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# TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

OPERATIONS AND REGULATIONS COMMITTEE MEETING

CHAIRMAN: MICHAEL B. WALLACE

Pages: 1 through 174

Memphis, Tennessee

February 13, 1985

 Acme Reporting Company

*Official Reporters*  
1220 L. Street, N.W.  
Washington, D. C. 20005  
(202) 628-4888



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1 MR. WALLACE: The meeting will come to order.  
2 This is the duly scheduled meeting of the Operations  
3 and Regulations Committee of the Board of Directors  
4 of the Legal Services Corporation, to be held in  
5 Memphis, on February 13, 1985.

6 I'm Mike Wallace, I'm Chairman of this  
7 Committee. The members of this Committee are with  
8 us today, as well as some of the members of the  
9 Presidential Search Committee, who will be meeting  
10 later this afternoon.

11 If I may say a word of welcome to everybody  
12 here and to my fellow members of this Committee and  
13 of the Board.

14 It has always been said that Memphis, and  
15 Mobile, and New Orleans, are the three largest  
16 cities in Mississippi, and as a lifelong Mississippian,  
17 I'm happy to welcome everybody to the largest city  
18 in North Mississippi this morning. We're glad to have  
19 you here, and just hope we will be able to get some  
20 work done here today.

21 I believe the first thing on our Agenda  
22 would be the adoption of the Agenda. We have all  
23 had it sent to us.

24 The Chairman will entertain a Motion to  
25 approve the Agenda as submitted, and as before you

1 in your book.

2 MR. SMEGAL: So moved.

3 MR. WALLACE: Is there a second?

4 MS. BERNSTEIN: I second it.

5 MR. WALLACE: All in favor say "aye".

6 MR. VALOIS: Aye.

7 MR. OPSUT: Aye.

8 MS. SWAFFORD: Aye.

9 MS. BENEVIDIZ: Aye.

10 MR. WALLACE: Opposed?

11 (No response.)

12 MR. WALLACE: The Agenda is carried.

13 We have also before us the Minutes of the  
14 previous meeting of this Committee on December 19th,  
15 1984. If everyone has had a chance to look through  
16 them, I'll ask first if anybody has any corrections  
17 or amendments to be made to the Minutes.

18 MR. SMEGAL: I will move their approval.

19 MR. WALLACE: We have a Motion to approve  
20 the Minutes. Do we have a second?

21 MS. MILLER: I second it.

22 MR. WALLACE: All in favor say Aye.

23 MS. BERNSTEIN: Aye.

24 MS. BENEVIDIZ: Aye.

25 MR. WALLACE: Opposed?

1 (No response.)

2 MR. WALLACE: The Minutes are approved.

3 Before we get on to the substantive business  
4 of the meeting, we had invited both of the members  
5 of Congress from the Memphis area, Harold Ford  
6 and Don Sundquist, to join us, or to send a  
7 representative, and they were unable to do so.

8 Congressman Sundquist has sent a letter of  
9 welcome to Memphis that he has asked to be read  
10 into the Minutes.

11 I will ask the Secretary of the Board, Mr.  
12 Daugherty, if he would read Congressman Sundquist's  
13 letter to us, at this point.

14 MR. DAUGHERTY: Thank you.

15 Mr. Wallace, as you indicated, Congressman  
16 Sundquist indicated to us that he is out in the  
17 eastern part of his District in an ice and snow  
18 storm in a broken down car, and hence cannot be  
19 here, but asked that we read this letter into  
20 the record:

21 "Dear Mr. Wallace and Members of the  
22 Operations Committee.

23 "I am happy to see that you have chosen Memphis  
24 as the site for your Committee meeting. I trust your  
25 stay in town will be a pleasant and productive one.

1 "It is my understanding that your Committee  
2 reviews regulations and procedures that apply to  
3 Legal Services offices throughout the country.

4 "Because of the unique character of the Legal  
5 Services Corporation, and because of the obvious  
6 ongoing need for protecting the rights of those  
7 who cannot afford private counsel, I know your  
8 responsibility is an extremely important one.

9 "When I learned of your meeting in Memphis,  
10 I felt compelled to let you know of my personal  
11 interest in the uniformity of regulations affecting the  
12 local Legal Services branches.

13 "Here in Memphis, I have witnessed the active  
14 participation of the Memphis Area Legal Services  
15 office in lobbying activities, activities which I  
16 believe are contrary to the purpose and goals of the  
17 LSC, and actually serve to obstruct the administration  
18 of Federal law.

19 "Briefly stated, Memphis Area Legal Services  
20 has been an active participant in fighting on behalf  
21 of fathers who are delinquent in child support  
22 payments.

23 "My staff time, services, and facilities,  
24 have been devoted to MALS's concerted effort to  
25 discredit our local child enforcement program.

1 "It is more than coincidental to note MALS's  
2 Executive Director has himself been cited four times  
3 during the past year for contempt of Court for  
4 non-payment of child support.

5 "In reviewing the procedures of some other  
6 Legal Services' offices, I am told that in the  
7 attorney assigning process, the LSC priority is  
8 placed with the mother and child, and not with the  
9 father.

10 "As a general rule, I appreciate the rationale  
11 for allowing local LSC offices to exercise discretion  
12 in determining which cases to take up, but I question  
13 the procedures which have allowed the MALS office to  
14 go to such extremes in its activism against the  
15 local Juvenile Court system.

16 "I don't believe the citizens of Memphis, or  
17 the nation, for that matter, want their tax dollars  
18 used to obstruct administration of one of the most  
19 universally supported laws passed by Congress in  
20 recent history, the Child Support Enforcement Act  
21 of 1984.

22 "I believe the actions of MALS reflect the  
23 views of the Executive Director, and not the views  
24 of Memphians.

25 "It is my understanding that there are some

1 who want to give more latitude to local LSC officials.  
2 In many cases, I fear this approach may result in  
3 more improper activism, such as I have described.

4 "I have been assured by authorities within  
5 the LSC that the particular MALS activities I  
6 question will be fully investigated.

7 "I do not ask, at this time, that your  
8 Committee undertake any separate detailed probe,  
9 but I do think you will agree that this is an issue  
10 that needs to be addressed by this Committee.  
11 Apparently, regulations pertaining to this matter  
12 have not been sufficiently enforced.

13 "I hope you will keep this particular case  
14 in mind, as you continue the difficult task of  
15 setting priorities, devising regulations to affect  
16 the future administration of the Legal Services  
17 Corporation.

18 "You have my very best wishes for a successful  
19 future.

20 "Sincerely, Don Sundquist, Member of Congress."

21 MR. WALLACE: Thank you, Mr. Secretary. On  
22 behalf of the Committee, I would appreciate it if  
23 you and Jim Streeter, our Government relations  
24 officer, would convey to Congressman Sundquist our  
25 thanks for his letter, and we have evidently already

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assured him that we are looking into his concerns.  
I trust that we will continue to do so.

At this point on the Agenda, we come to the  
main business of this meeting.

We have a report from our General Counsel on  
the regulations that have been republished in the  
Federal Register, substantial comments have been  
submitted. I have asked the General Counsel to  
summarize those briefly, although I believe most  
members of the Committee have had the benefit  
of your work already, so if you will proceed with  
your report now, Mr. Bagenstos.

MR. BAGENSTOS: Thank you, Mr. Chairman.

