21 that works real well, but expanding this a little bit will
22 enable us to say, "Should we go to Grantee A or Grantee B?",

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1 and sometimes that's the tough decision. We've been able to
2 narrow it down now to those kind of decisions, but we're
3 getting to the point with our resources that we are now
4 between "A" versus "B." This would give us some way to
5 address that, again a possibility for the future.

6 Self-evaluation. We've put a first draft of a
7 self-assessment tool on the table with our grantees. I think
8 further looking at that, working with the field
9 representatives, with CLASP, to get that tool to a point
10 where it becomes a useful document in terms of our work with
11 the grantees, I would recommend that we continue with that.

12 The monitoring standards, we've talked about. I
13 think we need to go forward on that. I think it's essential
14 that we continue to do whatever possible -- Paul touched on
15 it -- to strengthen local Board oversight.

16 A year ago in New Orleans, I reported to the Board
17 on the substantial progress made by many of our programs in
18 this area, in having strong Board oversight, but it's an area
19 that has to be nurtured and supported by the corporation.
20 Board Members change and we think that strong boards are not
21 only a key to effective local control; they are our key.
22 They are our partners in this, providing oversight at that

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1 level.

2 MR. EAKELEY: What are we doing now, other than
3 coming in from time to time to remind or tell Boards what is
4 expected of directors?

5 MS. SPARKS: During our on-site review, again, an
6 on-site presence allows for this. An on-site presence will
7 include interviews with Board Members to help teach them of
8 their responsibilities and, in a sense, to empower them, of
9 "You do have these responsibilities."

10 MR. EAKELEY: Do we have any materials, written
11 materials?

12 MS. SPARKS: There are -- a training video that was
13 done by Ellen's shop that was sent out to all programs.

14 MR. EAKELEY: For Board training?

15 MS. SPARKS: Yes. We need to continue to explore
16 ways to better assess the client satisfaction with the
17 services provided by our programs. I think this is one, if
18 not the most -- the greatest shortcoming of our current
19 process. This is a tough area to get into. I think with
20 your guidance, we can penetrate this area a bit.

21 MR. EAKELEY: I'm sorry to keep interrupting, but
22 our law firm regularly sends out a questionnaire that we ask

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1 our clients to send back, which asks in a variety of
2 different ways, "How are we doing? How well did we serve you
3 and how can we improve?" Does the Corporation do that with
4 its grantees?

5 MS. SPARKS: Oh, with our grantees?

6 MR. EAKELEY: Yes.

7 MS. SPARKS: How are they satisfied with our
8 services?

9 MR. EAKELEY: Yeah.

10 MS. SPARKS: Well, we do that every time we send
11 out a monitoring report and ask for their comments.

12 MR. EAKELEY: Okay. Do we know the extent to which
13 our grantees, the local programs, actually use client
14 satisfaction questionnaires or surveys with close-out of
15 cases or not?

16 MS. SPARKS: A number of them do. A number of them
17 do and I don't have the number.

18 MR. EAKELEY: Is there any uniformity to that?
19 Have we taken those examples and shared them with other
20 programs around the country?

21 MS. SPARKS: We do get the forms and they have
22 become part of our forms library. I don't know if those have

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1 been sent out by Ellen's shop, but --

2 MR. EAKELEY: I'm sorry to take up the time, but
3 this gets back to the Internet you mentioned before.
4 Ideally, I would hope we would all be on the same. We have
5 Lawyer Connect, but some E-Mail system. There so much of an
6 opportunity through communication to share the best of each
7 program with everyone else, and to see what's worked and how
8 it has worked and whether it's applicable to a given problem
9 or problem area.

10 This is part of it, too, of course, but I don't
11 know how expensive or far away we are from connecting each
12 local program electronically with the rest, and with the
13 corporation, but it can't be that far off if national law
14 firms are all inter-connected and now even separate law
15 firms. For a very small user fee, all you need is a modem
16 and fax.

17 MS. SPARKS: We'd encourage it. One other aspect
18 of the client satisfaction survey, just to throw out some
19 wild ideas, but in our meetings that we've had over the last
20 couple of years with other federal agencies, which has been a
21 real source of learning for us, as we met with GAO, HHS, HUD,
22 other agencies that do monitoring, we pick up ideas from

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1 them.

2 One of the agencies that we spoke to put in a
3 system where they developed the client satisfaction survey,
4 sent it out to their grantees, if you can see the analogy
5 here, and the grantees provided that to every client at
6 intake, and then it was mailed anonymously back to the
7 funding source, for a systematic data gathering activity
8 undertaken by the centralized office.

9 It's a thought, something we've kicked around, with
10 no further development, but it is an idea of how we can start
11 to penetrate client satisfaction with the services that we
12 find.

13 MR. EAKELEY: Ultimately, I think we're really
14 looking at not just client satisfaction but delivery of
15 something that goes beyond access, and justice delivery, I
16 suppose. There has got to be a way to measure that or gauge
17 that beyond client satisfaction, although that's got to be
18 the most important first step, but I don't know how you would
19 assess that.

20 But as we struggle with budget marks and what do we
21 request of the Congress and what are the reasons for it, I
22 predict over time we're going to be moving from -- I hope we

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1 get in our lifetime beyond minimum access. We're not there
2 now, but beyond minimum access to something beyond access and
3 the client's satisfaction is a part of it, but I don't know
4 what the other constituents would be of an answer there, but
5 anyway.

6 MS. SPARKS: In keeping with Ms. Battle's
7 committee, we all agree that we have got to clarify our LSC
8 regulations in a number of areas. Our work with programs
9 reflects the lack of clarity in certain regulations, and we
10 need your help in getting those regulations cleaned up. In
11 most instances, where our problems with the regulations are
12 simply reflects the fact that the regulations have not kept
13 pace with changing times. The regulations are outdated in
14 many ways, and that would certainly further our work and help
15 expedite our work.

16 Finally, I would just add for the future, as we do
17 every day, ongoing communication with the programs is
18 essential. It not only teaches us, but I think it is a key
19 to their improved performance and these communications need
20 to continue to be characterized by trust and openness,
21 because that is an invaluable source to improvement both at
22 the Corporation and at the field level. I will conclude

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1 there.

2 CHAIRMAN ASKEW: Thank you. That was a nice
3 statement to conclude it on and, in Doug's terms, the user-
4 friendly corporation still continuing to meet its oversight
5 responsibility, I would encourage you to continue in that
6 vein.

7 To the extent you are developing these new policies
8 or procedures like the monitoring standards or performance
9 standards that are in draft form now and the self-assessment
10 guidelines and those sorts of things, that you have an
11 interaction with the field, the representatives of the field,
12 to make sure that you have that trust and openness as you
13 move forward.

14 We'll continue to interact with you as this
15 committee continues its business. Thank you for your time.

16 MS. SPARKS: Thank you.

17 CHAIRMAN ASKEW: We're going to call the next panel
18 forward and stretch for just a moment while they're swapping
19 seats.

20 I mentioned at the beginning of this meeting that
21 we wanted to hear the perspectives of the users of our
22 services, I guess is the way to put it, and we decided

1 several weeks ago that it would be useful to bring some
2 people in from field programs, from the organized Bar, from
3 the client community, and from other interested groups, to
4 speak to this committee on the issues that are under
5 consideration today.

6 The first panel before us I have asked to speak to
7 the issue of the Corporation's current and past approach to
8 monitoring and evaluation. The second panel will be
9 addressing the future. Obviously, you may have some trouble
10 separating those things out.

11 I'm not foreclosing you from speaking to the
12 future. That's certainly quite welcome, if you'd like to do
13 it, but we really do want to get a sense from you, to the
14 extent possible, about what this process has been like for
15 you as users of these services, doing something like Doug
16 just mentioned, about a satisfaction survey.

17 We have tried to bring in people with different
18 perspectives to do this, so James Head, John Tull, John
19 O'Toole and Karen are here to help us with that. I'm going
20 to ask each of you before you start, to introduce yourselves,
21 give us a little bit of a brief history of your background in
22 Legal Services and then, as I understand it, James, you're

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1 going to go first. We had set aside 45 minutes for this
2 panel.

3 We're going to continue with 45 minutes with this
4 panel, even though we're behind schedule. So, I'll give you
5 something of a warning when we get close to the end, but
6 you're going to have the time that we promised you when we
7 invited you to come. So, let's start with you, James, and
8 each person, introduce yourselves, and then we'll come back
9 to you.

10 PRESENTATIONS BY JAMES HEAD, JOHN TULL,

11 JOHN O'TOOLE AND KAREN DENNIS

12 MR. HEAD: Thank you. I'm James Head and I'm the
13 Executive Director of the National Economic Development Law
14 Center, which is based in Oakland, California, and is one of
15 the national support centers that focuses on development
16 issues for the field.

17 I've been in Legal Services for 17 years as a
18 lawyer, having worked in Georgia Legal Services for a number
19 of years as my initial baptism, and then having worked down
20 in Miami Legal Services in Miami, Florida, for a number of
21 years before going out to the Law Center in California.

22 What I'd like to do is to spend a few minutes, and

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1 I will try to sort of not be repetitive of what you've
2 already heard, to maybe help our time along, but to spend a
3 few minutes putting some context to the issue of monitoring
4 and the charge of this committee and of the Board.

5 I'd like to first thank you for the opportunity.

6 CHAIRMAN ASKEW: Excuse me, James. I'll make it
7 clear. You weren't invited here because you were from
8 Georgia. Let's make that clear. Secondly, let me let the
9 other three panelists introduce themselves, so we'll know who
10 they are and then we'll come back to you.

11 MR. TULL: Thank you, Mr. Chairman. I'm John Tull.
12 My immediate involvement in Legal Services is as a private
13 consultant, although I think my history has probably more
14 relevance specifically to why I am here before you today. I
15 began in Legal Services in 1970 as a staff lawyer. I was a
16 project director from 1974 to 1980 at a time when the
17 monitoring and evaluation policy was very different and
18 served both as a monitor on teams as well as a recipient of
19 monitoring under the first Office of Legal Services and then
20 the early Corporation in its early years.

21 I worked for the Denver regional office of the
22 Legal Services Corporation from 1980 to 1984 and during that

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1 time, one of my principal activities was to serve as the
2 reporter for the development of the civil standards. At that
3 time, they were not the ABA civil standards. They were a
4 joint project of the Corporation and the field and the
5 clients' groups.

6 I left the Corporation in 1984 and became a
7 consultant. One of my first tasks as a consultant was to
8 work with the Standing Committee on Legal Aid and Indigent
9 Defendants of the ABA, continuing as the reporter for the
10 civil standards, which were adopted in 1986 by the American
11 Bar Association.

12 I have worked as a private consultant since 1984.
13 Almost all of my clients are Legal Services programs or Bar
14 foundations or some organizations which are related to the
15 delivery of legal services, and during that time, one of the
16 other things I did, as well, was to serve as the reporter,
17 again, to the Standing Committee on Legal Aid and Indigent
18 Defendants for the development of the monitoring standards,
19 of which you have heard today and will hear more down the
20 road.

21 CHAIRMAN ASKEW: How about the Comparative
22 Demonstration Project?

1 MR. TULL: Oh, thank you. I forgot that. One of
2 the other things I will speak to you about is I was the
3 consultant to the Corporation to train the peer reviewers for
4 the Comparative Demonstration Project which, again, you've
5 heard about and you'll also hear more about it in the next
6 couple of minutes. Thank you.

7 MR. O'TOOLE: My name is John O'Toole. Immediately
8 after graduating from law school in 1974, I went to work for
9 California Legal Rural Assistance in its Marysville Branch
10 Office. I then moved to the National Center for Youth Law in
11 San Francisco as a staff attorney in 1980. I've been the
12 Director of the National Center for Youth Law since 1981.
13 The National Center for Youth Law is funded, in part, by the
14 Legal Services Corporation as a national support center.
15 Thank you.

16 MS. DENNIS: I'm Karen Dennis. I'm the Executive
17 Director of Memphis Area Legal Services in Memphis,
18 Tennessee. I've been in Legal Services since my graduation
19 from the University of Tennessee Law School in 1978 and I've
20 been the Director in Memphis since April of 1987.

21 I am also at the present time the Chair of the
22 Management Information Exchange, which is a national

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1 organization formed by project directors for the benefit of
2 project directors on management issues, and have been an
3 active member of the Southeast Project Directors Association
4 and recently concluded three years on the Civil Council of
5 the NLADA.

6 CHAIRMAN ASKEW: Thank you, Karen. James.

7 MR. HEAD: What I'd like to do is not so much give
8 you specific experience, but to provide a little bit of a
9 context in terms of what my program and, I think, the field
10 views as the charge of this committee and of the Board as it
11 relates to, as you stated earlier, Mr. Chairman, the
12 provision or delivery of legal services.

13 We think that that charge not only encompasses
14 monitoring, but we also think that it encompasses a strong
15 support mechanism for assisting programs, and we think that
16 those two are linked very strongly and go hand in hand. We
17 believe that accountability is critical and needs to be the
18 immediate focus of the committee's attention.

19 But, to ensure that the accountability mechanisms
20 are grounded in the mission of LSC and that there's a careful
21 inquiry into what support programs are needed to be more
22 effective and efficient, we think that the committee should

1 move forward with all facets of the charge and not just
2 monitoring.

3 There are two critical themes, I think at least
4 two, that run through this issue of accountability. The
5 first one is: Do program activities meet regulatory
6 requirements and ensure that the precious and limited dollars
7 that they receive are expended in an efficient and effective
8 manner? You've heard a lot, I think, in terms of the panel,
9 the LSC panel, this morning about that.

10 We think, even more importantly or as important, at
11 least, that program activities respond to the critical needs
12 of their clients, providing not only an effective and high
13 quality legal services, but innovative and appropriate
14 strategies that truly improve opportunities for low income
15 persons and communities.

16 While these two go hand in hand, I feel far too
17 often in the past, monitoring and compliance has focused on
18 the former and devoted little attention and support to the
19 latter. To a great extent, I think that using some suggested
20 approaches to this would be helpful and instructive.

21 Many of you know that as we look around and as we
22 visit programs, what you will find is that they have begun to

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1 realize that the lives of their clients are impacted by a
2 number of different kinds of things -- health care reform,
3 welfare reform, violence related to youth and children,
4 economic development.

5 Issues that have traditionally not been encompassed
6 in the poverty law category are now beginning to surface.
7 Programs are also now beginning to try to respond to these
8 issues and try to respond in a way which makes Legal Services
9 a contributor and a facilitator of these problems in terms of
10 solving them and not just a barrier.

11 We think that this is critical to mention, because
12 we think that any monitoring function needs to take into
13 account that these kinds of approaches and strategies are
14 interwoven in the delivery of legal services today and that
15 the monitoring teams that go in need to be able to understand
16 how these fit and how programs are trying to struggle with
17 their effectiveness in delivering some of these services.

18 So, in thinking about monitoring and evaluation, we
19 think that the Corporation must consider how it will review
20 program activities and help programs to provide not only high
21 quality legal services, but how to achieve economic and
22 effective performance, how to meet the most pressing needs of

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1 these client communities, how to improve opportunities for
2 the poor, how to improve management and administration of the
3 program, as well as improving accountability for the services
4 to local client communities.

5 What does this mean for the current monitoring
6 activities and approaches? I think it means a couple of
7 things. One is that we need to re-examine the approach and
8 scope of monitoring to link the accountability to the TA
9 needs and to also link the fact that many programs are
10 experimenting, if not having tried, tested methods for
11 serving their clients that aren't included in some of the
12 compliance approaches that we take.

13 An example would be the fact that the field has
14 engaged over the last number of years in a number of planning
15 processes to look at how many of these issues affect our
16 clients. In the support community, there has been a great
17 deal of planning to look at cross cutting issues like
18 homelessness, economic development, health care,
19 transportation and how those issues impact our client
20 communities. The State Support Centers have also entered
21 into a fair amount of planning around some of these issues.

22 These approaches, I think, have forced us to look

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1 at new and different ways for trying to address the needs of
2 clients, and we think that monitoring needs to keep up with
3 that and to be a part of how that fits into an overall notion
4 of how we can be effective and how we can measure that
5 effectiveness.

6 Secondly, and this was talked about earlier, and I
7 think that the introductions that we all gave in terms of our
8 background and experience is relevant here, we need to ensure
9 that those who perform monitoring, both LSC staff as well as
10 people from the outside, have experience and knowledge of
11 Legal Services and of the clients we serve, including our
12 specific substantive knowledge areas.

13 This is a critical component I think for any
14 monitoring approach. It is very, very difficult, I think, to
15 understand specifically how interwoven these problems are,
16 how programs are responding to them, and how we can help
17 programs to better respond if you don't have that knowledge
18 base.

19 What I think this means for us in terms of the
20 community is that I think we really need to take a fairly
21 critical look at how we approach monitoring as well as how we
22 do monitoring in the times that we are in. Programs that we

1 work with in the economic development area feel that there's
2 a critical need, for example, that monitors who come in to
3 look at a program that has a substantial economic development
4 component, that they have some experience in community
5 economic development.

6 This is a field that is 25 years old. There are
7 people who have become experts in this field and who
8 understand this field in a number of ways. Yet, to my
9 knowledge, this is a field where there have been very few
10 people who have had that kind of experience involved in the
11 monitoring teams. It is critical, if you are going to look
12 at and examine this field, that you understand the breadth of
13 issues that are there.