Five parts of the Corporation's regulations  
were republished at the direction of the Board.  
Those parts were 1601, By-Laws of the Corporation;  
1612, Restrictions on Lobbying and Certain Other  
Activities; 1614, Private Attorney Involvement;  
1620, Priorities in the Allocation of Resources;  
and 1622, Public Access to Meeting Under the  
Government in the Sunshine Act.

The regulations appeared in the Federal  
Register on January 4th, 1985, and a thirty day  
comment period was given to end on February 4th, 1985.

It is difficult to give an exact figure of the

1 number of comments we received, because a significant  
2 proportion, as high as a third or more we would  
3 estimate, were received after February 4th. They  
4 were read and considered as thoroughly as possible,  
5 even though they may not have been received by the  
6 4th. They were still coming in yesterday, by the  
7 way. Also, many of them dealt with more than one  
8 part of the regulations.

9 We will give you a rough count of the number of  
10 comments received for each part, as we go down.

11 As you know, we have summarized for you the  
12 comments received, and we focused on the most  
13 frequent and important parts made, and we have made  
14 a representative sample of the comments available  
15 to you in advance. They are all here now. You can  
16 use them in the course of your consideration of the  
17 regulations.

18 Initially, Part 1601, the By-Laws of the  
19 Corporation, there were approximately 40 comments  
20 which were timely received. Most of them were  
21 unfavorable.

22 The most frequent criticism, in one form or  
23 another, was that the changes made in this regulation  
24 tended to restrict public access to Board deliberations.

25 As examples of that, the telephonic special

1 meetings allowed under 1601.16, of the emergency  
2 proceedings which would allow the Corporation to  
3 remove its deliberations to another location, and  
4 invite representatives of the public and the media  
5 to follow to the new location.

6 The argument was made that this would allow  
7 the Corporation to control the public access in  
8 violation of the Sunshine Act.

9 And 1601.23, Public Participation. This  
10 would limit public participation by asking the  
11 speakers, potential speakers, to submit a written  
12 application to speak. It was argued that this  
13 would have a chilling effect on public participation  
14 in the deliberations.

15 As I say, the materials that were provided  
16 to you, indicate the full range of suggestions that  
17 were made for changes.

18 For the moment, I would like to skip Part 1612.

19 MR. WALLACE: All right.

20 MR. BAGENSTOS: And go to Part 1614, Private  
21 Attorney Involvement.

22 Over 80 comments were received on this part,  
23 of which some of the representative comments were that  
24 the change from a 10 percent spending requirement  
25 for private attorney involvement, to a 12-1/2 percent

1 requirement, was arbitrary and capricious, and no  
2 rationale was given, or no factual basis was given  
3 for that change.

4 The argument was made that the imposition of  
5 the 12-1/2 percent requirement, or any requirement,  
6 on support centers, violated the terms of the  
7 Appropriations Act.

8 The argument was made that the imposition of  
9 a requirement to spend grant funds on private attorney  
10 involvement, will harm programs with functioning  
11 pro bono components, and in effect, result in less  
12 efficient and effective delivery of legal assistance.

13 The argument was made that the regulation  
14 appears to give preference to compensated private  
15 attorney model as opposed to pro bono models, by  
16 requiring a higher standard of proof of the economy  
17 and effectiveness of the delivery.

18 It was argued that throwing more money at the  
19 problem will not result in more efficient use of  
20 resources which are limited.

21 It was argued that applying a national  
22 standard does not allow for local flexibility,  
23 in the response to local needs.

24 MS. BERNSTEIN: Could you --? Excuse me?

25 MR. WALLACE: Ms. Bernstein?

1 MS. BERNSTEIN: You may be going to back up  
2 on this, and go over each one of these individually,  
3 but would you -- I -- Start with the one that  
4 started with the sentence of, "throwing more money"  
5 into what?

6 MR. BAGENSTOS: At the problem.

7 MS. BERNSTEIN: I don't understand what that  
8 means.

9 MR. BAGENSTOS: In other words, just requiring  
10 that programs spend the money on private attorney  
11 involvement, regardless of what they may already be  
12 doing, regardless of private attorney involvement  
13 that they may have through pro bono models, and so  
14 on, will not result in a more effective use of the  
15 funds.

16 To repeat, I think that as a national  
17 standard, it was argued that it does not allow for  
18 local flexibility in response to local needs, and it  
19 was argued that the burdensome paperwork requirements  
20 that were included in the regulation, would result  
21 in less delivery.

22 Finally, the argument was made in certain  
23 specified areas, that there were problems with the  
24 implementation of the regulation, rather than with  
25 the language of the regulation itself.

1           Part 1620, Priorities in the Allocation  
2 of Resources, is the next area.

3           In this one, approximately 70 comments were  
4 received.

5           Perhaps the major comments concerned the  
6 meaning of substantially equal access as used in  
7 that regulation.

8           Considerable confusion was found among the  
9 people, as to just what it meant. Those who tried  
10 to give it a specific meaning, felt that it was  
11 impossible of achievement, and certainly did not  
12 result in effective and economical delivery of  
13 legal assistance to eligible clients.

14           The examples given perhaps most frequently  
15 were those areas where a program service area  
16 included large relatively scantily populated rural  
17 areas, and the difficulty of delivering equal, giving  
18 equal access to legal services to people living in  
19 those areas, as opposed to a more densely populated  
20 urban area where access was much less of a problem.

21           Another objection to the regulation was that  
22 the annual review required a case acceptance schedule,  
23 which is not a term of art -- nobody quite understands  
24 just what a case acceptance schedule is. If they  
25 do understand it, they appear to think that it

1 duplicates some of the other reporting that goes on  
2 with the regulation.

3 And finally, there were a number of comments  
4 protesting the deletion of Section 1620.2(b)(7), old  
5 Section 1620.2(b)(7), because there is a number like  
6 that in there now, but it's a consideration of what  
7 is called by most of the commenters, an impact in  
8 terms of setting priorities. That is to say,  
9 described as how to get the biggest bang from the  
10 buck, and that sort of thing.

11 Section 1622, Public Access to Meetings  
12 Under the Sunshine Act. There were 35 comments.  
13 Two of them were favorable, and I should say that  
14 in most cases, where there were favorable comments,  
15 they tended to be general in nature, and not focused  
16 specifically on the items within the regulation.

17 Those comments which commented critically  
18 included an objection to Section 1622.2, Public  
19 Observation, in which the objection was to the  
20 non-inclusion of a right to participation.

21 Section 1622.4(c) was protested that a notice  
22 of meetings would only be sent to the governing  
23 bodies of the programs, rather than to the Program  
24 Directors of the programs themselves. The rationale  
25 for that criticism was that frequently governing

1 bodies are not that accessible to the programs, the  
2 time is generally short when notice is given, that  
3 it's much more efficient to give notice to both.

4 And finally, Section 1622.9, the Emergency  
5 Proceedings, which are essentially a duplicate of  
6 what the Emergency Proceedings are in the By-Laws,  
7 the objections were the same to those. That it  
8 limited public access. That in effect, it could have  
9 the effect of closing the meetings in violation of  
10 the Sunshine Act.

11 Finally, Section 1612, Restrictions on  
12 Lobbying, and certain other activities. This is a  
13 part of the regulations which received the largest  
14 response. With the most recent comments that we have  
15 received, more than 100 comments were received on  
16 this one.

17 Five of the comments were favorable. The  
18 rest opposed certain of the changes.

19 To summarize those comments, the most frequent  
20 comment was, some form of a statement that the  
21 Corporation had gone beyond the meaning of the  
22 restrictions included in the Appropriations Act, and  
23 had overreached its authority. That those ought to  
24 be construed narrowly and not broadly.

25 The comments indicated that certain activities

1 were prohibited, which in effect, violated an  
2 attorney's responsibility to fully represent his  
3 client, and therefore, were in violation of that  
4 section of the Act which mandated that attorneys  
5 operate in accordance with the Code of Professional  
6 Responsibility.

7           Restrictions on communications with legislators  
8 as included in this part of the regulations, where  
9 it was argued not justified. Again a burdensome  
10 paperwork requirement was imposed, according to a good  
11 number of the comments.

12           And finally, the argument was made that  
13 restrictions on representation before administrative  
14 bodies were too broadly construed.

15           I should say that we will be available to  
16 answer any questions you have. Joshua Brooks, who  
17 is now with the Office of General Counsel, but who  
18 has had considerable experience in the Office of  
19 Field Services, is here, and Dennis Daugherty, who  
20 is the Acting Secretary of the Corporation, and who  
21 was responsible for a large amount of the deliberations  
22 on the Lobbying regulation is here, and so he will  
23 be available as well.

24           MR. WALLACE: Thank you, Mr. Bagenstos. I  
25 have one general question that you and I discussed

1 over the phone the other day, and I don't know to  
2 what extent you are prepared to give me any thoughts  
3 on it, but I had asked you the nature of our  
4 authority, and the extent of our authority in  
5 promulgating regulations.

6 We have a letter that has been circulated  
7 around the House of Representatives by Congressman  
8 Bruce Morrison of Connecticut, and Barney Frank of  
9 Massachusetts, and there is a sentence in there that  
10 strikes me as needing some explanation.

11 It says, "Surely there can be no dispute over  
12 the principle that the Corporation lacks authority  
13 to promulgate obligations more restrictive than the  
14 underlying Statute."

15 Now, Federal Agencies promulgate regulations  
16 more restrictive than the underlying Statute all the  
17 time, and private corporations place restrictions on  
18 the people they do business with through contract.  
19 We are a beast somewhere in the middle, and if you can  
20 give me any idea as to your opinion of the nature of  
21 our authority to impose restrictions that are not  
22 expressly there in statute, I would be most grateful.

23 MR. BAGENSTOS: I think there are two parts  
24 to that really, and that is, the statute itself has  
25 some specific restrictions in it, which we must

1 parallel, I think. However, it also provides general  
2 grants of authority in certain other areas, and it  
3 provides a general grant of authority to regulate.  
4 Within the terms, within the broad authority granted  
5 to us by the statute, it seems to me that the  
6 Corporation can promulgate regulations that are more  
7 explicit, which are not specifically mentioned in  
8 the Act.

9 It cannot, I think, go beyond the broad  
10 parameters of the grant of authority given by  
11 Congress; however, it is not limited, I think, to the  
12 general terms of the authority given, but can within  
13 those terms, make explicit prohibitions, restrictions,  
14 and so on.

15 With reference to the Appropriations Act,  
16 the question I would say is different. It appears  
17 that they should be narrowly construed, and we cannot  
18 go beyond the specific narrow constructions of the  
19 words in any restrictions written into an Appropriations  
20 Act.

21 MR. SMEGAL: You made a distinction -- Mr.  
22 Wallace asked about, he used the term "restrictive",  
23 and you used the term, "explicit", and I would  
24 understand those to be different. I did not hear  
25 you respond to his question which was, can we be more

1 restrictive than the underlying Act.

2 MR. BAGENSTOS: I think you cannot be more  
3 restrictive than the underlying Act, however, I think  
4 you can be more explicit in the restrictions, given  
5 the general nature of certain grants of authority.

6 Does that clarify it?

7 MR. SMEGAL: More detailed?

8 MR. BAGENSTOS: Yes.

9 MR. SMEGAL: Or explicit, more detailed.

10 MR. BAGENTOS: Yes.

11 MR. WALLACE: Let me ask why you draw a  
12 distinction between the underlying Act, and the  
13 appropriations rider, and in that regard, and in  
14 that regard and while this question might be better  
15 directed to specific regulations, if we have  
16 authority as part of our general grant, to prohibit  
17 a particular practice under the Act, does the  
18 appropriation rider change that in any way?

19 MR. BAGENSTOS: It is my understanding of  
20 the effect of the appropriations rider is that it  
21 affects a temporal narrow amendment to the Act.

22 MR. WALLACE: It affects an amendment to the  
23 Act itself, with that, in effect?

24 MR. BAGENSTOS: Yes. It is temporal, it is  
25 in time. It is not a permanent amendment, but it --

1 MR. WALLACE: So, I take it that the answer to  
2 my question would be, there might be an area in which  
3 we have the general authority to deal under the Act,  
4 but that area might be closed off to us by the  
5 effect of the Appropriations Act?

6 MR. BAGENSTOS: The terms in which we might  
7 be able to deal with it, could I think, be limited  
8 or modified.

9 MR. WALLACE: Ms. Bernstein?

10 MS. BERNSTEIN: I'm just seeing Dennis shaking  
11 his head, and I just wondered if he would make a  
12 comment on this, just so we can get the benefit  
13 of the reasons for the head shaking?

14 MR. DAUGHERTY: It's my appreciation, and  
15 Mr. Wallace I think having worked in a more responsible  
16 position in the Congress than I did, that an  
17 appropriations rider restricts not a period of time,  
18 but a particular set of dollars.

19 The funds appropriated in a given Act, are  
20 subject to the terms under which they are appropriated,  
21 and they cannot be used for purposes beyond which they  
22 were authorized to be appropriated, and it would seem  
23 that it could restrict the authority of the  
24 Corporation.

25 They could direct the Corporation to enforce the

1 requirements on grantees that are more extensive than  
2 those that are required in the Act itself.

3 In many ways, our appropriations bills are  
4 serving as -- our authorization for appropriations,  
5 of course, expired many years ago, and in essence,  
6 our recent appropriations bills are serving as  
7 authorizations and appropriations for a particular  
8 year.

9 MR. WALLACE: Let me state for the benefit of  
10 my Committee and I'm willing to have my mind changed  
11 on this.

12 When Senator Eagleton asked us these questions  
13 in writing during confirmation proceedings last year,  
14 as to what we thought the affect of the appropriations  
15 rider was, I stated to him, and it is still my opinion,  
16 although I'm prepared to be convinced to the contrary,  
17 that what an appropriations rider does is say that  
18 absolutely no money can be spent across this line, and  
19 it has no effect on anything on the other side of the  
20 line.

21 If we have pre-existing authority to regulate  
22 right up to that line, we still have that authority  
23 whether Congress prohibited things on that side of the  
24 line or not.

25 What an appropriations rider does, and all it

1 does is to say, this is a line and no money can be  
2 spent over here. The rider says nothing about what  
3 can be spent over here -- as I would interpret it.

4 And if we had pre-existing authority to  
5 regulate over here, I would think we still have  
6 pre-existing authority. We still have authority to  
7 regulate over here.