14 I am going to now turn this over to John and he is
15 going to I think continue.

16 Presentation of John Tull

17 MR. TULL: Thank you, James. Bucky said in his
18 opening remarks, or the Chair, in his opening remarks,
19 commented that he wanted this panel to focus on the history
20 and the next panel to focus on the future.

21 You are going to hear from virtually everyone, as
22 you already, I'm sure, have begun to hear, as Board Members,

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1 and will hear over the next few months and just heard from
2 James, that it's time and an opportunity to really re-think
3 in a very fundamental way, the whole question of monitoring
4 and evaluation, to rethink the question of monitoring and
5 evaluation in the context of rethinking a whole set of issues
6 around how we assure that low income persons are given the
7 quality and the effectiveness of legal services to which
8 they're entitled.

9 A look at history is really a way to do what Toynbe
10 warned us to do, which is to pay attention to history so
11 we're not forced to re-live it. One of the things I want to
12 talk about is not the more recent history which you'll hear
13 from the next panel members about, but to talk about some of
14 the early history, because there's a number of lessons that
15 we can learn from that time period, which I think will be
16 very helpful to you, as Board Members, as you adopt policy,
17 and as all of us think to the question about what we do to
18 assure effective services for low income persons.

19 I began, as I said in my introduction, myself, in
20 Legal Services in 1970, first as a staff lawyer for four
21 years and then as a project director, and so went through the
22 monitoring process at that time, and monitoring in

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1 particularly the late period of the Office of Legal Services
2 under OEO and the early years of the Legal Services
3 Corporation was focused very differently from the monitoring
4 of the past 12 years.

5 I think we're fond of talking about it as being a
6 difference between looking at compliance and some other
7 purpose. It was really a little more complicated than that.
8 Certainly, then as in the future, there was an awareness of a
9 need to pay attention to compliance with the requirements of
10 the Act and regulations.

11 But, compliance, because of the particular
12 structure of the Legal Services Corporation Act is a very
13 complicated issue for the monitoring and evaluation process,
14 because it's not just a question of compliance with narrow
15 technical regulations, although certainly, as you've learned
16 from reading the materials you've gotten from Alan Houseman
17 and others and in your previous meeting this morning, you've
18 certainly learned that there is an enormously complex level
19 of restriction, both regulatory and statutory, which feeds
20 into the compliance set of questions.

21 But, underlying that and more importantly, are the
22 compliance questions which relate to the purposes of the Act

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1 that the Corporation is charged with the responsibility of
2 assuring that there is high quality legal assistance of low
3 income persons, and that it be effectively and efficiently
4 delivered.

5 So that one aspect of monitoring and evaluation
6 needs to be to look at and to serve those purposes, but in
7 the early years of the Corporation, its monitoring approach
8 tended to approach those questions not just in terms of
9 evaluating in order to make a stale report as to whether or
10 not there was quality services, effective services or
11 efficient services, but to look at those questions in the
12 context of seeking to assist programs to improve as they
13 delivered services to clients.

14 So, monitoring and evaluation visits tended to be
15 very interactive processes, both from the beginning at the
16 time that a team would be getting underway and would be
17 establishing contact with the program in order to help
18 identify issues that were of particular concern with it, to
19 develop a real understanding of how that program functioned,
20 in order to be able to really get into the guts of how it
21 operated in terms of how it provided services to clients, how
22 it interacted with clients, how it measured and made the

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1 determinations about what client need was.

2 The process itself tended to be much more
3 interactive. While it was fact finding, first of all, to
4 make certain that the responsibility which existed, to assure
5 compliance with the Act, that while that process was going,
6 there was much more of a tendency to interact with people
7 about how systems work and to allow the expertise of the
8 persons who were monitors and evaluators to be a part of an
9 interchange with the programs that they were looking at,
10 which leads to a couple of things, I think, in terms of key
11 differences in the process at that time.

12 The first was that peers were used. You will hear
13 about later and you have heard about already the Comparative
14 Demonstration Project, and one key aspect of that is the use
15 of peer reviewers. It's not the first experience that we
16 have had in the Legal Services community, nor that the Legal
17 Services Corporation has had with peer review.

18 It's different, and there are some important
19 differences we'll talk about down the road, but a key aspect
20 of monitoring and evaluation in the early years of the
21 Corporation was to have persons who were deeply experienced
22 in Legal Services, not folks with one or two years of

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1 experience but people who were really reviewed as being some
2 of the more effective advocates, some of the more effective
3 leaders in the community, to be present in programs.

4 I recall when I was a project director and I would
5 not say that it's easy to look back and to paint too green a
6 picture here on the other side of the fence. Monitoring
7 visits were always a pain in the neck. They were always a
8 disruption of what went on in the program, because it was
9 somebody coming in and taking the time of advocates. You had
10 to prepare documents. You had to do many of the things that
11 we did, but what was different -- that we've had to do in the
12 last 12 years.

13 What was different about them, however, was that
14 the process of interacting with people who really knew and
15 understood and cared about Legal Services was a real
16 opportunity for learning on the part of a program. It was a
17 real opportunity for feedback around how things worked and an
18 interchange which would lead to a capacity or an opportunity
19 for real program improvement.

20 The people who were members of the teams were both
21 peers -- that is to say persons who were active in the field
22 at the time, were project directors from other states. I

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1 know, as a project director in Arizona, I was on three
2 monitoring teams to states on the East Coast, and the teams
3 were made up of persons like that, and they were also made up
4 of members of the staff of the corporation, many of whom were
5 also very experienced people.

6 I went to the Legal Services Corporation as a staff
7 member in the regional office after 10 years working in a
8 program both as a staff lawyer and as a project director, and
9 I went there because the process, the view of regional
10 offices at that time, the view of the Corporation at that
11 time, was as a source of effective oversight and an effective
12 source of assistance with programs as they wrestled with
13 problems.

14 The second characteristic of that time period which
15 relates to the use of peers was a high degree of trust, a
16 high degree of trust which went both ways. I'm going to
17 hasten to say again, because I want to once again avoid the
18 risk of looking back with too rose-colored a set of glasses,
19 there was an enormous amount of trust between the corporation
20 and programs at that time in comparison with recent years.

21 That's not to say there was always agreement.
22 That's not to say that a program would always say, "Well,

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1 because the monitoring team says this, they're right and,
2 therefore, we're going to do it." There was often a
3 considerable amount of Sturm und Drang and angst around the
4 conclusions that a monitoring team might draw, but it took
5 place in the context of a fundamental trust that the persons
6 who were doing the evaluation cared about the same values,
7 had the same result in mind, which was high quality legal
8 services for low income persons.

9 Another aspect of trust I think is important
10 because one of the things you will hear from other panel
11 members and you will hear as you go around the country and
12 meet with projects is there was also a trust of programs.
13 That is to say that much of the concern of more recent years,
14 in terms of documentation and heavy documentation, came out
15 of, at least in the early years of the more recent
16 Corporation regime, of a concern that programs were not going
17 to shoot straight and, therefore, asking for an enormous
18 number of documents in order to be able to look at virtually
19 everything.

20 What you'll hear in terms of the amount of
21 resources that that used of programs is a result of a lack of
22 trust in the relationship between the two institutions which

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1 prevented or stood in the way of the Corporation being able
2 to rely on a much less intrusive set of questions about
3 programs.

4 There's I guess two other things I'd say about that
5 time period in terms of under the rubric of looking at the
6 past in order to think about the future and make certain that
7 the right choices are made. The first is that it was not
8 always easy for the Corporation to carry out a joint role of
9 being in the role of helper with programs, of coming into
10 programs with a self-described and a self-asserted interest
11 in interacting with a program to help it improve, while at
12 the same time having the responsibility to be the enforcer
13 and to pay attention to whether or not regulations were being
14 complied with and to pay attention to whether books were
15 being properly accounted for, and to pay attention to the
16 question about whether a program had a fundamental flaw in
17 it, which would take something other than simple advice.

18 That dual role was always one which was difficult,
19 both for members of the staff of the Corporation, and it was
20 always a challenge for programs because to interact with a
21 funding source around your program in the context of giving
22 the funding source, the Corporation, the kind of information

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1 that it would need in order to give you good advice, means
2 being very candid about the dirty laundry. It means being
3 real open about issues that really matter to you.

4 The degree to which the Corporation was there with
5 the responsibility of oversight and a responsibility of
6 making certain that the program was meeting its fundamental
7 needs, I mean, the fundamental responsibilities it has under
8 the Act and regulations, there was always the question which
9 had to exist in the back of the mind of a project director or
10 of a staff member, of how open should I be here, because if
11 they look at this and say, "Gee, this program really needs
12 more than some good advice, it needs some serious remedial
13 work," the point at which that line was crossed was not
14 always clear.

15 And it's a challenge which will still be with us,
16 particularly if the Corporation does as you will be urged to
17 do, take a different approach to monitoring, where it really
18 is more closely connected to the purposes of the Act in terms
19 of assuring efficiency and high quality legal services.

20 MR. EAKELEY: John, can I interrupt you for a
21 second?

22 MR. TULL: Sure.

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1 MR. EAKELEY: Was consideration given at any time
2 to monitoring for compliance conducted by a group other than
3 the group that was looking at programmatic issues?

4 MR. TULL: At the time that I was in the Denver
5 Regional Office, no, although I believe if you go back to
6 some of the early years, under the Office of Legal Services
7 with OEO, they did their evaluations by hiring an outside
8 organization to do it. I honestly don't know what the policy
9 of OEO was with regard to compliance, although I would guess
10 that it may well have been to try to bifurcate those two
11 functions and to treat them differently.

12 CHAIRMAN ASKEW: May I answer your question, Doug?
13 Under OEO, a contract was signed with NLADA, the National
14 Legal Aid Defenders Associate and NLADA conducted the
15 evaluation visits of programs and filed the report with OEO
16 and with the program, and it was done under certain criteria
17 in the OEO legislation about what was to be looked at, and
18 NLADA did it much the way that John is describing, using
19 existing staff, existing program directors, former program
20 directors, and clients on teams to go in and conduct these
21 evaluations and write a report. With the coming of the
22 Corporation, the decision was made not to contract that

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1 function out and to do it all in-house.

2 MR. EAKELEY: But it could still be done in-house,
3 although to the extent that peer review is taken and
4 expanded, that would be outside the house, but is one of the
5 implications of what you've just said about the prior
6 experience, that we should be considering a bifurcated
7 monitoring and evaluation process?

8 MR. TULL: I would say consider, yes. It's not
9 without a lot of risks. There certainly is -- it's a
10 question of balancing a number of things, obviously, and you
11 know that better than I. If a part of the Corporation or if
12 the Corporation itself only does compliance and someone else
13 does the sort of technical assistance visits and the visits
14 to try to get information in a broader context, it does two
15 things.

16 One is it means that where the action is in terms
17 of work that will be interesting and related to what people's
18 values are will be somewhere within the Corporation and the
19 folks who are there are going to find themselves more often
20 in relationships with programs which is adversarial and
21 unpleasant.

22 At the same time, I think that one of the lessons

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1 that I would draw from the past is that it is very helpful
2 and important to have a strong capacity outside the
3 Corporation for technical assistance and support, so that
4 when -- with the bulk of the programs, the tension between
5 the two isn't a problem.

6 The tension between the two grows when you have a
7 program which is sort of close to the cusp on -- it's not
8 really a -- it's a program which is struggling, and so the
9 question of whether the Corporation is going to be there as a
10 helper or an enforcer is a little unclear to virtually
11 everybody.

12 To have the capacity, the strong institutional
13 capacity outside of the Corporation to get help to that
14 program, I think would be very useful and really necessary in
15 order to have the ability to respond effectively to that
16 situation, but I think always taking the technical assistance
17 and supportive function and putting it somewhere else has a
18 lot of risks for just kind of what it does to the Corporation
19 in terms of its capacity to attract people and to retain
20 people who really find value in their work.

21 MS. ROGERS: I guess this is directed both to James
22 and John. Both of you, I think, would like to see the

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1 Corporation adopt a more interactive process and one that
2 involves peers, perhaps, in a narrow sense as well as in a
3 broad sense. If the Board were to be persuaded to ask the
4 Corporation to change its policies in those regards, would
5 there be any necessity of changing any regulations or would
6 you see that as something that the board could do, by simply
7 voting to do that at a particular meeting?

8 MR. TULL: That's probably a question for others
9 who wrestle more specifically with the nuances of the section
10 of the Act that should answer, but my -- I believe the answer
11 to that is no, that there's not a regulation which itself
12 governs monitoring and evaluation.

13 The proposed reauthorization language -- I mean,
14 there is language in the reauthorization Act, if it goes
15 forward, which would call upon the Corporation to adopt
16 regulations -- I'm sorry, adopt standards, but to adopt and
17 promulgate and go through a formal process to adopt
18 monitoring standards, as well as standards of performance for
19 programs, that would clearly -- I mean, the content of those
20 would clearly be affected by the decision that the
21 Corporation might make as to which is done.

22 CHAIRMAN ASKEW: John, to go back to your rose

1 colored scenario --

2 MR. TULL: I was trying to avoid that.

3 CHAIRMAN ASKEW: -- it's true, though, isn't it,
4 that back in the late '70s, that field programs were quite
5 concerned that there were no standards either for civil legal
6 services or for monitoring and that was an issue in the '70s
7 even with people that they trusted. We know the process has
8 been underway and at some time in the near future, we need to
9 consider the standards pretty carefully, the ABA standards.

10 Do you think -- and this will go to all panelists,
11 eventually -- that we have to have standards for these things
12 in order to be able, both for the delivery of services and
13 for monitoring, in order to be able to do this in an
14 effective and an efficient way, that will accomplish the kind
15 of things you're talking about, or can it be done without
16 standards?

17 MR. TULL: I think the clear answer is yes. I
18 mean, I observed it to be and the reason to look at the past
19 is to draw the lessons from it, and that is certainly one
20 enormous lesson that comes from the early years, which is the
21 point at which the trust broke down when it did, the point
22 when it turned into an adversarial relationship was often

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1 around the difference of opinion about what ought to be
2 looked at and what the conclusions were that ought to be
3 drawn from it.

4 The standards themselves -- when I introduced
5 myself, I said that they began as an LSC-funded and supported
6 project which had numbers of PAG, NLADA, National Clients
7 Council and other groups, as well as Corporation staff,
8 engaged for a two-year period in developing the standards,
9 and the genesis of that was quite specifically a concern in
10 the context of monitoring with the lack of performance
11 standards, and that's certainly the roots of them.

12 And, as you hear about -- from a later panel about
13 the Comparative Demonstration Project, what you will hear is
14 that one of the aspects of the Comparative Demonstration
15 Project is having taken the ABA standards and having built
16 them into and woven them into a much more useful set of
17 standards and a set of performance measures which address
18 some of the deficiencies in the ABA standards.

19 Those deficiencies were known at the time. It's
20 not a criticism of any of the participants in that or the
21 process. They were specifically designed to be aspirational
22 and they specifically avoided setting out performance

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1 measures, that is, easily measurable yardsticks that could be
2 used in the monitoring process. The Comparative
3 Demonstration Project is a giant step, although not a
4 complete step, toward correcting that.

5 The monitoring standards simply came out of a host
6 of concerns which were raised particularly in the early '80s
7 or the second half of the first quadrant of the '80s, and a
8 concern about the monitoring process at that time, and a
9 concern that there was a real need to identify what the
10 standards ought to be, and a recognition at the time that it
11 was not just something that affected us and the Corporation,
12 that it was something which affected the defender community,
13 IOLTA community and others, and they reflect that, as well.

14 MR. EAKELEY: This is, I hope, not cutting into
15 John O'Toole's time or Karen's, but when you were a project
16 director and served on peer review teams, were you
17 compensated additionally for that? How did that come about?
18 Was it a process of a search for volunteers, as was suggested
19 a little while ago?

20 MR. TULL: I don't know how it was done early on.
21 At the time that I was in peer review, I was paid a
22 consultant fee. At the time, it seemed huge. As with all

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1 things, it isn't so big anymore in retrospect.

2 The policy my program had was I took time off, and
3 I think that was true of all programs. They had a policy
4 where a person who -- a project director or staff lawyer or
5 someone else who was a paid employee of a project would
6 either pay that money to his or her program or would take
7 time off without pay or take vacation time and get it.

8 CHAIRMAN ASKEW: Did you learn anything yourself by
9 being a monitor that you could bring back to your own
10 program? Is that one of the benefits of doing it this way?

11 MR. TULL: Absolutely. I mean, I think there was
12 an enormous amount of learning that went all directions. I
13 mean, I did it willingly and happily not because there was a
14 fee involved, but because it was an opportunity to go to
15 other programs and to meet with other advocates and other
16 managers and to hear the kinds of issues they were wrestling
17 with.

18 The ideas they had weren't always immediately
19 transferable to the situation that I was in, but they always
20 invariably caused reflection on my part. My experience as a
21 project director at the time of evaluations as a recipient of
22 evaluations was that I didn't always agree with what the team

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1 might suggest ought to happen in the context of delivering
2 services.

3 But, it was always a cause for reflection, and
4 simply the process of getting ready for a monitoring visit
5 and describing how we did our work and what the focus of it
6 was, and in the context of work for clients, not in the
7 context of how we complied with regulations, but how we did
8 our work, it was always a very useful time both for me and my
9 staff, because it was a time when people sort of had to sit
10 back and think, "Well, why are we doing this?", and to talk
11 with someone else about it and interact with them, so both
12 ways, it was a very good learning experience, I would say.

13 CHAIRMAN ASKEW: Thank you, John. John O'Toole.

14 Presentation by John O'Toole

15 MR. O'TOOLE: Thank you for giving me the
16 opportunity to meet with you today. The Corporation has an
17 obligation to make sure that recipient programs are in
18 compliance with all applicable statutes and regulations. The
19 Corporation also has an obligation to make sure that programs
20 are doing a good job, that we're using our scarce resources
21 wisely, and that they are providing legal services in an
22 efficient and effective manner.

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1 We who work for Legal Services programs think this
2 responsibility is incredibly important. We became Legal
3 Services lawyers because we want to use our skills to provide
4 high quality legal representation to our clients. All that
5 we have to give our clients is our time. If we waste it, by
6 providing legal services in an inefficient manner or by doing
7 a poor job for our clients, we will have wasted the only
8 thing we have to offer.

9 I've been the Director of the National Center for
10 Youth Law for the last 12 years. During that time, my Center
11 has been monitored by the Corporation five times. I can tell
12 you from those five separate experiences that the system now
13 in place simply does not work.

14 The Corporation's process of monitoring and
15 evaluation of recipient programs does not fulfill the
16 Corporation's statutory obligation to ensure that the
17 delivery of legal services is done in an efficient and
18 effective manner. Moreover, the current system does not
19 facilitate the provision of high quality legal services.

20 Instead, the current monitoring process actually
21 interferes with our ability to do our job efficiently and
22 effectively. The current monitoring system undercuts our

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1 ability to represent our clients and provides no tangible
2 benefit to recipient programs or to our clients. The
3 monitoring process has been largely a waste of valuable
4 resources.

5 During monitoring visits conducted at my program in
6 1986, 1988 and 1990, the Corporation never even attempted to
7 determine whether we were doing a good job. There was no
8 review of the quality of our work and no mention of quality
9 in the monitoring reports which followed.

10 There was no assessment of whether we were
11 effective in doing our job. No one ever sat down with us,
12 for example, and went over our cases and asked questions
13 like, "Did you win that case? How many people benefitted
14 from that case? In what tangible ways did your clients
15 benefit from undertaking that piece of litigation? How long
16 did it take you to do that case? Do you think it was a cost
17 effective use of your resources, given how long it took and
18 given what the results were?" Those questions just weren't
19 asked.

20 In 1988, for example, the monitors explicitly and
21 firmly refused to review any pleadings in any of our cases.
22 We are a National Support Center and, as such, one of our

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1 most important roles is to work with local LSC-funded field
2 programs to help them do their job more efficiently and more
3 effectively.

4 One would think, therefore, that in order to assess
5 whether we were doing a good job, monitors would talk to LSC-
6 funded field programs and ask them, yet monitors have
7 consistently refused to do this, as well. We would welcome
8 constructive suggestions for ways in which my Center could
9 improve its services to poor children and to the Legal
10 Services community but we never get such suggestions.
11 Instead, there has been an exclusive reliance on technical
12 compliance issues.

13 This has occurred partly because the Monitoring
14 Division has never attempted to fulfill a role of measuring
15 quality or assessing effectiveness and partly because even if
16 they had tried, they would not have been able to help us,
17 because they don't know much about poverty law. They have no
18 poverty law experience and they lack substantive expertise in
19 issues that affect our clients.

20 In 1986, for example, we were monitored by seven
21 people on site, four of whom were attorneys. None of the
22 attorneys had ever worked in a Legal Services program. None

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1 had any poverty litigation experience. None had any
2 substantive knowledge of children's issues. Instead, their
3 areas of expertise were export control regulations,
4 international business transactions, international corporate
5 mergers, government real estate development work and
6 corporate law. This same pattern has repeated itself in
7 subsequent monitoring visits.

8 MR. EAKELEY: John, the last time you were
9 monitored was 1990?

10 MR. O'TOOLE: No, we've actually been monitored in
11 1993. The entire monitoring process of our program has been
12 an enormous waste of time and resources. In 1986 and 1987,
13 the single most time consuming case or project in which my
14 program engaged was not a lawsuit on behalf of abused and
15 neglected children, although that is what we are funded to
16 do, nor was it a manual about foster care litigation that LSC
17 field attorneys could use to better represent their clients,
18 although that, too, is what we were funded to do.

19 Rather, the single most time consuming project in
20 which we engaged during the years of 1986 and 1987 was our
21 monitoring by the Legal Services Corporation, a process that
22 lasted 16 months. During that time, we spent 1,279 hours of

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1 professional staff time in the monitoring process.

2 Quantified in terms of dollars, we spent \$47,739 in that one
3 monitoring process which lasted 16 months.

4 I'd like my colleague, James Head, to distribute to
5 you now an accounting of the resources and money that was
6 used during that monitoring process, and I should point out
7 that the entire expenditure of resources during that
8 monitoring process came without one dollar's worth of
9 benefits to the clients that we're funded to serve.

10 The day before our visit began in 1986, we were
11 told to have available by the following morning of the next
12 business day all of our Request for Assistance forms. A
13 Request for Assistance form in my office is the form on which
14 we write down any time someone calls our office asking for
15 help.

16 They contain detailed information from clients who
17 contact us and speak to us in the context of an
18 attorney/client relationship. They also contain our candid
19 assessments of the strengths and weaknesses of cases on which
20 Legal Services attorneys are seeking our help and are,
21 therefore, work product materials.

22 We were asked, therefore, to provide by the

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1 following day 2,500 Requests for Assistance forms covering a
2 three-year period. We spent most of our monitoring week
3 arguing with the members of the monitoring team about the
4 validity of our assertions of work product and
5 attorney/client privileges.

6 The Corporation refused to accept the validity of
7 these privileges and continued to insist that we provide all
8 of the forms immediately. Eventually, the day before the
9 visit was to end, they acknowledged that we did have to
10 review these forms and remove information which contained
11 privileged materials that could not be disclosed under
12 California law.

13 That same day, I provided 173 such forms to the
14 members of the monitoring team. I stayed in my office that
15 night until midnight and was able to review an additional 479
16 forms that could be made available by the following morning.
17 I kept asking the members of the monitoring team whether it
18 would be possible to give them a sample of the 2,500 forms
19 and that maybe that would meet their needs. They refused
20 that request.

21 For eight days, following the conclusion of the
22 monitoring visit, I did nothing else and my staff did nothing

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1 else than comply with the various document requests. I
2 personally reviewed 2,556 Request for Assistance forms. Of
3 those forms, 578 contained confidential information which had
4 to be redacted before it was provided to the Corporation.

5 At that point, we continued to provide requested
6 materials to the Corporation. We complied in full with more
7 than 89 separate requests for information which were made
8 during the course of a five-day visit. Between the end of
9 that visit in June of 1986 and January 20 of 1987, we wrote
10 17 letters to the Corporation, 15 of which were accompanied
11 by materials which we provided in response to requests that
12 they had made.

13 The Corporation never answered any of these
14 letters. It was not until the day after Christmas that we
15 got a letter from the Legal Services Corporation before we
16 had ever gotten a draft monitoring report, which would be the
17 normal procedure.

18 We got a letter the day after Christmas that told
19 us that rather than receiving a normal one-year grant for
20 1987, we were going to be given a three-month grant rather
21 than the full year, and the stated reason for this was that
22 we had not cooperated during the monitoring process. We did

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1 not even get a draft monitoring report until April of 1987, a
2 full 10 months after the monitoring team had left our
3 offices.

4 The Corporation eventually returned us to a regular
5 funding status but not until we had endured seven months of a
6 short funding cycle where our funding was in jeopardy and not
7 until after we were forced to prepare a 276-page response to
8 a seriously flawed draft monitoring report, and not until
9 after we had retained pro bono counsel, who expended an
10 additional 157 hours of attorney time rebutting the trumped
11 up, non-cooperation charges of the LSC monitoring unit.

12 During that period, I had a staff attorney position
13 which was available, which I froze, because I thought, in
14 prudence, I shouldn't be hiring new staff when my funding was
15 in jeopardy; moreover, I didn't think it would help my
16 recruitment efforts to find the best and the brightest, to
17 ask them to come to work at a place that was on three-month
18 funding.

19 Needless to say, this entire process was
20 demoralizing. I have here and will distribute when I'm
21 finished a more detailed description of that particular
22 monitoring visit. I only brought enough copies for the

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1 members of the committee and for the Chair of the Board. It
2 might make for interesting bedtime reading. I don't know
3 that you have to get too much more deeply into this
4 particular visit.

5 MR. EAKELEY: Could you just compare the '86-'87
6 experience with the '93 experience?

7 MR. O'TOOLE: Well, let me talk briefly about the
8 '88 and '90 and then I will.

9 MR. EAKELEY: Oh, okay. You're warming up to it.

10 MR. O'TOOLE: I should say that we were told to
11 keep this very brief. My first run-through was about three
12 and a half hours, but I think I have it down now to about 13
13 minutes, and I'd be happy to answer the question.

14 MR. EAKELEY: This almost looks like it's a bill
15 that's been presented to the Corporation.

16 MR. O'TOOLE: If you'll pay it, I'll be happy to
17 take it.

18 MR. EAKELEY: The statute of limitations has run.

19 MR. O'TOOLE: I think any reasonable person would
20 agree that the 16-month monitoring process was a waste of
21 resources and an unnecessary intrusion into the work of a
22 Legal Services program. Nothing is seriously wrong with a

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1 monitoring process in which a program is expected to expend
2 1,279 hours of professional time, but it's not an isolated
3 example.

4 A mere seven months after the issuance of our final
5 monitoring report from that visit, we received a notice
6 telling us that it was time to be monitored again. We were
7 required to submit 2,111 pages of materials which filled four
8 large binders and weighed 36 pounds. This was required to be
9 submitted before the monitors even came to our office.

10 Some of those materials were easy to assemble but
11 some of them were not. For example, we were requested to
12 provide detailed information about 125 separate training
13 events in which we were involved during a two-year period.
14 We don't keep that kind of information, but the monitoring
15 unit required us to compile it for each training event.

16 In 1988, again, as my final example of monitoring
17 abuses, during the last half-hour of our monitoring visit, we
18 got a request, document request number 22 which, in order to
19 complete, we had to retrieve 55 boxes of documents from a
20 storage facility where we keep the dead files of closed
21 cases, and we had to review literally tens of thousands of
22 pages of documents in order to complete that one request for

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1 documents.

2 The 1988 monitoring process took 16 months and the
3 1990 monitoring process took 17 months. In terms of whether
4 1993 was different, it was completely different. The
5 document requests in advance of the visit were still, in my
6 opinion, overly burdensome, but the way the visit was
7 conducted was really like night and day.

8 For the first time, we had a member of the
9 monitoring team who had actually worked as a Legal Services
10 lawyer who knew something about children's issues, and we had
11 some very constructive discussions with that gentleman. The
12 members of the monitoring team bent over backwards not to
13 interfere with the attorney/client privilege.

14 They were very cooperative in all regards. We have
15 a draft monitoring report now which, for the first time,
16 actually attempts to present a balanced and fair view. It
17 doesn't just focus on the negative. I find it ironic,
18 though, that throughout this whole period, we have always
19 done very good work.

20 We have not changed our behavior, and yet, we're
21 used to getting reports that are 100 pages long that are
22 nothing but attacks on it and now, even though we haven't

1 changed, we are getting a 25-page report which is fully of
2 very nice things to say about our program.

3 MR. EAKELEY: You don't have any objection to that,
4 do you?

5 MR. O'TOOLE: No, I don't have any objection to it.

6 MR. TULL: How about 180 pages of compliments?

7 MR. O'TOOLE: Clearly, the monitoring process, as
8 run by those currently in charge, has been a tragic waste of
9 scarce resources that were diverted from our mission of
10 providing legal services to the poor. There has been a
11 shameful abuse of power.

12 Moreover, the Corporation has failed miserably in
13 fulfilling its crucial responsibilities of ensuring high
14 quality legal work and the provision of legal services in an
15 effective and an efficient manner. I'd like to close with my
16 own recommendations for the future. They are very brief,
17 because there are others who follow who will say more about
18 this.

19 The Board has to realize that there is a high level
20 of mistrust and hostility towards those who currently run the
21 monitoring process at the Corporation. We have to move away
22 from that era and into one in which monitoring is mutually

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1 beneficial and constructive.

2 In order to accomplish that, in my opinion, the
3 Monitoring Division must be run by people who have a
4 demonstrated commitment to serving poor people and experience
5 in providing legal services to the poor. Similarly, the on-
6 site monitoring teams themselves must also include such
7 persons.

8 The Corporation must begin to take seriously its
9 responsibility to ensure high quality legal services and must
10 hold programs accountable for providing services in an
11 efficient and an effective manner. The Corporation has to
12 begin playing a positive role in helping programs fulfill
13 their mission.

14 The Corporation needs to work in partnership with
15 all of the elements of the Legal Services community so that,
16 together, we can help achieve the statutorily defined mission
17 of the Corporation to provide equal access to the system of
18 justice in our country. I wish you well in your efforts to
19 address these crucial issues, and I stand ready to help in
20 any way that I can.

21 CHAIRMAN ASKEW: Thank you, John. Karen?

22 Presentation by Karen Dennis

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1 MS. DENNIS: I am going to, in the interests of
2 time and not repeating what has been said over and over
3 again, try and make this a more personal statement of my
4 program's experience with the monitoring process during the
5 last nearly seven years. I have worked with most of the
6 people on this panel and the panel to come, however, and I
7 share many of their concerns and their recommendations and
8 endorse them, at this point.

9 For you to appreciate the experience of my program
10 in my Memphis, with LSC monitoring, complaint, evaluation and
11 compliance review, it's really necessary for you to have a
12 very brief history of my program. We -- I fully admit at the
13 front end -- would have taxed any system at a particular
14 point in our history.

15 In August of '85, a director was selected in my
16 program to replace another director who had been ousted by
17 the Board after five years, and that process -- I was a staff
18 member during his tenure. That process was extremely bitter
19 and divisive for both the Board and the staff.

20 The staff were enthusiastic about the new
21 director's selection. He'd been a staff member before and we
22 all looked forward to settling down and getting on with it.

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1 Unfortunately, within two years, a return visit by a fiscal
2 monitoring team from the Legal Services Corporation led to
3 the confirmation that substantial program monies had been
4 improperly diverted to the use of the Director and, most
5 probably, to the business manager, as well.

6 Both of these individuals were placed on 30-day
7 suspension and eventually terminated and the Chairman of our
8 Board asked me to step in and I did so at that time. This
9 was April of 1987. In the first three months of my tenure, I
10 had to respond to the business manager's unemployment case
11 and his specious claim for wrongful discharge, a federal
12 grand jury subpoena for all of our financial records, and I
13 was forced to complete a fidelity bond claim, through which
14 we eventually recovered \$75,000.

15 With the business manager's rather abrupt
16 departure, we discovered, among other things, that records
17 were either not being kept at all or were not being kept
18 properly; that large amounts were being charged to a variety
19 of corporate accounts, charge accounts, leave accounts and so
20 forth, improperly; that fiscal records themselves were
21 completely inaccessible as they had been entered on an old
22 computer with a password that no one on staff knew; that bank

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1 reconciliations had not been done in months; that there were
2 over \$16,000 in tax penalties that were caused by the
3 business manager's failure to properly handle withholdings
4 and so forth.

5 There were no current staff capable of restoring
6 fiscal integrity to the office. In addition, we had a staff
7 that had lost a director who was a friend to many and it had
8 happened under publicly humiliating and personally painful
9 circumstances. They were, understandably, utterly
10 demoralized and suspicious of everyone.

11 In April 1987, there was no case management system.
12 No meaningful performance reviews had been conducted in five
13 years or more. Salary disparities abounded and staff
14 vacancies that could not be filled. Our relationship with
15 the bench and bar was extremely tenuous and our entire
16 reputation, obviously, was terribly soiled.

17 Despite instances of individual case handlers in
18 the office who did outstanding work on their individual cases
19 and for clients, to the extent that we had a presence in the
20 community, it was terribly damaged. Legal Services
21 Corporation's technical assistance contributions to my
22 program in these very painful times were nil.

1 The fiscal team that had visited us for a week
2 refused us their work papers or the use of their draft report
3 which was withdrawn and never surfaced again. This required
4 the new project director, yours truly, to spend weeks re-
5 constructing, re-investigating and re-discovering the
6 monetary losses that had occurred in my program.

7 We received no technical assistance from the
8 Corporation whatsoever. As we struggled on to address
9 pending claims, pending litigation and a host of small fire-
10 fighting needs that seemed to erupt every day, Legal Services
11 Corporation froze our funding at the 1988 level, where it
12 remained for nearly three years, placed us on month-to-month
13 funding and went so far as to hire a new auditor for us, but
14 it provided no support or guidance.

15 We accordingly sought outside accounting expertise
16 from a locally well-respected CPA who voluntarily reduced her
17 rate to \$50 an hour. During the next several years, we
18 constructed the administration of my program from the ground
19 up, and I mean that quite literally.

20 Not only was no help forthcoming during this period
21 from the Corporation, but we were severely criticized for the
22 methods that we used. The problem was that we had no

1 guidance, no guidelines, no checklists, nothing in advance.
2 The sense I have most clearly of that period of time is that
3 Legal Services Corporation expected us to guess what it was
4 they wanted and when we got it wrong, they yelled, "Gotcha."