8 I look forward to further enlightenment as  
9 we go into that, but that's --

10 MR. BAGENSTOS: That doesn't differ from what  
11 I was trying to say, and I accept the amendment that it  
12 is not temporal in the sense of a specific time period,  
13 but a specific appropriation of funds.

14 MR. WALLACE: Okay. I think maybe we  
15 understand each other at this point.

16 MR. BAGENSTOS: I think it can be positive  
17 too, as well as negative. Can mandate that certain  
18 funds be spent in certain ways, as well as prohibiting  
19 funds being spent in certain ways.

20 MR. WALLACE: Do you think we have any  
21 positive mandates? Well, we do right now, as to  
22 distribution of funds among grantees.

23 MR. BAGENSTOS: Yes.

24 MR. WALLACE: With regard to the regulations  
25 that we are dealing with here, do we have any such

1 positive mandates in our Appropriations Act right  
2 now, or are they all "thou shalt not's"?

3 MR. BAGENSTOS: I think we're dealing with  
4 the "not's".

5 MR. WALLACE: Okay, that's what I thought.

6 If that completes your report, I'm -- I'm  
7 going to ask you not to go very far. We are at the  
8 part for a discussion of these regulations.

9 A representative of the General Accounting  
10 Office is here today. Mr. John Hanson is prepared  
11 to give us a brief report on the GAO's investigations  
12 into some of the activities which are dealt with  
13 under Part 1612.

14 I'm going to ask him to come forward at this  
15 time, and then we will get into the general public.

16 Mr. Hanson, thank you for taking the trouble  
17 to come to Memphis this morning. The Committee  
18 appreciates it.

19 MR. HANSON: That is quite all right, Mr.  
20 Chairman.

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1 STATEMENT OF JOHN HANSON, GENERAL ACCOUNTING OFFICE,  
2 WASHINGTON, D. C.

3  
4 I want to thank you and the members of the  
5 Committee for asking me to come and give you an  
6 overview of some of GAO's prior work on lobbying  
7 activities by the Legal Services Corporation grant  
8 recipients.

9 Not only has this issue generated a substantial  
10 amount of debate in Congress, but it has also  
11 produced a large number of requests for GAO's views  
12 on the kinds of lobbying activities in which LSC  
13 grant recipients can engage.

14 For the second time, I am going to briefly  
15 summarize some of these views.

16 In an August, 1980, report, GAO found that  
17 LSC's regulations provided grantees wide latitude  
18 to engage in lobbying activities, and that the  
19 Corporation had not established procedures for  
20 systematically determining if its grantees were in  
21 compliance with the Act's provisions.

22 At that time, LSC only investigated grantee  
23 lobbying activities in response to specific complaints  
24 it received.

25 We recommended that LSC, one, revise its

1 regulations to more specifically define the  
2 legislative restrictions on grantees lobbying  
3 activities that were not permissible; and two, imple-  
4 ment procedures to ensure compliance with the  
5 lobbying restrictions.

6 Again, in November, 1980, a few months  
7 thereafter, in a legal opinion to Congressman  
8 Benjamin Gilman, we concluded that LSC's authorizing  
9 legislation and restrictions on the use of its  
10 appropriations, prohibited LSC and its grantees,  
11 from expending appropriated funds for publicity and  
12 propaganda purposes, such as grass roots letter writing  
13 campaigns, designed to induce the public to contact  
14 elected representatives for the purpose of influencing  
15 pending legislation.

16 We again pointed out that LSC's regulations  
17 did not clearly define prohibited and permissible  
18 lobbying activities, and recommended that LSC's  
19 regulations be revised to clarify its policy guidance  
20 on lobbying activities.

21 We also recommended that LSC include lobbying  
22 restrictions in grant documents.

23 Although LSC's Board approved revised regula-  
24 tions in March of 1981, they did not address the  
25 concerns that led to our recommendations.

1           In May of 1981, we submitted a legal opinion  
2 to Congressman James Sensenbrenner, in which we  
3 concluded that numerous LSC memoranda from March,  
4 1980, through March, 1981, clearly indicated that  
5 LSC had itself engaged, and allowed its grantees  
6 to engage in lobbying activities prohibited by  
7 Federal law.

8           These activities included the development  
9 of an extensive lobbying campaign to support LSC's  
10 reauthorization legislation and appropriations  
11 measures.

12           We noted that while anti-lobbying restrictions  
13 permitted officials to express their views on pending  
14 legislation as it affects their policies and  
15 activities, directly to Congress or the public, they  
16 were prohibited from engaging in grassroots lobbying,  
17 involving appeals to the public to contact their  
18 elected representatives indicating their support of,  
19 or opposition to pending legislation.

20           In other words, direct communication by LSC  
21 officials to members of Congress, or Committees of  
22 Congress is permissible. Drumming up support for the  
23 same purposes outside of LSC is not.

24           Further, we indicated that LSC had improperly  
25 construed its authorizing legislation to permit

1 grassroots lobbying on matters which directly affected  
2 LSC and its grantees.

3 We reiterated our previous recommendations  
4 that lobbying restrictions be clarified in the  
5 regulations.

6 Despite this first GAO report in August of  
7 1980, and two subsequent legal opinions which I  
8 have briefly summarized, recommending that LSC revise  
9 its regulations to specifically define the lobbying  
10 restrictions on -- the legislative restrictions on  
11 lobbying activities and the types of activities that  
12 local programs may not engage in, LSC continued to  
13 broadly interpret the exceptions to the statutory  
14 lobbying restrictions until May of 1981, and did not  
15 approve more specific lobbying regulations for LSC  
16 funded programs until 1983.

17 Although LSC's President at that time, Dan  
18 Bradley, said he disagreed with GAO's interpretation,  
19 of the applicable legal provisions restricting lobbying  
20 activities, he told GAO in May of 1981, that he had  
21 directed all LSC personnel to stop any and all  
22 activities coming within GAO's definition of grassroots  
23 lobbying, and would request that the Board of Directors  
24 of the Corporation consider necessary changes in  
25 relevant regulations.

1           In March, 1983, about two and a half years  
2 after GAO first recommended that LSC revise its  
3 lobbying regulations, LSC did, in fact, publish  
4 revised anti-lobbying regulations, which were  
5 responsive to our concerns.

6           In September of 1983, in a legal opinion, we  
7 advised Senators Hatch and Denton, that internal  
8 memoranda and other material from the LSC Headquarters  
9 and Regional Office files, covering primarily 1981,  
10 indicated that LSC and its grantees had violated  
11 statutory restrictions on the uses of LSC funds for  
12 certain activities.

13           These included such activities as conducting  
14 training programs which advocate or encourage  
15 political activities, forming, using LSC funds  
16 to form organizations for networking and coalition  
17 building, and for opposing a ballot measure.

18           We concluded that LSC failed to carry out its  
19 statutory responsibility to enforce the LSC Act,  
20 by not insuring that its grantees and their employees  
21 complied with the Act. Instead, LSC encouraged and  
22 authorized its grantees to expend LSC funds for  
23 activities which in our view, violated Federal law.

24           In April of 1984 testimony before the  
25 Senate Labor & Human Resources Committee, the GAO

1 indicated that in 1980 and 1981, the LSC had encouraged  
2 grantees to engage in grassroots lobbying activities  
3 to ensure continued Federal funding of Legal Services,  
4 and oppose additional restrictions on LSC program  
5 activities.