5 The monitoring process was almost entirely punitive
6 in nature. The failure of the draft monitoring reports and
7 the final monitoring reports to even mention the
8 accomplishments that we made along the way was substantially
9 responsible for continued low staff morale and made the
10 administrators of the program subject to almost constant
11 second guessing, even bitter opposition, at home.

12 We expected correction. I want to emphasize that
13 very strongly. We expected and welcomed correction but what
14 we got was much worse. Hundreds of hours were spent
15 preparing for visits, on the visits themselves, and
16 responding to the various monitoring reports, corrective
17 action notices, and compliance review reports.

18 Unfortunately, the level of relationship between my
19 program and the Corporation was so hostile that we found
20 ourselves responding to even the minutest and silliest points
21 in draft monitoring reports because we were afraid that any
22 silence might be construed as admission and that that

1 admission would bring some other form of punishment.

2 As an aside, I might note that there were a
3 remarkable number of findings in the draft monitoring report
4 which were belied by the text of the narrative of the same
5 report, leading us to the conclusion that the findings were
6 drafted by one set of individuals and that the narratives
7 were drafted by someone else.

8 I'm making a very long and extremely painful story
9 very, very short. The fundamental point for me is that if
10 Legal Services Corporation had swiftly provided technical
11 assistance where and when it was needed, if it had shown
12 support for the Director and those volunteer Board Members
13 whose dedication to fixing the program was proven, if it had
14 come from the standpoint of healing rather than punishing,
15 then my program might have come through some very dark times
16 much sooner and with much less internal strife.

17 But, instead, Legal Services Corporation became for
18 us another problem and we had a very full plate of problems.
19 The upshot, of course, in all of this, is that clients did
20 not get served because we spent so much of our time and
21 resources on this otherwise unproductive process.

22 Now, since 1987, our program has expanded its

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1 visibility in the community. We have initiated a successful
2 law school clinic program with the Memphis State University
3 Law School. We've expanded private bar involvement from two
4 small panels to seven. We've created strong community
5 education and public outreach programs.

6 We've forged strong relationships with the local
7 bar and a variety of agencies. We shortly begin our third
8 annual fund raising campaign with support from the majority
9 of the large firms and small practitioners in town. Our
10 newest fund-raising campaign chair, Shepard Tate, is a former
11 ABA president.

12 In April 1987, we were 100 percent LSC funded. We
13 now receive funds from IOLTA, Title III, HCFA and the Private
14 Giving Campaign as well as other small donations and grants.
15 Our pro bono efforts continue to bind us closely to the local
16 bar and now to the state bar, as well, and increasingly to
17 other agencies that serve our clients.

18 As mentioned, the law school clinic exists and is
19 an enormous success. In fact, it has far outstripped our
20 expectations in the three short years that it's been in
21 existence and in this current semester, we will be turning
22 away students from a clinic that has continued to expand over

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1 the last three years.

2 Now, if you look for a mention of these things in
3 any draft or final monitoring report, you will come up empty.
4 If you look for assessments of the quality of the legal work
5 in our office, you will come up empty. The complaint review
6 process unfortunately reflects some similar values on the
7 part of the Corporation.

8 I do not speak here of client complaints. We have
9 been very careful to process client complaints and to advise
10 clients when they have a right to carry on to the
11 Corporation. No client complaint that I can recall which has
12 been carried through to LSC has ever been resolved other than
13 in our favor.

14 We did have two, however, complaints in the last
15 now almost two years from non-clients, the handling of which
16 gave me great pause. One involved an adverse party of one of
17 our clients, who raised the issue of our clients' financial
18 eligibility and the Corporation's involvement in that
19 essentially posed the specter of Legal Services inserting
20 itself between our client and our adverse party during the
21 pendency of litigation. I'll come back to this in a moment
22 because this sparked a compliance review visit.

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1 The second complaint occurred after a fired
2 employee caused another individual to file a complaint about
3 his firing with the Corporation. The ensuing correspondence
4 resulted in the creation of discoverable documents which were
5 simply unnecessary.

6 An extreme interpretation of the LSC regulation
7 which requires that a program consult LSC before disciplining
8 an employee for noncompliance with an LSC reg, was at issue,
9 despite the fact that the employee was terminated and there
10 was a 20-page termination notice, and the reference to a regs
11 violation occupied one sentence in that 20-page termination
12 notice.

13 There were serious issues of insubordination and
14 incompetence involved in the termination. Nevertheless, LSC
15 found it necessary to declare in a discoverable writing that
16 our termination of the employee violated LSC regs. The lack
17 of judgment evinced by this is absolutely astonishing, as it
18 was to our counsel representing us in the employee's lawsuit
19 against Memphis Area Legal Services.

20 I urge, among other things, that strict guidelines
21 for dealing with complaints when adverse parties either to
22 the program or to clients of the program are involved, be

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1 created, and I just think it's absolutely essential and it
2 must be done.

3 Finally, as I said before, the eligibility question
4 sparked an on-site compliance review in my program in
5 February of 1993. This followed about 10 months of
6 correspondence during which we argued over whether or not the
7 client was, in fact, financially eligible and it largely
8 determined -- it largely depended on whether a household
9 could be deemed to include children that had been temporarily
10 removed or not.

11 At last, we determined, rather than continue to
12 carry on the conversation, that we would represent the client
13 with other funds. This particular instance was specifically
14 referred to in a compliance review notice that we
15 subsequently received. Three people came to my program for
16 four days, ostensibly to review these particular -- these
17 small issues that were left over from a corrective action
18 notice and the issue of eligibility.

19 Nothing that was done during that visit could not
20 have been done during a regular monitoring visit which would
21 have occurred on a normal cycle within the next year. We
22 subsequently determined that less than two percent of all

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1 open cases had some problem with the way in which financial
2 eligibility had been screened.

3 If you consider that our incoming calls are
4 somewhere between 10 and 15,000 thousand a month and that
5 that was two percent of the open cases, not two percent of
6 all of the clients that our intake people deal with, to have
7 10 or 12 of those applicants for service have some glitch in
8 the intake screening is fairly amazing.

9 When they were reviewed, it was determined that
10 there were only a couple that presented problems and, in most
11 instances, those clients had been subsequently turned away.
12 As we said, the other case that was part of the focus of all
13 of this was being handled with non-LSC funds.

14 It is the first and only time in my 15 years,
15 almost 16 years, of experience, that I've ever dealt with a
16 case like that, and I don't expect it to recur any time soon.
17 It was simply not worth the amount of time and effort that
18 was expended on a fishing expedition in my program.

19 If you look to the objectives of monitoring, only
20 one could be said ever to have been attempted in past
21 monitoring or compliance visits to my program. If you ask,
22 "Was there evaluation of effectiveness of program

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1 performance?", my answer is, "Never."

2 How could it be, when, for example, one of the
3 attorneys who was sent to evaluate the legal work of my
4 program in one of our monitoring teams had only been licensed
5 for six months?

6 Was there an evaluation of whether we were meeting
7 the most pressing needs of the client community we serve? To
8 my knowledge, a monitoring team during my tenure has never
9 even spoken to clients or community groups and I ask: How
10 could they tell?

11 Was there evaluation of the effectiveness and
12 quality of individual representation? I do not recall that
13 we have ever had a peer review, anyone with Legal Services
14 experience, in my program. Certainly, the hallmark was
15 insufficient legal experience, for the most part. There was
16 some look at case management systems and some look at
17 performance evaluation systems, but they never never looked
18 at legal work.

19 The worst example I can tell you about is that in
20 the draft of the compliance report, under the heading, "Legal
21 Work of Program," there is no discussion of client cases.
22 There is a lengthy discussion of the case against us by the

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1 former employee and a long discussion about a disciplinary
2 charge that was filed by a criminal defendant who was mad at
3 us for not taking his case, and had filed, at the same time,
4 disciplinary charges against his public defender and against
5 the general counsel to the Board of Professional
6 Responsibility. All of this was explained to the compliance
7 team, and yet, it appeared in the draft report; for what
8 reason, I do not know.

9 Has there been evaluation of our efficiency in
10 meeting priorities and other responsibilities? Except for
11 occasional references to priorities vis-a-vis PAI, I would
12 say no. We've submitted priorities reports without comment
13 for years. When we are critiqued, it is generally only the
14 process that is critiqued and not the substance and yet, in
15 my estimation, priorities in work plans are one of the
16 primary ways to convey the values of a program through its
17 substantive work.

18 Finally, was there an evaluation of management and
19 administration? Yes, to an extent, but no more useful than a
20 thorough audit plus a compliance checklist. There was no
21 meaningful critique of management or supervisory performance.
22 I do not see myself as a whiner. I try to accept that our

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1 program has had monumental problems.

2 We have not sought to avoid review. In fact, we've
3 sought it out. In point of fact, during the last seven
4 years, we have established accountability in our program
5 where none had previously existed. What we seek now is a
6 process that is reasoned, that is written, that is understood
7 by all, and that is motivated by the highest purposes of the
8 Legal Services Act, a process which results in peer review,
9 constructive criticism and fair appraisal.

10 I hope that you will look at the various technical
11 assistance and training programs as you go along, also.

12 These have been self-developed by programs and groups of
13 project directors over the past few years and, if adequately
14 funded, could provide other project directors with support
15 and guidance rather than hassles and punishment.

16 I hope you will also encourage the employment of
17 LSC personnel who embody the values of Legal Services
18 programs and who will work with programs to improve, and not
19 at cross purposes. What I hope I've conveyed to you is a
20 picture of a program which not only needed essentially
21 temporary, although extreme, remedial help with basic
22 compliance issues, but also had longstanding needs for

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1 support and assistance to develop the substance and delivery
2 mechanisms of our work.

3 Our program did not receive any of that support or
4 assistance. Instead, our time was so consumed by compliance
5 review points and the extreme extension of compliance review
6 points that the result was severely wasted resources. The
7 fact that our program has come as far as it has can only be
8 attributed to the devotion of our local board, staff and
9 those who have voluntarily agreed to assist us from time to
10 time in improving our ability to deliver high quality legal
11 services to our clients.

12 I thank you for doing this. I appreciate your
13 inviting me to speak to you today. Like John, I stand ready
14 to help you in any way possible in your quest to improve this
15 process, which I think desperately needs to be done. Thank
16 you, very much.

17 CHAIRMAN ASKEW: Yes, Edna.

18 MS. FAIRBANKS-WILLIAMS: I had one question of Mr.
19 O'Toole. Do you think that the questions were in any way
20 info that Congress might have wanted in order to move along,
21 that it might have been a request from behind the scenes by
22 somebody?

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1 MR. O'TOOLE: Do you mean the requests for
2 documents?

3 MS. FAIRBANKS-WILLIAMS: Yes.

4 MR. O'TOOLE: Not to my knowledge. I think that a
5 lot of what was going on then was probably a feeling by some
6 people in the Monitoring Division. They just didn't trust
7 programs and they weren't very competent, and so they had a
8 tendency to ask for everything. It may have been coming from
9 Congress, but I'm not aware of that.

10 CHAIRMAN ASKEW: On behalf of the committee and the
11 Board, I thank all of you for agreeing to be here today and
12 taking your time. We appreciate what you've had to say. I
13 wish we had more time but, as you know, we don't. Thank you.
14 I'm going to ask for the next panel to come forward and I'm
15 going to take a two-minute comfort break.

16 (A brief recess was taken.)

17 CHAIRMAN ASKEW: We're going to reconvene. It's
18 obvious to everybody that we're running a good bit behind
19 here but we're not going to cut this panel short because of
20 that.

21 I had originally scheduled to give you an hour.
22 I'm going to ask if we can try to keep that to 50 minutes,

1 which would have us ending at 5:00, and then we have two
2 other agenda items that we must deal with today that
3 shouldn't take a terrible amount of time, so we will deal
4 with those when this panel is over.

5 So, we'll have 50 minutes for this and then we'll
6 move on. Frankly, I like being shown deference and being
7 called Chair, so we'll let it go as long as we can. Our next
8 committee is not here yet anyway.

9 This panel we put together and asked to speak about
10 the future, and we think we've invited people who can address
11 this from several different perspectives -- other funding
12 sources, clients, field program directors, the staff of
13 programs and people who have been involved in the Comparative
14 Demonstration Project. This is where we want to start
15 looking at where we go from here.

16 I'm going to ask, as I did the first panel, for
17 each one of you to introduce yourselves and give a brief
18 background statement about your history in Legal Services and
19 then we'll start in order that's been laid out here, which
20 would be Jerry Lane going first, Dwight, then Lonnie, then
21 Marion and Ramon, if that's all right with you.

22 PRESENTATIONS BY JEREMY LANE, DWIGHT LOINES,

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1 LONNIE POWERS, MARION HATHAWAY AND RAMON ARIES

2 MR. POWERS: I will start the introductions.

3 CHAIRMAN ASKEW: You're on the far right, as usual.

4 MR. POWERS: Yes. I won't talk about being on your
5 left. I'm Lonnie Powers. I'm glad to be here. I am
6 currently and have been since 1983 the Executive Director of
7 the Massachusetts Legal Assistance Corporation. That
8 organization funds civil legal services programs throughout
9 the State of Massachusetts using state money, derived from a
10 variety of sources, which I'll go into in a moment, including
11 IOLTA and state appropriations and a filing fee surcharge.

12 Prior to becoming director of Mass. Legal
13 Assistance Corporation, I was, for three years, the director
14 of Legal Services of Arkansas, an LSC-funded program in
15 Arkansas, and for one year, the director of the Southeast
16 Regional Training Center. Before starting to work for Legal
17 Services in 1979, I had had a variety of public and private
18 legal experience including being in the State Attorney
19 General's Office in Arkansas and that, I think, is enough
20 background.

21 CHAIRMAN ASKEW: Thank you, Lonnie.

22 MR. LANE: I'm Jerry Lane, the Executive Director

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1 of Mid-Minnesota Legal Assistance, an 80-year program
2 headquartered in Minneapolis. We have 36 funding sources.
3 Approximately 20 percent of our funding is Legal Services
4 Corporation.

5 I've been in Legal Services for 24 years, 23 years
6 and six months of them in Minneapolis, six months in New York
7 City and for the last 12 years, project director in
8 Minneapolis. I'm also currently serving my third term on the
9 Minnesota State Bar Association Board of Governors.

10 MS. HATHAWAY: I'm Marion Hathaway, and I'm a
11 Client Board Member of Harlem Legal Services, New York City.
12 I've been invited here because I sat as a client on the
13 Comparative Demonstration group, appointed to that group, I
14 understand, by virtue of what I currently do.

15 At the moment, I'm a mediator/arbitrator for
16 several different agencies and institutions in New York City.
17 I've been a board member for a lot of years, and I am to
18 bring my perspective as to what I foresee for the future from
19 being the demonstration committee.

20 MR. ARIES: Good afternoon. My name is Ramon Aries
21 and upon graduating from UCLA School of Law in 1978, I was
22 hired by California Rural Legal Assistance, CRLA, to work in

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1 its field office located in Madeira. That's in the center of
2 the San Joaquin Valley in California. I worked there for two
3 years as a staff attorney.

4 I then moved to Fresno, 30 miles down Highway 99
5 and worked in CRLA's Migrant Unit as a staff attorney and
6 then became director of that migrant office and supervised
7 the work of four attorneys and two paralegals, and then
8 became Director of CRLA's Migrant Unit, where I supervised
9 the legal work of four field offices.

10 Then I moved to San Francisco and became Regional
11 Counsel of CRLA. After 10 years with CRLA working as an
12 attorney, I became the Director of San Francisco Neighborhood
13 Legal Assistance, where I now have worked for six years.

14 MR. LOINES: My name is Dwight Loines. I am the
15 president of the National Organization of Legal Services
16 Workers, and I have no idea why you invited me.

17 (Laughter)

18 MR. EAKELEY: Just to forestall criticism in the
19 future, Dwight.

20 MR. LOINES: I didn't want to speculate that far,
21 but I was a staff attorney in Harlem Legal Services for six
22 years in the late '70s, early '80s. I've been associated

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1 with the labor movement since then and I have been the
2 president of the organization that I mentioned for the last
3 five years.

4 I think I came to that naturally. Before going to
5 law school, I was a tenant and community organizer, and it
6 always just made sense to me that the way that you helped
7 improve situations and improve conditions was to organize
8 people to address their concerns. I carry that same
9 motivation into the labor movement and into my involvement
10 with the National Organization for Legal Services Workers.

11 Presentation by Jeremy Lane

12 MR. LANE: Let me apologize up front for my cold.
13 I'm afraid I'm going to wreck Minnesota's reputation, so well
14 nurtured by Bud Grant, where Minnesota is a place where
15 people wear tee-shirts in snowstorms. I tried it and this is
16 what happened.

17 My comments are going to be based on my own
18 personal observations over 24 years as well as those of other
19 Minnesota Project Directors. The Southern Minnesota Program,
20 headquartered in St. Paul, is also an 80-year-old program, so
21 we have a pretty good perspective on the delivery of legal
22 services. I've been through monitoring in the '70s, '80s and

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1 '90s, and my suggestions and comments are grounded in that
2 experience.

3 The good news is that, unlike some of what you've
4 heard today, none of the Minnesota programs have ever been on
5 any political hit lists. Nobody was out to get us in the
6 '80s, as some programs clearly were targeted. My program has
7 a good reputation in its communities and within the Legal
8 Services Corporation, so I'm not going to tell horror
9 stories. My program has gotten good reports from the
10 monitoring visits, to the extent there is anything in the
11 reports reflecting on quality.

12 The bad news, unfortunately, is that I also can
13 find almost nothing positive to say about monitoring as
14 conducted in Minnesota since the early '80s and up to the
15 present time. Our internal program preparation for
16 monitoring has been useful.

17 If monitoring didn't exist, we'd have to invent it,
18 but the monitoring itself has not been useful in my program,
19 and the other Project Directors have told me the same thing
20 and I'm talking about monitoring as recent as September 1993,
21 which is when my program was most recently monitored.

22 You've heard about the two basic functions of

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1 monitoring, which is a sort of law compliance and quality
2 enhancement. Until the '80s, it had both, in my experience.
3 The compliance portion was generally, for my program and many
4 others, a minor nuisance to put up with. The quality
5 enhancement portion was the part that staff looked forward
6 to, the chance to pick the brains of smart, experienced
7 professionals in our field who had lived with the problems we
8 were struggling with.

9 Unfortunately, that second component of quality
10 enhancement, in my experience, has not just been neglected;
11 it has been consciously eliminated over the past 10 years.
12 As a result, in my experience, monitoring has ignored the
13 statutory mandate to assure that high quality services are
14 delivered.

15 In my program's experience and those of the other
16 Minnesota programs, the fiscal monitors we've had in the last
17 10 years have generally been competent people without
18 ideological baggage, but what they have been required to do
19 is wasteful overkill. They've done mini-audits, duplicating,
20 but not very thoroughly, what our independent auditors do
21 every year and have already done.

22 For programs with clean audits, I think that all

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1 that's really needed is perhaps a check to see that the local
2 independent auditor has done their job properly. Without
3 exception, however, not one suggestion has been made to my
4 program by an LSC monitor that had not already been
5 considered and rejected by my program in consultation with
6 our local auditors.

7 My program consciously rotates auditors every few
8 years to ensure that things don't get too comfortable and
9 that we have fresh eyes looking at our program every few
10 years. We have adopted a couple of the suggestions that the
11 LSC monitors made, only because it was easier to adopt them
12 than it was to fight about them. We're talking about things
13 at the level of whether to have sequentially pre-numbered
14 cash receipt forms; that's about as serious as things have
15 gotten.

16 Another Minnesota program reported to me the same
17 kind of experience. Their Comptroller, after reconciling the
18 monthly bank statements, had the practice of initialing the
19 envelope with the statement in it and the LSC monitor told
20 her that she should initial the statement and not the
21 envelope, and that's about as helpful as it's been.

22 The legal work monitoring is not now structured to

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1 enable the monitors to make knowledgeable judgments about the
2 quality of the work that my lawyers do. Too many people have
3 been sent out. The teams were smaller and more efficient in
4 the 1970s.

5 Especially in light of the fact that there really
6 is no quality enhancement function, a lot of money has been
7 wasted on over-sized teams. I mean, I've had teams of eight
8 people spending a week in my program and it just wasn't
9 necessary, and it was very demoralizing, when we were losing
10 staff people because of lack of funds, to see it being spent
11 that way.

12 When I say the quality enhancement has been
13 consciously eliminated, I'm not exaggerating for effect. The
14 Duluth program administrator asked a monitor in December 1991
15 for ideas about how to improve their intake system and she
16 was told, "We don't do that."

17 One of my deputy directors reports that in the
18 previous monitoring visit, a monitor started to make a
19 suggestion but caught himself and stopped, saying, "We're not
20 supposed to do that." A monitor visiting my program did meet
21 with the MSBA Director of Volunteer Legal Services a couple
22 of years ago and he was good, and he gave her some good

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1 ideas. He then told her she should write them down on the
2 spot because he would not be permitted to put them in his
3 report.

4 With that exception, I cannot say that anything
5 useful has ever come out of legal work monitoring in
6 Minnesota in the last 10 years. I could tell little stories,
7 like some of those you've heard, like the legal work monitor
8 who came to my program who was not admitted to practice at
9 all because he had flunked the Bar exam several times.

10 Although the number of horror stories and perhaps
11 the quality of them has diminished for the most part in the
12 last couple of years, in my experience, the fundamental
13 mindset has not changed. Monitoring is still nothing but a
14 compliance check. In my judgment, that violates both the
15 letter and the spirit of the LSC Act.

16 I think that the evaluation and quality enhancement
17 component of monitoring requires three things. One is the
18 local program staff must respect and trust the monitors; two,
19 the monitors must trust the senior staff of the Corporation
20 to use their candid criticisms of local programs
21 constructively to help programs and not to hurt them; and,
22 three, the senior staff of the Corporation must trust the

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1 monitors to be both competent and objective.

2 If you simply, as a Board now, instruct the current
3 senior Corporation staff to start using experienced field
4 people as monitors, I do not believe you will have solved the
5 underlying problem. If I were asked to be a monitor
6 tomorrow, I think I would decline because I could not
7 honestly tell local program staff people to be entirely open
8 with me, and that their identification of program problems
9 would not somehow be used against them by Corporation staff,
10 either internally or by feeding information to political
11 enemies of a strong delivery system.

12 On the other hand, if you as a Board take the steps
13 which are necessary to recreate an atmosphere of mutual trust
14 and respect, you'll find yourself with a terrific pool of
15 smart, experienced, present and former Legal Services
16 staffers, who would welcome the opportunity to share their
17 experience with programs that could benefit from it.

18 I think you will find that the programs are
19 generally eager to identify and work on problem areas. I'd
20 like to make one point very clear and I speak for the other
21 project directors in Minnesota, as well. I am not talking
22 about sweetheart monitoring. I have no interest in that. I

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1 don't want it done to my program and I would have nothing to
2 do with it as a monitor.

3 I measure decisions against one very simple
4 standard: What is good for the clients? I have had to ask
5 people I liked, people I worked with for years, to leave my
6 program because, for one reason or another, they were no
7 longer delivering the quality of service that I require for
8 the clients of my program, but I've never done it without
9 making sure first that every effort has been made to solve
10 the problems the staff person was having.

11 I am convinced that trust and accountability can
12 co-exist, and I can't over state the importance of that one
13 word, "trust." In my experience as a project director, it is
14 essential. I believe, in fact, that it is more important
15 than the precise system you adopt.

16 My program's evaluation system works pretty well
17 and a major reason for that is that staff trust me and they
18 trust the managers not to play "Gotcha." They are,
19 therefore, willing to be honest in their self-evaluations
20 regarding the aspects of their job performance that they are
21 concerned about, and I believe that self-evaluation is
22 perhaps the most critical component of a meaningful

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1 evaluation process.

2 Although there are some exceptions, most people in
3 my experience know their weak spots better than anyone else
4 does and when a person self-identifies a problem, they are
5 much less likely to be defensive about efforts to deal with
6 it. I believe the same applies to programs. I know the
7 areas where I'd like to see my program improve, but my staff
8 and I are not about to open up about those issues to a person
9 or a process that we don't trust and respect.

10 I'd like to add a footnote here about what I see as
11 another major purpose of monitoring and evaluation that
12 hasn't really been talked about, and that is identification
13 and re-enforcement of program strengths. Praise is very
14 important to an evaluation, but it's meaningful only if the
15 person being praised respects the person giving it, and
16 believes that they're well qualified to recognize good work.

17 Although the team leader who visited my program a
18 couple of months ago was a good man, the legal work monitor
19 on his team was not someone whose opinion, good or bad, would
20 carry any weight with me and my staff. My recommendations
21 for the immediate future are not complicated and they are not
22 unlike what you've already heard.

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1 Number one, use experienced field people as part of
2 the process. I see no conflict of interest in that, unless
3 you ask me to monitor the team of my friend in St. Paul. My
4 interest, like yours, is to see that clients are well
5 represented, whether it's in Montana or Maine or Minnesota.

6 Number two, have performance standards for local
7 programs against which to monitor them. Number three, have
8 monitoring standards and procedures assuring both fairness
9 and accountability. Number four, have high standards for the
10 selection of monitors. Not every current and former LSP
11 staffer is necessarily going to be a good monitor. Number
12 five, you need an LSC staff which merits both the trust and
13 the respect of local programs, staff, board members and bar
14 leaders.

15 Number six, you're going to need some patience.
16 It's going to take some time to repair the damage done to
17 LSC's credibility by people like the monitor who walk into
18 the office of the MSBA Director of Volunteer Services and
19 open the conversation with a statement, "I know there's deep
20 seated hostility between Legal Services and the private Bar.
21 How does it manifest itself in Minnesota?" The Bar employee
22 didn't know whether to laugh or cry, in light of the fact

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1 that the Bar Association had just given its highest award for
2 professionalism to a Legal Services staff attorney.

3 A couple of specific ideas. Focus and customize
4 monitoring. A program like mine, which has an excellent
5 reputation and track record in terms of its fiscal
6 responsibility and its systems really doesn't need much time
7 being spent on it.

8 You can do a once over lightly on some of the
9 compliance issues and put the time and money you saved into
10 technical assistance for programs that do need help. Ask
11 programs what kind of expertise they would like to have on
12 the monitoring team to help them with specific problems
13 they're trying to address.

14 There are lots of other ideas like that, that I and
15 other program directors could come up with. I'm probably not
16 one of the most creative people in the world, but if you work
17 with field programs on design, I think the product will be
18 better and cheaper. Thank you.

19 Presentation of Dwight Loines

20 MR. LOINES: First of all, let me tell you, I'm
21 sure to your great pleasure, that my remarks are going to be
22 fairly brief. One of the reasons for that is that I was up

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1 most of the night trying to deal with and help to resolve a
2 situation in New York, which I think some of you are aware
3 of, and that is the fact that the Legal Services for New York
4 program is on strike at this moment, which means that, for
5 the most part, no legal services are being delivered to the
6 poor of New York. It's a very troubling situation and it's
7 something that we are very much concerned about, so that will
8 explain, perhaps, my subdued and brief comments.

9 Let me just tell you a little bit about the
10 National Organization of Legal Services Workers as I get into
11 my further remarks. One, the organization was established by
12 Legal Services workers -- attorneys, paralegals, clerical
13 workers -- and you should know that.

14 This was not an organization established by a labor
15 organization coming in to organize people. This grew out of
16 the Legal Services movement and it was a natural development
17 for a lot of people who considered themselves progressive and
18 who wanted to make a difference in this country. So, all of
19 my staff around the country are, for the most part, former
20 Legal Services people.

21 We are affiliated with the United Auto Workers, and
22 I mention that because it is crucial to your understanding of

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1 who we are and what role we play. We've been successful in
2 bringing the labor movement intimately into the Legal
3 Services movement, as a strong supporter of the program.

4 I have personally spent hundreds, perhaps
5 thousands, of hours lobbying on behalf of Legal Services in
6 bringing to bear the extensive lobbying apparatus of the
7 labor movement on behalf of Legal Services, and we've done
8 that right up through the most recent pending cases vote and
9 will be doing that in terms of the reauthorization and, of
10 course, appropriations each year that that comes up.

11 Let me say that I think that in terms of what you
12 can do as a new Board -- and I should mention most people in
13 Legal Services today weren't around when, Bucky, if I can
14 call you that, and Bill, when you guys were running the
15 Corporation so, you know, they only know by hearsay your
16 reputations, et cetera.

17 So, they still have a lot of painful memories about
18 Legal Services over the last 10 years or so, and I should
19 add, I guess, some of us who were around pre-Reagan don't
20 think those days were all that great, I should add.

21 (Laughter)

22 But, nevertheless, they're looking to you for

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1 leadership, guidance and inspiration, and I think that, you
2 know, the steps that you take and the things that you do in
3 the early part of your tenure will be very important in terms
4 of how the staff around the country sees you.

5 One of the things that the Corporation has not in
6 the past dealt with except, perhaps, peripherally from time
7 to time, has been issues coming up around labor management
8 relations. I think you know, of course, the Corporation is a
9 quasi-governmental independent organization and the local
10 recipients are autonomous organizations, particularly with
11 respect to labor issues.

12 However, from our point of view, there's been, over
13 time, unnecessary, we believe, strife, unnecessary expenses
14 and resources devoted to resolving labor management issues,
15 than are warranted, frankly, in a community of people who
16 consider themselves, again, progressive, and people who are
17 here for the same mission.

18 I think that this Board could do a lot of it
19 attempted to direct some resources, perhaps through technical
20 assistance or some manner, to help local programs facilitate
21 and get through the process that, in many cases, for people
22 is fairly traumatic, and that is when the staff of the

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1 programs walk in and say, "We have unionized and we want
2 recognition."

3 For people who consider themselves progressive,
4 that is often perhaps the most traumatic experience that
5 they've had in their lives. They've devoted themselves to
6 Legal Services. They feel they are doing the right thing and
7 how is it possible that their staffs are unionizing? That
8 has led to, as I've suggested, thousands of dollars being
9 diverted from providing legal services to lengthy litigation
10 and, in extreme circumstances, of course, even after you've
11 had a collective bargaining relationship, strikes. So, I
12 think it's something that the Corporation can do and I would
13 strongly recommend that you look at it.

14 Incidentally, I should have mentioned earlier that
15 I have directed some material to individual Board Members,
16 which you probably haven't received because it was sent by
17 Federal Express, and I believe my office addressed it to your
18 hotel, so you'll have something to look forward to when you
19 get back.

20 It was actually suggested to me that I talk mainly
21 about the EVA file situation, because that demonstrated an
22 issue that involved conflict between the Corporation, a

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1 number of recipient programs and our local bargaining units
2 in various parts of the country. Just for a few minutes to
3 bring you up to date on that in a sense, I'll give you some
4 history of that.

5 Historically, we union members have always been
6 concerned, obviously, about clients' rights, their privacy,
7 et cetera, et cetera, and they've been equally concerned
8 about their own, so many collective bargaining agreements
9 around the country, almost all, have and had provisions that
10 said that matters relating to personal -- matters that should
11 be considered personal and private that might be in a
12 personnel file not be disclosed to third parties.

13 A few years ago, LSC, as they expanded their
14 intrusiveness and demand for documents, decided that they
15 wanted to see all personnel records regardless of what might
16 be in those personnel records, whether there was medical
17 information in there, whether there was information in there
18 relating to a person's children, spouse, et cetera, that
19 might be pertinent and very important for the local program
20 to know but, frankly, should not be disclosed to anybody
21 outside of the program, including LSC monitors.

22 When LSC began to make those demands, we looked

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1 around for what legal rights and remedies we had, and that
2 resulted in a number of lawsuits in federal court which
3 sought to restrain LSC. It used a number of theories,
4 including the collective bargaining units, and attempted to
5 use local privacy laws, et cetera.

6 There was a period when LSC was restrained but now,
7 subsequently, LSC entered into a process that involved a
8 number of field programs and representatives of national
9 organizations that led to this EVA file grant condition.
10 That was negotiated several years ago and, frankly, did not
11 meet our expectations and all of our concerns, so it
12 continues to be a problem.

13 I understand -- I know that there are discussions
14 going on around that particular grant condition. I have not
15 had a chance to review the most recent documents in terms of
16 where that's at, but I do know that I have some very strong
17 concerns about where those discussions were at, and I will be
18 attempting, at least, to talk to whoever is involved in that
19 in the next few days to see if our concerns are being met.

20 In terms of the future, I guess that's what this is
21 all about, I believe, again, we need to foster good and what
22 I call healthy relationships between labor and management

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1 locally and, as I suggested, I think LSC can play an
2 important role in that regard.

3 I think it would be incredible, and a strong
4 indication of your interest in local staff if the Corporation
5 would, particularly in light of the fact that the Corporation
6 has to be authorized in early next year, that you begin to
7 look at some innovative things, such as pension benefits, as
8 an example.

9 There are very few people in Legal Services who
10 have retirement benefits, and those who have those benefits,
11 they are grossly inadequate. We have any number of people,
12 and the Corporation recognizes every year or so, people with
13 25 or more years with Legal Services.

14 And, I would daresay if you took a survey of those
15 people and asked them if they had retirement benefits, almost
16 all of them would tell you, "No." That's a shocking
17 situation and that's something we need to deal with, and not
18 just prospectively. We need to deal with some way of
19 addressing the past. That, of course, requires some sort of
20 funding mechanism, but some way of giving people credit for
21 the time that they've been in Legal Services.

22 We've tried to address this, and through collective

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1 bargaining, we've made some progress. We have a national
2 pension plan in which a number of programs have bargained
3 into, but to be honest the resources, particularly since
4 those resources have been pretty dismal in the last several
5 years, they simply have not been there for that particular
6 benefit and need.

7 So, I look forward to working with this Board,
8 renewing my relationship with at least a couple of the people
9 on the Board, and I think we can do great things, as long as
10 we are open, we are inclusive, and again, I look forward to
11 bringing the labor movement even further in terms of its
12 involvement with supporting Legal Services.

13 I think some of you will recognize that, frankly,
14 that involvement has been significant and even pivotal, in
15 terms of the number of issues that have come up in the last
16 several years. I thank you.