6 These lobbying activities, while consistent  
7 with LSC's interpretation of the ACT and regulations  
8 that existed, at that time, in 1981, in our opinion  
9 were prohibited by Federal law.

10 I understand you are going to spend a good  
11 deal of time here today, Mr. Chairman, talking about  
12 current lobbying restrictions and the like. I have  
13 not seen the most recent ones which Mr. Bagenstos  
14 referred to when discussing the comments you had  
15 received, but let me just say that last April, when  
16 we testified before Senator Hatch's Committee, we  
17 were asked for our views on the 1612, which existed  
18 at that time, and which perhaps is still in force,  
19 and I just want to say that we think that those  
20 regulations more clearly define the activities which  
21 are permissible, and those that are prohibited in the  
22 way of lobbying, and they are responsive to the  
23 concerns that we raised in our earlier legal opinions  
24 back in 1980 and 1981.

25 Further, we noted that these restrictions were

1 based on appropriations riders which had been added  
2 on in recent years. Of course, there was some  
3 discussion here about the nature of an appropriations  
4 rider, and I'm not going to profess to be knowledgeable  
5 on that, but we did indicate to Senator Hatch that  
6 because that is a temporary law restricting funds in  
7 a particular period, in our view the lobbying  
8 restrictions that resulted from those appropriation  
9 riders, since they were responsive to the prior  
10 recommendations we had made, should in fact, be  
11 enacted into permanent law, as amendments to the  
12 LSC Act, and we made that recommendation last April.  
13 I just wanted to reiterate that, as well.

14 But in any event, I think it's important to  
15 note that the successful implementation of these  
16 lobbying restrictions really depends on LSC's ability  
17 to actively enforce the restrictions and ensure  
18 compliance from its LSC grantees.

19 It is one thing to get the regulations in  
20 place, and it is another thing to make sure that there  
21 is compliance with those regulations.

22 That is all I had in the way of my summary,  
23 Mr. Chairman. I would be happy to answer any questions  
24 you or any members of the Committee may have.

25 MR. WALLACE: We appreciate it, Mr. Hanson.

1 Mr. Smegal?

2 MR. SMEGAL: Yes.

3 Have you been -- Mr. Hanson, have you been  
4 in this since 1980? Have you been involved in this  
5 particular GAO function?

6 MR. HANSON: I have been involved in this  
7 function for the past two years, Mr. Smegal, but  
8 I have dealt in those past two years with the people  
9 that did do the work in 1980 and '81.

10 MR. SMEGAL: Did I hear you say that the  
11 regulations that were promulgated in March or April  
12 of 1983, as far as you are concerned, are adequate  
13 in respect to dealing with the concerns that GAO  
14 has raised since 1980 and 1981?

15 MR. HANSON: Yes. The concerns that we  
16 raised about the lack of a clear definition of  
17 what kinds of lobbying activities were permissible  
18 and which were prohibited, that was found -- the  
19 discussion was found in our earlier legal opinions,  
20 we felt that the regulations passed in March of '83,  
21 I believe --

22 MS. BERNSTEIN: '84.

23 MR. SMEGAL: Prior regulations --

24 MR. HANSON: '84, I'm sorry.

25 MR. WALLACE: Well, we have got two members

1 of the Committee more or less testifying, and I'm  
2 not sure I've got a clear answer.

3 As I understood your testimony, you went before  
4 the Senate Committee on Labor & Human Resources in  
5 April of 1984.

6 MR. HANSON: That's correct, in April of '84.

7 MR. WALLACE: Now, what regulations were you  
8 referring to, at that time? We apparently put some  
9 in place in March of 1983, and when did we publish  
10 the existing regulations for comment?

11 MR. SMEGAL: April 29.

12 MR. WALLACE: They went into place on April  
13 29 of '84, or were --

14 MR. DAUGHERTY: They were published for comment  
15 in February of 1984, and adopted by the Board of  
16 Directors in late April of 1984, and published in  
17 the Federal Register .

18 MR. WALLACE: All right. Well, then, there was  
19 one set of regs in place in 1984, and another that  
20 had been published that went into place in '84. Do  
21 you know which ones you were referring to?

22 MR. HANSON: Our comments would have been with  
23 regards to those regulations which had been approved.  
24 Not those that had been published for comment at that  
25 time. We felt that they were responsive to our

1 concerns about the lack of a definition of what  
2 activities were permissible, and which were prohibited.

3 We were not, at that time, commenting on any  
4 proposed regulations. I would say that we have not,  
5 in fact, taken a position, or evaluated those, from  
6 that standpoint.

7 I'm not sure whether that was responsive, Mr.  
8 Smegal, to your question?

9 MR. SMEGAL: Well, let me just go back and  
10 summarize it then.

11 MR. HANSON: Sure.

12 MR. SMEGAL: If I understood you correctly,  
13 when you testified early in 1984, you were testifying  
14 with respect to the regulations that then existed,  
15 and had been in effect since March of 1983, and your  
16 response is, that as far as you were concerned, all  
17 the GAO investigations that you were involved in,  
18 that you reported on to us today, were adequately  
19 covered by those regulations that had existed since  
20 March of '83.

21 MR. HANSON: The concerns that we raised in  
22 those legal opinions, we felt were adequately addressed  
23 by those regulations.

24 MR. SMEGAL: So, if we went back to those  
25 regulations, there is nothing that you would testify

1 to today, that wouldn't be covered by that set of  
2 regulations that existed when you testified in 1984,  
3 that had in place for over a year.

4 MR. HANSON: I'm not sure I understand your  
5 question, Mr. Smegal.

6 MR. SMEGAL: Did the March of '83 regulations,  
7 cover all of your concerns, and would they still cover  
8 all of your concerns today?

9 MR. HANSON: All of our concerns I would say  
10 in the sense of those concerns which we addressed,  
11 that we were asked to address by the members of  
12 Congress.

13 I'm not sure that that is all encompassing  
14 of any concern that may exist with regards to lobbying  
15 regulations.

16 MR. SMEGAL: Only insofar as GAO has been  
17 asked to investigate?

18 MR. HANSON: Yes, that's correct.

19 MR. WALLACE: Are there any further questions?  
20 Ms. Bernstein?

21 MS. BERNSTEIN: Yes, I have another question,  
22 and I know that this is not a question that may be  
23 capable of being answered this morning, but I have  
24 been struggling with the applicability of Circular  
25 A-122, to Legal Services Corporation, and the

1 concerns that are voiced with regard to the account-  
2 ability and the enforcement.

3 You and I had talked briefly at one point  
4 about the overlap, and the fact that A-122 is somewhat  
5 more lenient than our proposed regulations at this  
6 time, and would probably be more strict in some senses.

7 It is very difficult for me to figure out  
8 exactly what applicability A-122 may have to us.

9 In the discussion, when the circular was  
10 published, it referred to a Treasury Act, which said  
11 that any monies coming from the Treasury may not be  
12 spent for X, X, and X, and that was given as one of  
13 the authorities for Circular A-122 having been  
14 promulgated.

15 Well, obviously, we get our money from the  
16 Treasury.

17 There is another concern, however, in that  
18 A-122 talks about grant making agencies, and there  
19 has been -- the Corporation is neither beast nor  
20 fowl, in terms of its actual organizational entity.