17 CHAIRMAN ASKEW: Thank you, Dwight. Lonnie.

18 Presentation of Lonnie Powers

19 MR. POWERS: Thank you, Mr. Chairman. Sir, in the
20 interest of disclosure and a disclaimer, I forgot to mention
21 or neglected awhile ago to say that I have the honor to be
22 the president of the National Legal Aid and Defender

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1 Association, addressing a couple of my illustrious
2 predecessors. Nothing that I say here today is anything
3 other than my own opinion. I'm not speaking policy on behalf
4 of NLADA. I wanted to make that clear.

5 I want to talk about the experience of the
6 Massachusetts Legal Assistance Corporation in monitoring and
7 evaluating programs in Massachusetts since 1983 when we were
8 established. I want to do it for two reasons: One, to
9 contrast what I think we've been able to do with what you've
10 heard about the Legal Services Corporation, and I think there
11 are some good reasons and some possibly not very good reasons
12 for the difference between our experience and the national
13 experience, and to talk about ways in which I hope that in
14 the future, the Corporation and organizations similar to the
15 Massachusetts Legal Assistance Corporation, IOLTA programs
16 and other state-level funding sources, which represent such a
17 significant funder of civil legal services programs in this
18 country, can serve more of a partnership role with the
19 Corporation in supporting and improving those local Legal
20 Services programs and national and state support programs
21 that we jointly fund.

22 First, the Massachusetts Legal Assistance

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1 Corporation was founded in 1983 as a way that the State of
2 Massachusetts sought to deal with the cutbacks in federal
3 funds for civil legal service that had occurred at the
4 national level. It was a cooperative effort of the Bar and
5 of Legal Services programs and MLAC became the focus of
6 legislative, executive branch and judicial support for legal
7 services for the poor.

8 Our purposes are identical with the Legal Services
9 Corporation and, in fact, in the best tradition of lawyers,
10 they stole a lot from the Legal Services Corporation Act, so
11 it reads a lot the same way. Part of our mission is to
12 ensure the maintenance of the highest quality of service and
13 professional standards, words which appear in the Legal
14 Services Corporation Act.

15 We have, since we began, found that monitoring and
16 evaluation was an essential role that we had to play if we
17 were to carry out that part of our mission. In every state
18 in the country, and I'm a little ahead of myself in Indiana,
19 but they will soon have an IOLTA program that's functioning,
20 there are state level organizations that have money to fund
21 civil legal services programs.

22 In every state, the primary purpose for that money

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1 is to support civil legal services to the poor. Not all of
2 those programs do on-site monitoring and not all of them do
3 monitoring in the way that we have done, but many do. I have
4 always believed, having come out of a Legal Services
5 background, that on-site visits were essential for many of
6 the reasons that you've heard here today.

7 We have used not only the staff of the Mass. Legal
8 Assistance Corporation but also used experienced Legal
9 Services attorneys, both current and former, as part of our
10 monitoring teams. We've done that so that we could evaluate
11 and assist our board in deciding on funding requests;
12 secondly, to be able to improve both the quantity, through
13 increased funding, and the quality of civil legal services to
14 the poor.

15 The third reason is so that I and the other members
16 of my staff and the members of our Board of Directors could
17 stay in touch with the day-to-day work of Legal Services
18 programs because, as the staff of the Legal Services
19 Corporation would probably tell you, if all you do is sit in
20 your office and shuffle paper, you're out of touch with the
21 essential part of your work, with your essential mission. If
22 you don't get out and talk to clients, community groups and

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1 Legal Services workers, you cannot keep focused on the core
2 mission of the funding source.

3 We have tried, over the last several years, to
4 assess the management systems of programs, their systems for
5 delivering services, the financial systems, as opposed to or
6 different from the management, their private Bar involvement
7 efforts and their relations with community groups.

8 We have been able to do that with varying degrees
9 of success and have found that people have been amazingly
10 cooperative and open with us because -- I think primarily
11 because they trust us, because in a state the size of
12 Massachusetts, I and the other members of my staff are well
13 known to the Legal Services programs that we fund, and we
14 fund all of the LSC-funded programs in the state, we also
15 have been able to do our monitoring in a relatively informal
16 way because of this level of trust.

17 We have, although doing it informally, conformed in
18 major part, to the monitoring standards which you've heard
19 about, and used as a basis for our assessment of programs the
20 standards for civil legal services programs because that
21 gives us a way of talking to the programs about what we are
22 looking for. We have also customized each of our visits in

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1 that we have discussed with the directors of the programs
2 issues that were facing them, and have tried to add to our
3 team people that would bring expertise in that area.

4 The results of our work have been positive, I
5 think. We have been able to promote needed changes in
6 program structures and service delivery plans and a re-
7 examination of priorities and a fine-tuning of priorities at
8 the local level.

9 I do have some concerns, though, about what we've
10 been able to accomplish and what we can accomplish in the
11 future. There is, inevitably, some tension between our roles
12 as a funder, a provider of technical assistance, and as a
13 monitor for compliance.

14 One of the initial Board Members of the Mass. Legal
15 Assistance Corporation coined the phrase that we were a force
16 and not a funnel. I think that's apt for any funding
17 organization, but there is some tension in there, as you try
18 to shape the flow of money and how it should be used.

19 Over the last decade, we have been cautious, often
20 at the request of local program directors, about what we put
21 in monitoring reports, because of concern about how that
22 might be used by the Legal Services Corporation and by other

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1 funders.

2 We have also seen, particularly in the last few
3 years, a clear need for capacity building, for technical
4 assistance and other resources that we cannot meet with our
5 limited resources at the state level, particularly given the
6 decline in IOLTA income, and I am hopeful that that is
7 something the Corporation in the future will be able to
8 address.

9 We have also been concerned that there have been
10 conflicting messages from the Legal Services Corporation and
11 from us to programs about what should be done to provide
12 services to clients. We have always felt very strongly that
13 programs should provide a full range of advocacy services to
14 clients, including legislative and administrative advocacy in
15 appropriate cases, and that's not always been the message
16 that has come down from the Corporation.

17 The final concern is that we have duplicated, in
18 many cases, at least the time and the money that has been
19 spent on monitoring with Legal Services programs in
20 Massachusetts. I think that we have been focused more on
21 improving the quality of services than possibly the
22 Corporation has been, but I would hope that as we move into

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1 the future, that one of the things that could be explored is
2 ways in which local and state funders can cooperate with the
3 Legal Services Corporation to see that monitoring is carried
4 out only once and not twice or three times, and that it is
5 focused on the appropriate areas.

6 I'm not sure exactly the best way to carry that
7 out, but I would like to be able to have that discussion, not
8 only in Massachusetts but around the country, and there needs
9 to be an increased focus at the national level on providing
10 the kind of technical assistance and support that has not
11 been provided in the last few years.

12 You've heard many stories about the need for that
13 today, but we are seeing it increasingly. Programs in
14 Massachusetts are stretched almost as badly as they were in
15 1981. I visited a program this week which has laid off, in
16 the last several months, five staff people, including two
17 lawyers, and reduced one paralegal from full-time to half-
18 time.

19 Obviously, both the quantity of the legal services
20 available to clients in that area has been reduced and the
21 trauma that's been visited on the program because of that
22 cutback is also having an effect on the quality of services

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1 to clients. I think they are doing a good job in struggling
2 with it, and we are going to help to the extent that we can
3 in assisting them through this period.

4 If the Massachusetts Legal Assistance Corporation
5 and the Legal Services Corporation can become partners in
6 this effort, as I hope the Corporation will with other state
7 level funding efforts around the nation, we will both achieve
8 our mission of improving the quality and quantity of civil
9 legal services to the poor, and hopefully, with a united
10 front, we'll have a whole lot more money, and we won't be
11 facing these lay-offs that programs have been facing
12 recently. Thank you.

13 CHAIRMAN ASKEW: Thank you, Lonnie. Marion.

14 Presentation of Marion Hathaway

15 MS. HATHAWAY: First of all, let me begin by saying
16 that I've heard today, and it's been so long ago I can't
17 remember, when there was trust between the Corporation and
18 the field programs, but if it has existed, I would begin by
19 asking you to first of all see that maybe you can step in
20 that direction again, at once. Maybe the statement that I am
21 going to make now, you will not ever have to hear it again.

22 I am the client on the Comparative Demonstration

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1 Project, the client, not clients. Granted, there are program
2 directors. There are private Bar attorneys. There are
3 private industry and insurance industry persons. But, there
4 is only one client, and that's an awesome responsibility to
5 place on the shoulders of any person, whether it's this
6 committee that I'm sitting on, whether it's on any other
7 national or local committee, because one client, one person,
8 cannot speak for people across the country due to logistics,
9 due to many other things. It's just not possible.

10 What I have learned and what I have experienced,
11 there is no way that I can get that information into the
12 field to the other clients. I have no mechanism of support,
13 no way of getting it out; however, perhaps you can look at
14 that as a step, that is, beginning to find some way to do
15 that between the field and the Corporation.

16 The most important thing to me in this monitoring
17 discussion is that on the teams that have been sent out
18 throughout the history of monitoring, there has never been a
19 client -- a client, clients, one client, two clients, never.
20 I see no reason why clients could not have been included and
21 trained to be consultants and be on these teams, as well as
22 the other persons who were invited or drafted to become

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1 members of the monitoring teams, many of them whom haven't
2 had the slightest inkling of what the Legal Services
3 Corporation was about or its responsibilities.

4 I speak from experience with my program and I look
5 at it that if monitoring, as it is and has been, was such a
6 big deal, then why has it left such a bitter taste in the
7 mouths of the programs in the field? There are very few good
8 things that I have heard about monitoring. Most of them have
9 been very negative, so maybe monitoring doesn't need to
10 exist.

11 Sure, there needs to be accountability, but maybe
12 there needs to be some other form. Maybe this form of
13 monitoring needs to be ended and perhaps start all over
14 again. Maybe if you're going to keep this model, then try to
15 revisit it and reorganize it.

16 Monitoring and regulations, the regs, should go
17 together, but I certainly feel that monitoring and
18 evaluations should not be lumped together because regulations
19 and monitoring deals with compliance, and evaluation deals
20 with performance measures, so now if a program is deemed by a
21 monitoring team to have fallen down in its regulations or its
22 compliances, and it isn't complying with certain sections of

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1 whatever, then that's going to affect the evaluation of that
2 program because it's lumped together.

3 Then if the program is de-funded or put on month-
4 to-month funding or whatever, ultimately, it's the client who
5 is going to suffer in the end. The bottom line is that, to
6 me, no matter what is done, the client is the one who
7 suffers. Clients are not utilized.

8 Sitting on the advisory committee of the
9 comparative bidding, when I first started, I was saying to
10 myself, "Why did Congress feel that they needed to put out
11 this much money to have a study or to try to get a model for
12 comparative bidding, \$977,000, that could probably be used
13 for many other things that would enhance the delivery of
14 services to the client?"

15 However, as I went along, then maybe again,
16 competition might not be such a bad idea. Maybe there might
17 be something in competition that would help the client. I'm
18 still not convinced one way or the other that that is a cure-
19 all, but what I have run into, in listening, is that I would
20 ask the Corporation, the programs, to first of all look at
21 your clients.

22 We are people. We breathe like you do. We bleed

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1 like you do if you pinch us with a pin or whatever. We are
2 not commodities. We are consumers of your services. We come
3 to you because we are looking for a service, but we want to
4 be treated with respect and we want you to be sensitive to
5 our needs.

6 The lack of sensitivity is a great burden on the
7 client. People become eligible clients for the services of
8 the Legal Service program not always by design, but sometimes
9 by circumstances. I have been in both positions. I started
10 out as a client representative, because I was the Executive
11 Director of a Council on Poverty program, so I went on the
12 Board of Harlem Legal Services representing the community.
13 After that program was closed, I became an eligible client,
14 so that put me in another category, and I have sat on both
15 sides of the table. I know how it feels.

16 The same respect that I gave the community when I
17 was representing them as a representative, I expect that when
18 I got on the other side of the table as being an eligible
19 client. We, out in the community, we are not illiterate. We
20 are educated, some of us highly educated, some of us semi-
21 educated, but none of us are totally, totally illiterate. We
22 can observe. We know better than anybody else what our

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1 problem is.

2 When we come to you, we would like for you to
3 listen to us, hear us out, hear what we have to say and then
4 discuss possibilities with us of how our case is going to go,
5 how our case is going to be treated, and certainly there are
6 even some areas that can be -- self-help. We can help
7 ourselves.

8 All you have to do is tell it to us, show it to us,
9 and since there is short money and short staff, there are
10 some things that we can do, and maybe when we get to that
11 certain point legally that we can't handle it, then the
12 program would be able to step in.

13 Now, I don't know how the Corporation is going to
14 handle this. I do not envy you, but I know that it has to be
15 done. I would ask you to look out into this vast field, this
16 vast community, and search out the clients. We are more than
17 willing to help.

18 We don't need to be hand picked and we don't need
19 just a small cluster of clients that become so well known
20 because we can do so many things, because there are many,
21 many more clients out in the client community, who can do
22 just as much, perhaps, if not more than I can do and do it

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1 better than I can do.

2 I would ask you to start to find a way. Talk to
3 us. Converse with us, not just saying things that you think
4 we want to hear or trying to appease us, but really, really,
5 start communicating with the client community and let us
6 become partners with the Corporation and with the field
7 programs.

8 CHAIRMAN ASKEW: Thank you, Marion. Ramon.

9 Presentation of Ramon Aries

10 MR. ARIES: Okay. Maybe I should give this in
11 Spanish to wake everybody up. First, I need to say, for
12 those of you who were here to hear John O'Toole's comments,
13 please do not believe or get the idea that it was anecdotal.

14 I can tell you from my experience at California
15 Rural Legal Assistance, where I once had to spend almost an
16 entire two-week period and get continuances in cases because
17 I had to assist staff attorneys in preparing for a monitoring
18 visit, but let me get to what I'm supposed to talk about
19 today.

20 I have been asked to comment on the Comparative
21 Demonstration Project as a member of the advisory group to
22 the project, but before doing so, a few introductory remarks

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1 are in order. For some time, opponents of Legal Services
2 argued that programs should compete for LSC grants much like
3 businesses compete for government contracts.

4 They claimed competition would lead to high quality
5 legal assistance. Many in the Legal Services communities,
6 myself, for instance, believed that the true motive was to
7 eventually de-fund programs by changing the way funds are
8 distributed. There is no credible evidence, to support the
9 notion that competition leads to effective delivery of legal
10 services, nor is there any indication that the opposition has
11 any understanding or appreciation for what constitutes
12 effective legal services in the first place.

13 Although the effort to use competition in the
14 awarding of grants ultimately failed, a study of competition
15 as an incentive to provide effective and efficient legal
16 services was politically inevitable, and so the 1992 LSC
17 appropriation contained \$977,000 the Board could use to
18 "conduct comparative demonstration projects to study, under
19 appropriate standards and criteria, the use of competition in
20 providing effective and efficient legal services of high
21 quality."

22 It is noteworthy that the appropriation language

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1 speaks to the need to have appropriate standards and criteria
2 and makes no mention of competitive bidding but, instead,
3 refers to competition as a tool to use in the effort to
4 provide legal services of high quality.

5 As you know, your predecessors elected to exercise
6 their discretion to conduct a comparative demonstration
7 project and along the way, the decision was made to include
8 members of the Legal Services community in the design of the
9 project and, more significantly, in the development of the
10 performance standards and criteria to be used.

11 Thus, the Comparative Demonstration Project to some
12 extent represents a convergence of two different, but not
13 diametrically opposed, views. The first is the view that
14 competition will naturally improve performance and that the
15 lack of competition will lead to mediocrity and complacency.
16 Further, money provides the incentive to compete.

17 The other view is that the Legal Services community
18 has a duty to exploit every opportunity to improve the
19 quality of services we provide to clients. Fundamental to
20 that endeavor is the development and adoption of appropriate
21 performance standards. The comparative demonstration project
22 offered such an opportunity, and that is why we agreed to

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1 serve on the advisory committee.

2 Although I am prepared, as best I can, to answer
3 any questions you might have about the design of the
4 competition, I would rather comment on the two aspects of the
5 project I believe will be of lasting value, the performance
6 standards that have been developed and the peer review method
7 of applying them.

8 I should, however, mention the basic design. Local
9 programs from throughout the country volunteered to
10 participate in the project. Sixteen were chosen by lottery.
11 They have been grouped into four different clusters:
12 Programs with small budgets and small geographic areas;
13 programs with small budgets and large geographic areas;
14 programs with large budgets and large geographic areas; and,
15 finally, programs with large budgets and small geographic
16 areas. If you can remember all of that, you can join the
17 advisory committee. A large geographic area exceeds 3,000
18 square miles and a large budget exceeds \$1 million.

19 Now let me get to what I wanted to talk about.
20 During a first round of visits to the programs, the competing
21 programs were rated by a group of peer reviewers, that is,
22 people with extensive experience in Legal Services. Their

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1 judgments about each program in their cluster were made after
2 looking at five performance areas developed by the advisory
3 committee to the project.

4 Incidentally, I should mention that, to my
5 knowledge, this is the first instance since I've been in
6 Legal Services that field programs were invited to
7 participate in an LSC-sponsored project. Eighteen months
8 after the first visit, each team of peer reviewers will visit
9 the four programs in its cluster again and apply the same
10 criteria.

11 The one program in each cluster that is rated the
12 most improved and best overall at the end of the
13 demonstration period will receive a substantial cash award.
14 I should add that a fifth cluster of programs was chosen as a
15 comparison group. As a way to gauge whether improvement in
16 performance is attributable to a cash incentive, the winner
17 of this group will not receive a cash award.

18 Now, to the five performance areas which I will
19 only summarize because I believe that you have the text in
20 your materials. The performance areas promote the
21 Corporation's duty under the Act to ensure grantees maintain
22 the highest quality of service; that programs establish and

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1 implement priorities, taking into account the relative needs
2 of eligible clients, and that the services provided be
3 economical and effective.

4 The first performance area looks to whether the
5 program is addressing the most pressing needs of the client
6 community. Is the program relevant? A program might be the
7 best at divorcing clients but divorces might not be what
8 clients most need.

9 The second performance area looks to the quality
10 and effectiveness of the services provided. This, by far, is
11 probably the -- well, undoubtedly, the performance area with
12 the most criteria. Among other things, the criteria asks the
13 peer reviewers to determine whether the program's legal
14 representation and other activities comport with the ABA
15 standards for providers of civil legal services to the poor.

16 The third performance area looks to thoroughness of
17 access and utilization by the client community. Peer
18 reviewers are asked to see whether the program provides
19 services and is responsible or responsive to each of the
20 racial, ethnic and language minorities in its service area.

21 The fourth performance area looks to the program's
22 internal operations and management systems. Good

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1 administration does not guarantee effective services for
2 clients, but it certainly increases their likelihood.

3 Finally, the fifth performance area looks to
4 whether the program's activities toward the ends set forth in
5 performance areas one through four are conducted in the most
6 efficient manner possible, given the program's limited
7 resources.

8 Obviously, the five performance areas overlap with
9 one another. There is a need to refine them after the
10 demonstration period and to distribute them for comment;
11 however, based on my experience as a Legal Services attorney,
12 I believe they are a significant step toward developing a set
13 of performance standards that look to the totality of a
14 program's role and effectiveness in improving opportunities
15 for low income persons consistent with the Act.

16 Following the first round of visits which, I
17 believe, were completed in September of this year, all peer
18 review teams gathered with the advisory committee to share
19 their experiences and impressions. Predictably, they had
20 helpful suggestions on how the performance areas and criteria
21 could be improved, but most significantly, the peer reviewers
22 found them adaptable to the different programs they visited.

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1 Even the directors of the participating programs, who met
2 here in Washington earlier this week agreed that, with some
3 modification, the performance areas can be used to evaluate
4 performance.

5 Before commenting on the use of peer review teams,
6 I want to acknowledge that although the entire advisory
7 committee had a hand in developing the general framework of
8 the performance areas, Alan Houseman, of the Center for Law
9 and Social Policy, Leona Vogt, of Vogt and Associates, and,
10 in particular, D. Miller of the Legal Services of New Jersey,
11 were primarily responsible for the substance of the work.

12 I really have to mention, though, that there were
13 some LSC staff that actually were supportive of the work and
14 did a good job. I guess I've got to pay credit where it's
15 due.

16 MR. EAKELEY: Don't sound so grudging.

17 MR. ARIES: As for the use of peer reviewers, let
18 me begin by saying that I have never fathomed the
19 Corporation's position that programs cannot be fairly
20 evaluated by peer reviewers because peer reviewers have a
21 conflict of interest and are, therefore, not independent.

22 I fail to see the conflict, but I do understand the

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1 underlying assumption and that is that members of the Legal
2 Services community have an interest more compelling than the
3 provision of high quality legal services, and that simply
4 isn't true.

5 As our meeting with the peer reviewers so vividly
6 demonstrated, we can be as critical of one another as the
7 most ruthless monitoring team when it comes to serving
8 clients. Indeed, it hits home much harder because our
9 judgments are based on experience. The difference is that
10 the criticism is constructive and grounded in the belief that
11 we have a duty to make things better.

12 The other thing I want to note about the peer
13 review teams is that in listening to them, I realize I made a
14 critical mistake. I should not have agreed to serve on the
15 advisory committee. I should have, instead, applied to be a
16 peer reviewer.

17 The peer reviewers themselves will tell you that
18 they are the project's true winners. They have the
19 opportunity to leave their own programs and visit others and,
20 in doing so, to generate ideas on how to improve their work.
21 This leads to my final comment on the peer review teams.

22 Almost all of them found programs desperate for

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1 technical assistance and while I blame a decade of hostility
2 and indifference, there is no future in laying blame, but in
3 moving forward, and I suggest that this board place technical
4 assistance at the top of its list. Finally, the last --

5 MR. EAKELEY: Could you stop right there just one
6 second? What areas of technical assistance were found to be
7 most needy?

8 MR. ARIES: In listening to the peer reviewers, I
9 must say that it was entirely across the board. There were
10 folks who talked about programs needing immediate assistance
11 on management systems. How do you provide leadership and
12 control to a program?

13 There were other peer reviewers that talked about
14 the immediate need to get programs to be more accountable to
15 the client community, so I really could not say that there
16 was any particular area.

17 It was really across the board, but it was very
18 revealing to me that the peer reviewers were very frustrated
19 by the fact that, because of the rules of the demonstration
20 project, people like Greg Knoll, of San Diego, who has been a
21 project director, I believe, for 20 years, could not offer
22 advice to someone who was desperate for it and who was asking

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1 for it, and he had to say, "Well, I'm sorry, but the rules of
2 the game don't allow it," and I'd say that that really was
3 leading to a lot of frustration on the part of the peer
4 reviewers, as well as the participating programs.

5 Since I am the last speaker, could I please just go
6 over three points which I think will tie together the things
7 that you've heard today from at least these two panels. The
8 first is that monitoring, as it is currently being conducted
9 by LSC, does not serve the purposes of the LSC Act. It does
10 not address major areas of LSC responsibility under the Act.
11 It is wasteful and burdensome and should, in the short term,
12 be substantially revised and reoriented.

13 The second point is that, for the long term,
14 tinkering with monitoring will not do. To affect quality and
15 performance and to improve the effectiveness and efficiency
16 of legal services delivery, as envisioned by the Act, LSC
17 must fundamentally re-think and revamp its approach to
18 monitoring, taking into account the needs not only for
19 appropriate accountability and enforcement, but also the need
20 to adopt standards and provide support and assistance to
21 programs to improve both the substance and delivery of their
22 work.

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1 The third point and the final one is that for LSC
2 to accomplish its statutory mandate, its staff responsibility
3 for monitoring must have experience in delivering legal
4 services to the poor and must possess the capacity and
5 sensitivity to address the full range of activities necessary
6 to affect program quality and performance.

7 Fundamental and comprehensive re-examination and
8 overhaul of the LSC role are required, and these activities
9 must be carried out by people who have experience in
10 providing legal services to poor people and who have or can
11 gain the respect and trust of their colleagues. Thank you
12 very much for the opportunity to speak to you.

13 CHAIRMAN ASKEW: Thank you, Ramon. Do we have any
14 questions? Nancy.

15 MS. ROGERS: Yes. Ramon, I know that you are
16 favorably inclined toward the standards, but you mentioned
17 that you think they'll need further modification a year from
18 now.

19 If you were sitting where we are sitting and were
20 trying to decide whether to adopt standards and, if so, how
21 quickly, would you reach out and take these standards and
22 begin applying them now? Would you wait a year or would you

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1 use some other process for finding standards for performance?

2 MR. ARIES: Frankly, I would not wait for the end
3 of the demonstration project to use these performance areas.
4 What I would do is to take time to revise them and to
5 distribute them to the field.

6 I should mention that they were distributed under
7 instructions by the president to the field, but at the time,
8 folks thought, and rightly so, that these standards were only
9 going to be used in this demonstration project. I think
10 that if the field was aware that they were contemplated as
11 possible standards to use in the future, in future
12 evaluations, people would take the time to read them and
13 comment on them.

14 I think that, already, and perhaps other members of
15 the advisory committee would agree with me, that both the
16 peer reviewers and the directors of the participating
17 programs had helpful comments on how different parts of the
18 performance areas could be interlocked with others and
19 integrated into others, but I think that the model is there.
20 I would not suggest that you start from ground zero, because,
21 for example, the ABA standards which John Tull talked about
22 earlier are a part of performance area number two.

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1 MS. ROGERS: Some sorts of professional peer review
2 require a self-study by the Agency that's being reviewed in
3 advance of the review, say, every five years. I wonder what
4 the views of the panel are, as to whether LSC ought to
5 require a self study.

6 MR. ARIES: I am not sure of my view on whether it
7 ought to be a requirement, but just to give you a sense, and
8 I certainly don't mean to applaud my program, but I will. We
9 are thinking of revising the performance areas and using them
10 as a self-assessment tool the early part of next year, and we
11 think it's going to be helpful.

12 MR. POWERS: We have not required programs to do
13 specifically a self-study, but we have, over the last couple
14 of years, begun to require them to report to us as part of
15 the re-funding application, their work for the immediately
16 preceding year, and that has some of the elements of a self-
17 study.

18 I think that it is useful, and a properly done
19 self-analysis, I think, would be quite useful. I'm not sure
20 that that's where I would put a whole lot of effort right
21 now, given the need for technical assistance that you've
22 heard about and the need for revising the monitoring program,

1 but as you develop your view of where to go, I think it
2 should be very seriously considered as part of the
3 Corporation's overall approach to this.

4 MR. LANE: I would concur with that, noting what I
5 mentioned in my remarks, which is that it will only work if
6 people are willing to be open about the self-assessment, and
7 that will only work if people trust the people to whom it's
8 going.

9 MS. ROGERS: A follow-up question. You may know
10 that I'm bringing a lot of this from my own experience in law
11 schools, but one of the requirements of our self-analysis in
12 advance of any sort of review, is that the self-analysis
13 document not simply be one that administration writes; that
14 it has to be a participatory document that is circulated to
15 everyone who works there, from janitors to professors. I
16 don't know whether you think that that process, which may be
17 one of the main benefits of our own accreditation reviews, is
18 something that has comparable application for Legal Services
19 associations.

20 MR. LANE: My own opinion is that it does.
21 Certainly, when I'm evaluated by my board, every person in
22 the program has an opportunity to have input into that

1 process and it doesn't, needless to say, go through me. The
2 same is true of other staff evaluations, that everybody who
3 works with or around or under or over someone has an
4 opportunity to feed into that process. So, I would recommend
5 that, yes.

6 MS. ROGERS: Another followup is a question as to
7 whether the staff should have access to any reports that are
8 generated on the program.

9 MR. POWERS: For my part, I think it's absolutely
10 essential that the final evaluation document be not just for
11 the directors of programs or just for the board, but for the
12 entire program, because that's what you're trying to
13 evaluate, and I would be very distressed if I found that a
14 project director had not used that as a way of learning for
15 the entire program.

16 MR. LANE: I would share that conviction, also.
17 It's been disappointing to my staff in the 1980s and '90s for
18 me to have to tell them that there really isn't much point in
19 my sending the report around, because there is nothing in it
20 there that's of any value to anybody. I mean, I make it
21 available but I've told them, and they really are
22 disappointed. They want feedback. They want to hear what

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1 outsiders think, and they are looking for help and they're
2 looking for comments, and they're disappointed when I show
3 them what we've been getting.

4 CHAIRMAN ASKEW: Any further questions?

5 (No response.)

6 CHAIRMAN ASKEW: Thank you, Panel. Hold one just a
7 minute. Dwight said he didn't know why he'd been invited
8 here. Well, he was invited here because he gave us what we
9 wanted, and he and the rest of you gave us what we wanted,
10 which is help educate us as a committee and a board about
11 what's going on and give us ideas for the future in this
12 process, and we greatly appreciate you taking the time to do
13 it. We thank you for being here.

14 The Chair is not here, but I have a feeling what
15 the Chair is going to instruct me to do and my committee to
16 do is what he instructed the Operations and Regulations
17 Committee to do, which is begin developing a construct,
18 theoretical construct, for this process in the future.

19 It's going to require much more of these kinds of
20 discussions as we go through it, and this is a high priority,
21 I think, for the Corporation and for the Board. We very much
22 appreciate you being here and sharing this with us, and thank

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1 you.

2 With my apologies to the Audit and Appropriations
3 Committee, we have two more agenda items that we need to
4 cover very quickly because they are important, and I'm going
5 to ask Ellen Smead to come forward and Kathleen Welch, from
6 the National Association of Public Interest Law, to come
7 forward, and we will proceed with these apace.

8 Ellen, the first issue is the Law School Clinics
9 Program. Can you quickly bring us up to date on the status
10 of the money for the clinical programs and the time frame
11 that we must follow in terms of getting solicitations out so
12 that those grants can be made?

13 Status Report on Law School Clinical Grant Program

14 MS. SMEAD: Thank you. For the record, my name is
15 Ellen Smead, and I'm Director of the Office of Program
16 Services. As part of the 1994 appropriations, the
17 Corporation received \$1.4 million to be devoted to law school
18 clinical programs. As an internal time schedule, we had
19 geared towards trying to get a solicitation out by mid-
20 December; however, there is flexibility in that, and we could
21 get it out probably as late as about mid-February, and it has
22 gone out that late in the past. That's why I can tell you

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1 that it could go out in February.

2 Of course, the earlier we get it out, the better,
3 because it allows the law schools to plan more if they are
4 going to be submitting a proposal. It also gives the
5 students an opportunity to know what clinics LSC might be
6 funding in the coming year. These clinics, of course, would
7 start in September of 1994, and would be running for the '94
8 and '95 program year, school year.

9 So, where we are at this point is I do have a draft
10 solicitation. It's been circulated only to me internally,
11 and we welcome any ideas on changes from the past.
12 Traditionally, what we've done is given it directly to law
13 schools. The law schools submit proposals.

14 Those are judged against certain criteria that are
15 set forth in the solicitation, those being, for example, the
16 types of cases that will be handled, the quality of the
17 people involved, and the support from the local community. I
18 know that there have been some other ideas about how to focus
19 on providing seed money to new programs instead of funding
20 existing programs and how can we go about doing that. One
21 option is instead of looking at one-year grants, we could
22 look at two-year grants, and then provide there be no further

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1 funding.

2 As background, some of the programs that we have
3 now we have been funding for five or six years, but every
4 year, we do try and make sure that we do include some new
5 programs in there. The advantage of making these two-year
6 grants instead of one-year grants is it gives the programs,
7 the law school clinical program, an opportunity to get off
8 the ground, to get some credibility and then go look for
9 alternative funding sources.

10 Another option that might be considered is
11 externships. Those are where, during the summer, the law
12 student could go and work at one of the local Legal Services
13 programs and receive credit from the law school to do that.

14 Another option that we have just started kicking
15 around and haven't really come to much fruition on is using
16 the money to do what we would call culmination of the
17 clinical experience, and provide basic lawyer skills training
18 to law school graduates.

19 This would be done probably either just before --
20 just after graduation or just after the Bar exam or maybe
21 both, depending on the location. Of course, I'm sure there
22 are many other ideas on how this money could be used, but

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1 those are just some of my thoughts.

2 CHAIRMAN ASKEW: Let me make sure I understood you.
3 The draft solicitation has not gone to law schools, yet?

4 MS. SMEAD: The draft solicitation has not gone
5 to --

6 CHAIRMAN ASKEW: Anybody?

7 MS. SMEAD: No, it hasn't even gone to the
8 president, yet.

9 CHAIRMAN ASKEW: Okay. Nancy may have some
10 questions but I think one thing I wanted to make sure is that
11 the process has not started yet, so the committee still has
12 time to review it, both because it hasn't started, but also
13 because we don't have to get a solicitation out until after
14 the next board meeting, so we do have time between now and
15 the January 28th board meeting to review this and come up
16 with some additional ideas if we wish to.

17 MS. SMEAD: Correct. We do. We do.

18 MS. ROGERS: If we bring back these suggestions to
19 the board meeting at the end of January, would that be
20 sufficient time for you to turn around the request for
21 proposals and get it out in mid-February?

22 MS. SMEAD: Yes, the staff has had experience with

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1 that. This past year, they turned it around very quickly and
2 we have very able staff who can write very quickly and turn
3 documents around to get them out by mid-February until the
4 end of February.

5 MS. ROGERS: I, just before coming here, got one
6 other suggestion. Actually, I solicited ideas from people in
7 the law clinic world and got some very similar to the three
8 options that you have suggested, but one additional one was
9 to indicate an interest, not perhaps exclusive of other
10 things, but an interest in funding programs that would permit
11 legal clinics and law schools to bring in Legal Services
12 lawyers for a semester to teach, by providing funding that
13 would go to their Legal Services organization for release
14 time for that semester period as well as some funding for
15 travel and living expenses if they are going to another
16 community, with the idea that that would be enriching to the
17 law school experience by introducing in the clinical program
18 an active Legal Services lawyer with that perspective, and
19 also enriching to the programs in the sense that it would be
20 not a part-time teaching opportunity for Legal Services
21 lawyers at the end of a long day, but an opportunity for a
22 Legal Services lawyer to have something of a sabbatical

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1 experience in which all time would be devoted to thinking
2 about practice and translating that into teaching, as well
3 as, perhaps, an opportunity to improve morale and the
4 prestige of Legal Services lawyers.

5 I don't know. I'm sorry that you don't have much
6 notice of that, but I wonder if you have any immediate
7 reaction or if others on the committee do.