21 I have argued before to this Board, that we  
22 look like an agency, we act like an agency, we have  
23 less authority than an agency, and therefore, I don't  
24 think we can keep hanging our hat on the fact that  
25 we have been called a Corporation. And so, with the

1 appropriations riders being as restrictive as they  
2 are, as far as our independent authority to make  
3 decision, I'm just not sure that we aren't an agency  
4 right now, and therefore, I'm wondering whether or  
5 not Circular A-122 doesn't, in fact, apply to us,  
6 and that that ought to be our considerations, as well  
7 as previous GAO opinions.

8 I'm coming to the end of my longwinded question  
9 here.

10 MR. HANSON: Then I'm going to summarize it.

11 (Laughter.)

12 MS. BERNSTEIN: Then the Notice that was  
13 published in the Federal Register in April of 1984,  
14 when the final version of A-122 was given out, it  
15 has a section of the legal authority for A-122, and  
16 I'm not asking you to comment on the legal authority  
17 of it, but to summarize that section, it basically  
18 says that the Congress has delegated the enforcement,  
19 which you -- the enforcement of laws, the execution  
20 of laws, to the Executive Branch, and that OMB, as  
21 the agency in the Executive Branch that helps to  
22 define how to get things enforced, has come out with  
23 Circular A-122, and it goes through all the Executive  
24 Orders and so forth.

25 So, we have got both the appearance of being

1 an agency, the fact that our money comes from the  
2 Treasury, and the fact that the Executive Branch is  
3 responsible for the enforcement of laws, all mitigating  
4 toward the decision that A-122 applies to us.

5 Have you considered this question?

6 MR. HANSON: No.

7 Let me just make a couple of comments, LeaAnne.

8 First of all, I am certainly not GAO's expert  
9 on A-122. GAO did work with OMB after the initial  
10 A-122 was published, I think it was in January of 1983,  
11 and it came in for a lot of controversy.

12 It is certainly, even in its final stage, a  
13 very controversial document.

14 I think the whole issue of OMB's authority to  
15 issue that type of regulation has, of course, been  
16 debated, and may not have been resolved, and may not  
17 be resolved without going through the Courts, despite  
18 what they state here.

19 GAO has not taken any position on supporting  
20 or opposing A-122. We don't generally take positions  
21 on saying, "This is what regulations should say," but  
22 it's just whether or not they clearly state -- for  
23 example, in the case like the lobbying restrictions  
24 that I discussed earlier, whether or not they lay out  
25 clearly for the recipients that, "This is what you can

1 do, and this is what you can't do."

2 It is a very complex issue. I don't know  
3 whether or not, in fact, there is a case for applying  
4 it to LSC or not. I think that is something that  
5 your General Counsel people are going to have to look  
6 at.

7 MR. WALLACE: Let me ask you this. What role  
8 does GAO play in the enforcement of A-122? This is a  
9 restriction on how Federal funds are spent. Is it  
10 your job to go out and see whether or not it is  
11 complied with?

12 MR. HANSON: You raise a very interesting  
13 question, and one that came up in a prior GAO legal  
14 opinion related to Legal Services which I didn't  
15 mention.

16 It was a legal opinion in December of 1981,  
17 to Congressman Ben Weber.

18 In that case, it was investigating a lobbying  
19 case, and the question that Congressman Weber raised  
20 to us was whether or not GAO -- he wanted GAO to go  
21 out and recover some funds that he felt were  
22 improperly spent for lobbying.

23 Now, in the case of A-122, since it applies  
24 to executive agencies, by law the GAO has the statutory  
25 authority to go out into -- excuse me -- to pursue

1 violations of Federal law where funds are misspent,  
2 and hold people accountable.

3 Where there is a certifying officer, or someone  
4 who authorized an expense, if that was illegal, or  
5 improper, the GAO has the legal authority to, what  
6 we call, settle accounts.

7 If somebody at the Department of Transportation,  
8 gets a grant for something that is illegal under the  
9 law, or improper under the regulations, we have the  
10 authority to do that.

11 What we told Congressman Weber about though,  
12 with regards to LSC, was that because of LSC's special  
13 nature as a Government Corporation, if you will, that  
14 we did not have that authority.

15 Really this came up because H.R. 3480, which  
16 had passed the House in 1981, included a provision  
17 that would have given GAO the authority to settle  
18 and adjust LSC's accounts. In other words, make our  
19 decisions binding on the Corporation.

20 What we pointed out to Congressman Weber was  
21 notwithstanding whether or not we were given statutory  
22 authority to settle LSC's accounts, that we may not in  
23 fact, be able to enforce that, because of the  
24 Corporation's unique character, and the lack of anyone  
25 that we could hold accountable in settling accounts,

1 to say, you know, "You authorized this particular  
2 payment." The law says that you can't use funds for  
3 those activities and hold someone pecuniary liable,  
4 so we don't have the authority to do that in the  
5 case of LSC. We do in the case of executive agencies,  
6 so we would enforce A-122, using our statutory authority  
7 to go out and settle accounts and hold people at  
8 executive agencies accountable for the expenditures  
9 that they authorize.

10 MS. BERNSTEIN: But that would be assuming  
11 that we have not, in fact, progressed to the place  
12 where we are despite our name, as simply an agency?

13 MR. HANSON: Well, that is certainly not a  
14 determination that I can make.

15 MS. BERNSTEIN: I understand, but I mean, that  
16 is the presumption. Assuming that we had the  
17 independence that the Act originally gave us, then  
18 that would be the lack of authority regarding the  
19 GAO.

20 MR. HANSON: That's what it really boils down  
21 to.

22 MS. BERNSTEIN: I have another couple of  
23 questions regarding A-122.

24 I know you have looked at it. Are the concerns  
25 that are voiced in A-122 about the expenditure of

1 Federal monies for lobbying similar to the concerns  
2 that have been voiced regarding the Legal Services  
3 Corporation grantees?

4 MR. HANSON: LeaAnne, I haven't made a real  
5 close study of it, but I think it's either the whole  
6 issue of lobbying with Federal funds. I think it  
7 could be applied to just about any grant recipient  
8 that receives any kind of Federal funds, be it a  
9 legal services grantee, or any other program.

10 The Special Assistant to the Controller General  
11 in testifying before the Senate Government Affairs  
12 Committee last April, tried to put it in kind of a  
13 philosophical way by saying, you know, that there is  
14 nothing inherently evil about lobbying, but that  
15 doesn't mean that there isn't a legitimate question  
16 of whether or not public funds ought to be used to  
17 subsidize people's lobbying.

18 I would just say from a general standpoint  
19 that the issues are probably quite similar to those  
20 that have come up in Legal Services.

21 MS. BERNSTEIN: I want to go back to this  
22 question about the timing of these various publications  
23 of regs and so forth.

24 Isn't it true that the March, 1983, regs  
25 preceded the September, 1983, GAO Report, and the 1984

1 appropriations riders, and that therefore, the  
2 testimony to Senator Hatch was with regard -- was  
3 actually addressing new issues that came up in those  
4 concerns, such as training and coalition building,  
5 and that those concerns then needed to be addressed  
6 to further regulations, and that's why there were  
7 additional regulations proposed by the corporation?

8 MR. HANSON: Let me tell you what I think.  
9 Let me try and explain it as best I can.

10 Our comments to Senator Hatch in April of '84,  
11 related to the March, 1983, regulations that clarified  
12 restrictions on lobbying.

13 Now, restrictions on lobbying that we had  
14 taken issue with in the past, did not include some  
15 of those that we addressed in the September, 1983,  
16 opinion to Senator Hatch, such as the work on the  
17 ballot measure, the prohibition on training.

18 The '83 regs addressed concerns that we had  
19 raised about grassroots lobbying campaigns, trying to  
20 influence pending legislation before Congress, and  
21 that is what we were referring to.

22 MS. BERNSTEIN: So, there were additional  
23 concerns that GAO has voiced, that came up after those  
24 1983 regs?

25 MR. HANSON: That's correct.

1 MS. BERNSTEIN: That's what I wanted to get  
2 clear.

3 MR. WALLACE: Okay. Any recross, Mr. Smegal?

4 MR. SMEGAL: I'm still confused. We have got  
5 some regulations that start in March of 1983, GAO  
6 does an investigation. Are you suggesting when in  
7 September, or was LeaAnne suggesting that in  
8 September when you testified, or when GAO testified,  
9 that there was already a reaction to the March of  
10 '83 regulations? That GAO had done an investigation  
11 to see whether they were being conformed with?

12 MR. HANSON: No.

13 MR. SMEGAL: Okay.

14 MR. HANSON: I would be able to explain that,  
15 Mr. Smegal.

16 MR. SMEGAL: Sure, go ahead.

17 MR. HANSON: Certainly we have done a lot of  
18 work here and it can get confusing, because you know,  
19 the regulations are changing while GAO is issuing  
20 legal opinions and doing audits.

21 The legal opinions that we issued in 1980,  
22 and '81, addressed concerns about grassroots lobbying  
23 campaigns, attempting to influence pending legislation  
24 before the Congress. Okay. The changes that we  
25 recommended, to clarify what kinds of activities based

1 on those concerns you could engage in, were addressed  
2 in the March of 1983 regulations.

3 In September, 1983, in a legal opinion to  
4 Senator Hatch, we addressed another set of circum-  
5 stances, which included some of our previous concerns  
6 about grassroots lobbying, but also raised issues  
7 about uses of funds for conducting training purposes  
8 for political purposes, and attempting to use  
9 Federal funds to influence a ballot measure, which  
10 we had not previously looked at, and as a result, had  
11 not made any recommendations on.

12 So, those were issues that we were asked  
13 to look at, subsequent to the March 1983 regulations,  
14 which did address the concerns we had raised up to  
15 that point about the grassroots lobbying activities.

16 MR. WALLACE: Now, our first training  
17 regulations went into effect then on April 29th, or  
18 were approved on April 29th of 1984.

19 Has GAO made any investigation of any conduct  
20 under those regulations, since that time?

21 MR. HANSON: We have not, Mr. Chairman.

22 MR. WALLACE: Okay.

23 Do we have any further questions from the  
24 Committee?

25 MR. SMEGAL: Yes. I guess I just want to make

1 certain that I understand what you said.

2 We have had some March '83 regulations that  
3 in effect, GAO has not had an opportunity to evaluate  
4 because, one, there hasn't been a sufficient evaluation  
5 period, so whatever effect those March of 1983  
6 regulations had on lobbying, or whatever term we want  
7 to use, good or bad, we really aren't in a position to  
8 know from a GAO investigation, whether those regula-  
9 tions are effective the way they are written, whether  
10 they have been effective since March of '83. We have  
11 nothing to base that on. We have no reason to go  
12 ahead and make any changes from March of '83, based on  
13 anything that GAO has done.

14 MR. HANSON: I think what you said is accurate,  
15 Mr. Smegal, because what we were talking about in our  
16 earlier work were activities. We were talking about  
17 activities that took place --

18 MR. SMEGAL: '79, '80, '81.

19 MR. HANSON: '80 and '81. We were not talking  
20 about activities that took place subsequent to the  
21 passage of those March of 1983 regulations, and were  
22 thus in violation thereof.

23 So, from that standpoint, the question you  
24 raise is, has GAO done any audit work since the passage  
25 of those March of 1983 regulations, which would have

1 included an evaluation of whether or not there was  
2 being compliance with those regulations, and whether  
3 they were effective.

4 The answer to that is No, we have not done  
5 any audit work since March of 1983, addressing those  
6 March of 1983 regulations.

7 MR. SMEGAL: Or also, even been asked to do it?  
8 You haven't done any, but you haven't been asked to do  
9 it?

10 MR. HANSON: That's correct. All work that  
11 we have done at Legal Services, has been specifically  
12 requested by Congress, and not something that GAO  
13 has self-initiated.

14 MS. BERNSTEIN: John, I know that you are  
15 somewhat limited in your ability to give us opinions  
16 here on the spot, but if it comports with your chain  
17 of authority, and so forth, do you have an opinion  
18 as to whether or not the proposed regulations that  
19 we have in front of us, which include additional  
20 things, beyond just the lobbying, the training, and  
21 the coalition building, the kind of additional concerns  
22 that came up after the 1983 regulations were promul-  
23 gated, do you have an opinion whether or not these  
24 regulations would address the concerns and help to  
25 limit the kind of activities which caused concern, and

1 caused GAO investigations in the past?

2 MR. HANSON: I haven't seen the regulations,  
3 LeaAnne, and I'm in no position to comment on them.

4 If this Committee or the Board would find  
5 it helpful, I'm sure that if the regulations, the  
6 draft regulations, were sent to the Controller General  
7 with a request for his comments, that our Office of  
8 General Counsel would be happy to look at them.

9 MS. BERNSTEIN: I would suggest that we do  
10 that.

11 MR. WALLACE: That may be a good idea. We  
12 will take it up when we get to the point for some  
13 decisions by the Committee.

14 Mr. Hanson, we appreciate your time, we  
15 appreciate your efforts in getting down here today,  
16 and we appreciate the work of GAO in assisting with  
17 the oversight of this Corporation.

18 We thank you very kindly.

19 MR. HANSON: You're welcome.

20 MR. WALLACE: Let me ask for the benefit of  
21 the Committee --

22 MR. SMEGAL: John, would you make available  
23 to us a copy of your remarks? You seem to have a  
24 prepared statement?

25 MR. HANSON: Oh, this?

1 MR. SMEGAL: Yes.

2 MS. SWAFFORD: Could I have a copy of that,  
3 too?

4 MR. HANSON: I only have one copy.

5 MS. SWAFFORD: I'm not a member of this  
6 Committee, but I'm just a member of the Board.

7 MR. WALLACE: The Secretary of the Board  
8 will get them reproduced and get them around to us.

9 For people who are staying in the Sheraton,  
10 I think the checkout time is 11:00. Is there anybody  
11 here that needs a recess to take care of checking  
12 out?

13 MR. SMEGAL: I have checked out in the physical  
14 sense, but I have the key in my pocket. Maybe Dennis  
15 could run it --

16 MR. WALLACE: Tim ought to be able to help  
17 us on that.

18 If that's all we need to do then, we will  
19 not take a recess at this point, to take care of  
20 those situations.

21 We can move on with public comment. I know  
22 that Mr. Houseman is here. I think you are with the  
23 Center on Law and Social Policy, is that correct, and  
24 I know you would like to speak, so if you could give  
25 us some remarks with an overview of these regulations

1 at this point, I would appreciate it, and after  
2 that we will get other remarks, and then we will  
3 go section by section.