8 MS. SMEAD: I think it sounds very interesting to
9 me. I'm sure it would sound very interesting to -- I won't
10 speak on behalf of the field, but I think they would think it
11 would be very interesting, too, and with having the nexus to
12 the law school, it probably would qualify under the clinical
13 aspect of it. I think, though, we'd have to look at it
14 closely to make sure that it does meet the appropriation
15 requirements.

16 We do know that there's not much of a definition of
17 what clinical programs mean, and we might have to seek some
18 guidance from the committee on that, the appropriations
19 committee, if our General Counsel thought that would be
20 necessary.

21 MS. ROGERS: One other thought was one of taking
22 one of the options, which is the basic lawyering skills

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1 training and even expanding it to provide or indicate an
2 interest in proposals that might involve a partnership of a
3 clinic and a Legal Services -- perhaps a state-wide or some
4 other Legal Services organization to create in-service
5 training modules or in-service training for lawyers, using
6 both the clinical staff, or using the clinical staff,
7 primarily, and I suppose using the grant for release time for
8 the law school clinical staff to provide the training.

9 MS. SMEAD: That sounds very interesting, too.

10 CHAIRMAN ASKEW: Well, I think what the committee
11 would like is to have some time. One, I think it would be
12 helpful if you circulated your draft solicitation for us and
13 to the field representatives to take a look at it, although I
14 assume it's not substantially different than past
15 solicitations, is that right?

16 MS. SMEAD: This time, it isn't. We have not
17 revised it to take into consideration any of the options that
18 I presented to you at this point.

19 CHAIRMAN ASKEW: Okay, and we'd like to have some
20 time between now and the next board meeting to generate some
21 of these more creative ideas, I hope, maybe through contact
22 with the law school clinic community, with the field, to see

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1 if there are some ways that we can legitimately utilize those
2 funds the next round of grants, and so we will be coming back
3 to this issue at the next committee meeting, the next board
4 meeting. Thank you.

5 We have invited Kathleen Welch to be with us today
6 and Ellen, with all due deference, I'm going to ask Kathleen
7 if she would make a presentation to us about the National
8 Service Act and the ways the Corporation and the field may
9 get involved in that. I think it may require us to at least
10 inform the Board tomorrow of some things that we want to get
11 started.

12 Why don't you introduce yourself, Kathleen, and
13 what your role is now?

14 Presentation by Kathleen Welch

15 MS. WELCH: My name is Kathleen Welch and I'm the
16 Executive Director of the National Association for Public
17 Interest Law. I'm grateful for your invitation to come here
18 and speak to you.

19 I confess it's the first time I have been invited
20 to speak before the Legal Services Corporation Board and I
21 certainly hope it will be the first of many more
22 opportunities in the future. I have to commend you on your

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1 endurance. You have all been here a long time, and I'm
2 amazed.

3 If I could just take a couple of minutes to
4 introduce NAPIL and my organization, I think for those of you
5 who haven't been on a law school campus for a few years,
6 you'll be surprised to learn what's happening on campuses all
7 over the country. Back in 1986, my organization was founded
8 by law students on 15 campuses who got together to try and
9 find ways to alleviate the crisis in Legal Services and also
10 to remove obstacles to young lawyers going into Legal
11 Services and other public interest work.

12 Today, that coalition of law student organizations
13 is on 123 campuses, about 70 percent of all the ABA-approved
14 law schools in the country. We are the largest organization
15 in the country devoted to training the next generation of
16 Legal Services lawyers and to supporting those lawyers, and
17 we are the only law student coalition in the country devoted
18 exclusively to the promotion of public interest law.

19 One of the primary activities of our law student
20 groups has been to raise money to create new opportunities to
21 send lawyers into Legal Services programs. Just in the last
22 year, the students raised just under \$2 million to fund over

1 700 students to go out into the field last summer working at
2 Legal Services organizations, environmental and consumer
3 groups, civil liberties organizations and so on.

4 Since our founding, we've raised -- and when I say
5 "we," I can't take credit for it; these are the students who
6 are members of our group -- over \$7 million to fund more than
7 3,000 positions, and in the packets I just had handed out to
8 you, there's a sampling of the Legal Services organizations
9 that were funded last summer by our student groups.

10 These are law students raising money from each
11 other, asking their fellow students to contribute funds to
12 support their peers to go into Legal Services and other
13 organizations for the summer.

14 We also worked very closely with the law schools to
15 create loan repayment assistance programs, innovative
16 curricula reform that provide training, expanding clinical
17 programs, and we run a series of leadership training programs
18 throughout the academic year to train law students to get the
19 skills of raising money, organizational development and
20 hopefully, by the time these students get a job at Legal
21 Services organizations, they will be well prepared to do
22 things like funding, organizing and creating strong

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1 organization.

2 You'd be surprised at how many students go after
3 these summer grants more than 25 to one at many of our
4 campuses applying for summer positions. It's clear that
5 there are thousands of students every year who are coming out
6 of law school who want to go to work for Legal Services but
7 can't for two very simple reasons.

8 Number one, there are a very limited number of
9 jobs; and, number two, many of these students are faced with
10 upwards of \$50,000 in educational debt and simply can't
11 afford to take a low paying Legal Services job. Just last
12 month, we had an annual national public interest law career
13 fair and conference. Over a thousand students came from
14 across the country to Washington to apply for a limited
15 number of jobs.

16 In response to this, we have organized something
17 that I think will seem a little familiar to those of you who
18 were with the Corporation many years ago, and also, I think,
19 is consistent with what the president is trying to do in the
20 new National Service program, and that is something we're
21 calling NAPIL Fellowships for Equal Justice.

22 It is a new post-graduate fellowship program that's

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1 trying to create new opportunities for lawyers serving under-
2 represented communities to provide debt assistance for those
3 new lawyers, in other words, to make the jobs accessible to
4 everyone whether you are indebted or you come from a
5 disadvantaged background.

6 The program seeks to encourage projects that are
7 innovative, that are replicable, that are sustainable and,
8 ultimately, the goal of what we're trying to do with this
9 fellowship program, is to increase resources in the Legal
10 Services community and to create a constellation of
11 fellowships. It's very similar to the old program in many
12 ways.

13 We put a significant amount of resources into
14 recruiting minority law students and graduates to this
15 program. We run a very fierce national competition. Last
16 year, over 300 law students applied for -- this was the first
17 year of the program -- only seven positions.

18 We were very fortunate to get our hands on a very
19 unique source of funding for this program. Two federal
20 judges provided us with a little over \$3 million in anti-
21 trust settlement reserve funds to create the program, and
22 that's the endowment upon which we are launching what we hope

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1 will be a much bigger program.

2 Some of Legal Services' oldest and dearest friends
3 are involved in this program. Jack Curtin is currently
4 serving as the Chair of our Board of Directors. Jack Martin
5 from Ford Motor Company, is on the board, Clint Lyons, Esther
6 Lardette and many others whom I'm sure you know or have had
7 contact with.

8 I've provided you with some information. I won't
9 go into detail about the fellows who we funded in the first
10 year. There's a profile of those folks in your packets and,
11 as you'll see, five of the seven fellows are working at Legal
12 Services programs. I have to tell you that the profile of
13 lawyers coming out of law school who are dedicated to public
14 service and Legal Services work, are unlike any that I think
15 any of you have seen.

16 They are people with many years, in spite of their
17 age, of community service work, of summer work and during the
18 year work with Legal Services organizations. There are
19 people who -- many people, we're finding, who want to return
20 to their communities, who come out of communities such as
21 Native American Reservations or poor urban communities, who
22 want to go back there and serve the folks that they grew up

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1 with.

2 The real question is: How do we get them there?
3 How do we provide them with the resources? How do we create
4 these new jobs? We are running our second fellowship
5 competition right now and I've provided you with a sampling
6 of just some of those applications. Applying for this
7 position is not about sending in a resume.

8 You have to go out as a law student and develop an
9 innovative project serving poor communities. You have to go
10 out and find a sponsoring organization, develop the project,
11 and complete a very lengthy application process. In spite of
12 all that, we're still getting two to three hundred
13 applications.

14 I hope that this gives you some sense of the range
15 of opportunities that I think my organization and the Legal
16 Services community and the LSC board has to work together in
17 the near future. I think perhaps one of the most compelling
18 opportunities is facing us right now and that is an
19 opportunity to work with the new National Service program.

20 As many of you, I'm sure, have seen in the paper or
21 have read in your materials that Don Saunders sent around to
22 you, this fall, Congress passed the National Community

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1 Service Trust Act which initially President Clinton or
2 Candidate Clinton was selling on the campaign trail as an
3 opportunity to get more people into community service
4 programs and to provide more educational opportunities.

5 It was thought of as largely a program for college
6 aged youth but largely due to the work of, if I may, my own
7 organization and NLADA and PAG and others, we have been able
8 to expand that program to include Americans of all ages and
9 specifically to include graduate students, law students,
10 professionals and others.

11 The program creates a brand new federal entity
12 modelled after the Legal Services Corporation, in part,
13 called the Corporation for National and Community Services.
14 Over \$300 million has been appropriated for that program this
15 year and in the following two years, that's fiscal year '94,
16 \$500 and \$700 million respectively have been authorized for
17 that program.

18 The Corporation plans to place up to 20,000 people
19 in community service positions during the next year,
20 addressing four priority areas: the environment; public
21 safety; education; and unmet human needs. Individual Legal
22 Services programs, national nonprofit organizations,

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1 government agencies, law schools, all are eligible to apply
2 for funding under this program.

3 I have to stress that one thing that the
4 administration and the new corporation is looking at is
5 collaboration between those entities of partnerships,
6 public/private partnerships, partnerships between federal
7 agencies and local organizations, to create programs to get
8 people into these community service positions.

9 The funding for this program is going to be
10 allocated two-thirds to the state level and one-third to a
11 national pot of funding, and the types of programs that they
12 plan to fund have to address those four priority areas, and I
13 think the one that most directly speaks to the Legal Services
14 community is obviously unmet human needs.

15 It's clearly -- that national priority, I think, is
16 clearly consistent with the priorities of the programs that
17 you fund. The kinds of the things the corporation plans to
18 look at is the impact on the local communities as well as the
19 impact on the individual who is doing the service.

20 They'll be looking to ensure that there's not
21 displacement of existing workers; that there are measurable
22 goals; and, similar to a NAPIL fellowships program, they will

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1 be looking for innovation, replicability and sustainability.
2 I think many of us have a tendency to look at this as an
3 opportunity to fund existing staff positions at beleaguered
4 Legal Services organizations, and I think we ought not to
5 look at it that way, because the priorities of the
6 administration, I think, are to create projects that have a
7 specific AMERICOR, which is the trendy new name for this
8 program, an AMERICOR identity, clearly identified projects
9 with specific goals that fit within the national priorities.

10 In my many conversations with members of the
11 administration and senior staff at the corporation, I think
12 there is clearly an interest in bringing lawyers into this
13 program, and I can tell you, from the early days of lobbying
14 on this program, lawyers and Legal Services programs were not
15 on their radar screen at all, so I think there is an
16 interest. I think there is an opportunity.

17 Just to sort of bring it to life a little bit, I
18 think the kinds of programs that we might -- we, meaning the
19 Legal Services community, broadly -- might do that would fit
20 into this program are some sort of national, local, or
21 regional Legal Services Corps, with Legal Services attorneys
22 focusing on specific needs, such as the needs of low income

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1 children and family violence or on homelessness prevention.

2 CHAIRMAN ASKEW: Kathleen, I'm sorry. Let me
3 interrupt you for a second. We are about 45 minutes behind
4 here and the next committee is due to start. We probably
5 need to have you come back before us again in the future,
6 both about this project but also about NAPIL more generally
7 because I think we probably ought to be working more closely
8 together on joint projects.

9 My understanding is there is something that we need
10 to do soon if we are going to make a choice to participate in
11 this program, and that's really why I wanted this on the
12 agenda for today to make sure we don't miss any deadlines or
13 miss any opportunities we've got between now and the spring
14 of the year.

15 Is there something that we need, as a board, to do
16 in the next month or two to make sure we don't miss some
17 deadline?

18 MS. WELCH: Yes, in March of 1994, they're going to
19 be taking applications and proposals for grants, and between
20 now and then, the corporation is working very hard to provide
21 technical assistance and meet with groups such as your
22 Corporation, to develop these problems. If I may, I would

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1 suggest that your staff look into this very quickly and I
2 hope would work with us.

3 CHAIRMAN ASKEW: Well, what I would suggest, and I
4 may suggest it to the Board for tomorrow if it requires Board
5 action, is that we encourage, we ask, our staff, and that's
6 Ellen and her staff, to meet with you, the folks at NAPIL,
7 and the other people who are working on this, and I
8 understand PAG has been working on it and maybe NLADA, and
9 make sure that between now and the next time we get together,
10 that whatever steps are necessary are taken, the work that's
11 needed to get this in shape is done, so that we can have a
12 committee meeting about it, have it on the agenda for our
13 next committee meeting in January to make sure that we move
14 it forward.

15 There are people on the staff, Ellen's staff, who
16 are aware of this, and I think they'd be happy to sit down
17 and start working this through with you, and I'd encourage
18 them to do so. Is there anything else, though, in the next
19 30 to 60 days that we have to do other than get you all
20 together and get you working together?

21 MS. WELCH: I don't think so. I think that will do
22 it. I would prefer it be more like in the next 15 days if

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1 you can do it.

2 CHAIRMAN ASKEW: Right.

3 MR. EAKELEY: I agree.

4 CHAIRMAN ASKEW: As soon as possible, and have you
5 done a mailing to us, or the PAG mailing to us covers what
6 the program is and the opportunities that we would have both
7 nationally and locally to participate in this? It's in that
8 mailing?

9 MS. WELCH: I think it provides the basic materials
10 that you would need.

11 CHAIRMAN ASKEW: Okay. We only got it yesterday,
12 so I imagine most of us haven't had a chance to read it, yet.
13 Thank you for being here. I'm sorry we had to cut it short
14 bit we want to get this started.

15 MS. WELCH: That's quite all right.

16 CHAIRMAN ASKEW: Any other business before the
17 committee?

18 MR. COOK: May I just suggest at some point, I know
19 you have a lot on the agenda. At some point, you need to
20 take some time to have public comment because, you know, I've
21 been sitting here all day. A lot has gone on that I want to
22 comment on, and I'm not going to try to do that right now,

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1 but there are some -- I think there is something to be said
2 about making sure.

3 Maybe you can even do it tomorrow, carving out a
4 portion of time of the meeting to allow comments from the
5 public that have not been part of these panels, because
6 there's been just an awful lot of stuff and because most of
7 you know me, I have been very patient today.

8 It has been a remarkable effort on my part not to
9 jump up and start screaming all day long. I don't need that,
10 and so, you know, I just -- I don't know. Maybe we can do it
11 tomorrow, but I don't want to get into your Audit and
12 Appropriations Committee meeting.

13 People have been very polite. I'm talking about my
14 colleagues around the country. I'm not talking about
15 Corporation staff. They have been very polite about getting
16 to the bottom line, Bucky, in terms of the Monitoring
17 Division.

18 I have a bottom line, and we need to deal with
19 that, and I'm not going to be polite about it, because I
20 don't think there's going to be any way for us in the field
21 to deal with monitoring unless that bottom line is dealt with
22 and that is, a major thing has been talked about in terms of

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1 trust.

2 MR. EAKELEY: Are we going into public comments
3 now? If I assure Mr. Cook that we'll provide some public
4 comment tomorrow --

5 CHAIRMAN ASKEW: We're going to provide time.

6 MR. EAKELEY: -- he's going to take double time,
7 tonight and tomorrow.

8 CHAIRMAN ASKEW: Let me say when I started this
9 meeting this morning, I said this is just the beginning of a
10 process that's going to go on. It's not the end. We felt
11 obligated, because we had brought people in from around the
12 country to speak, that we give them time to speak, but we
13 fully intend to take public comment and to hear from others
14 in this process, either in writing between meetings or at
15 meetings.

16 MR. COOK: Believe me, Bucky, I appreciate the
17 pressure that you all have. I'm just saying that, you know,
18 let's keep in mind at future meetings, too, let's carve out
19 some time, but I'm not going to give up on this weekend. I
20 am going to be here tomorrow morning, too, and hopefully,
21 there will be some time at the Board Meeting tomorrow for
22 other public comment, because there is a bottom line for me

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1 on the Monitoring Division, whatever they call themselves. I
2 want to make that point about that Division.

3 There are others here, too, but there certainly is
4 a bottom line for me on that Division and that needs to be
5 dealt with.

6 CHAIRMAN ASKEW: Doug?

7 MR. EAKELEY: I move that we adjourn the committee
8 meeting.

9 CHAIRMAN ASKEW: You're out of order. You're not
10 on the committee.

11 MR. EAKELEY: Yes, I am. Ex officio. The Chair is
12 an ex officio member of every committee.

13 CHAIRMAN ASKEW: Only for the purposes of a quorum,
14 though, Mr. Eakeley.

15 MOTION

16 MS. ROGERS: I'll make the motion.

17 CHAIRMAN ASKEW: Nancy makes the motion. We
18 adjourn. It is five minutes of 6:00, which I submit is 5:00
19 o'clock Legal Services time, anyway, so we're right on
20 schedule. Do we have a second for that motion?

21 MS. FAIRBANKS-WILLIAMS: Second.

22 CHAIRMAN ASKEW: All in favor, say aye.

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