4 Also, if you would introduce your colleague,  
5 Mr. Houseman?

6 MR. HOUSEMAN: Yes.

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1 STATEMENT OF ALAN HOUSEMAN, CENTER ON LAW  
2 AND SOCIAL POLICY.  
3

4 Thank you, Mr. Wallace. My colleague is  
5 Allen Ramsaur, who is the Director of the Tennessee  
6 Association of Legal Services Programs, the Statewide,  
7 the Legal Services Support Center in Tennessee.

8 I would first like to just make clear on the  
9 record that I am here representing five of the  
10 national organizations who submitted comments to the  
11 Corporation on February 4th.

12 These are the National Legal Aid and Defender  
13 Association, the Coalition for Legal Services, the  
14 Project Advisory Group, the National Organization  
15 of State Support Units, and the National Organization  
16 of Legal Services Workers.

17 I am not here in any other capacity.

18 Secondly, I want to point out that in response  
19 to requests from this Committee, and from members of  
20 the Board, we put together -- that is the national  
21 organizations, an ad hoc working group of Legal  
22 Services lawyers -- to try to come up with the draft  
23 which we submitted to you.

24 This group included representatives from all  
25 the organizations I just mentioned, a number of Field

1 Program Directors, as well as representatives from  
2 several of the national support centers, and the  
3 State support centers.

4 I think we have covered most of the bases  
5 in the community. Clearly, we do not speak for every  
6 member of the Legal Services community.

7 Next I think because we have presented you  
8 with this document which for each regulation contains  
9 essentially our comment, then the proposed language  
10 changes, and then a section by section analysis,  
11 I think it would be most useful, at least initially,  
12 to focus on a few general comments that have come up,  
13 and then point to what we think are some of the more  
14 difficult questions under each of the regulations,  
15 but I'm not going to go through and reiterate what  
16 we have already submitted in writing.

17 Let me begin by addressing what I think is  
18 maybe the key overriding question, a question which  
19 you asked of Mr. Bagenstos, and that is, "What can  
20 LSC do."

21 I'm not sure, as Mr. Bagenstos stated it, that  
22 I have any substantial disagreement with him, but I  
23 think I would like to make it a little more precise.

24 First, under the LSC Act, there is no general  
25 rulemaking authority, in the sense of a general grant

1 saying to the Corporation, "You can issue rules and  
2 regulations," as with many other Federal agencies.

3 Instead what there is, is three provisions  
4 which speak explicitly to a regulatory authority.

5 First 1008(e) is a procedural authority. It  
6 is a notice and comment authority. It is modeled  
7 after the authority of the Administrative Procedure  
8 Act, which, of course, is not an authority to  
9 promulgate regulations by an agency. It is a process  
10 of regulation.

11 It is stronger than the APA. It contains none  
12 of the APA's exceptions.

13 1006(b)(1) in the LSC Act, provides the  
14 authority to issue regulations to ensure compliance  
15 with several specific sections of the LSC Act,  
16 including Section 1007(a)(5), which is the general  
17 section in the LSC Act on legislative and administra-  
18 tive representation.

19 Section 1006(b)(5) requires LSC to issue rules  
20 and regulations within 90 days from the first meeting  
21 of the Board, to provide for the enforcement of  
22 Section 1007(a)(5).

23 1006(b)(1)(a) provides the Corporation shall  
24 have authority to ensure the compliance of recipients  
25 with the provisions of this title.

1           So, it provides for compliance in ensuring the  
2 enforcement.

3           Clearly then, LSC has the authority to  
4 interpret the LSC Act and appropriation riders. It  
5 clearly has the authority to promulgate regulations  
6 which ensure compliance with the Act, and the  
7 appropriation riders, but I do not think it has the  
8 authority, in the Act itself, to go beyond the  
9 restrictions, other than to ensure compliance, and to  
10 provide an interpretation of them.

11           I think that is a better way, in some sense,  
12 of understanding it, when you go through the specifics.  
13 That, of course, gives you tremendous breadth. I  
14 don't think there is any doubt about it, but it places  
15 some limits on it.

16           When you consider the rule making authority  
17 of the LSC, you also must take into account the  
18 section of the Act, which is 1006(b)(3), which  
19 specifically places the responsibility on LSC to not  
20 interfere with an attorney in carrying out his  
21 professional responsibilities to his client, and it  
22 mandates the Corporation to quote, "ensure that  
23 activities under this Title are carried out in a  
24 manner consistent with attorneys' professional  
25 responsibilities". Therefore, as you consider

1 regulations, you must take into account the impact  
2 which these regulations have on professional  
3 responsibility.

4 Here, we are, of course, dealing with a  
5 slightly different animal, because Congress,  
6 particularly in the last several years, through the  
7 appropriations process, which has essentially replaced  
8 the authorization process, Congress has engaged in a  
9 detailed examination of lobbying, and has reached a  
10 compromise, a compromise which was worked out in  
11 great specificity between members in the Senate and  
12 the House that were involved in this.

13 A compromise on, at least for the moment,  
14 what Congress' views on lobbying are. Obviously, that  
15 compromise doesn't answer every question, and we all  
16 understand that, but it does state fairly explicitly,  
17 at least with the use of '84 and '85 appropriated  
18 funds, what the authority is.

19 So, whatever general authority LSC might have,  
20 and I don't think it is quite as broad as some people  
21 would say, I think we have to look today in the  
22 context of what the appropriation riders have done.

23 In answer to your question, it is quite clear,  
24 of course, that an appropriation rider does not  
25 override or change the substantive law that is in

1 effect. It does affect the way appropriations  
2 money can be spent in a particular year, to the  
3 extent that the appropriation rider is specific.  
4 Clearly, this appropriation rider is specific, and  
5 would overcome any of the statutory construction  
6 hurdles that the Courts have placed on appropriation  
7 riders.

8 So, it doesn't affect the underlying Act  
9 itself. There is no doubt about that, and the  
10 authority that you had under the Act, you still have,  
11 but you cannot use '84 or '85 funds to -- you cannot  
12 use those in contradiction to the appropriation rider.

13 Finally, there is the issue of the D. C.  
14 Corporation Act. I have given a little more thought  
15 to this, and I frankly think that the D. C. Corporation  
16 Act doesn't address this issue.

17 Corporations are not regulatory bodies usually.  
18 They obviously -- The Act, by the way, provides that  
19 they can have By-Laws and internal operating  
20 procedures. It doesn't discuss, as you would never  
21 expect it to discuss, regulations, or regulatory  
22 bodies, or a rulemaking agency. I really think the  
23 powers under the D. C. Act are essentially beside the  
24 point.

25 And finally, in considering at least the

1 lobbying area, if not some of the others, one has  
2 to take into account that some of the activities  
3 that are being discussed here -- not all of them  
4 but some -- raise some First Amendment problems.

5 So, when you go through and look at the  
6 specifics, these are the kinds of -- this is the  
7 framework I think you should approach this in.

8 Secondly, let me briefly address an issue  
9 that-- and I don't want to spend a great deal of  
10 time on it -- that LeaAnne raised, which was A-122.

11 I think it is very clear from reading A-122,  
12 that A-122 does not apply to the Corporation. Indeed,  
13 OMB has indicated that it doesn't apply to the  
14 Corporation. But the real point that I want to make  
15 about A-122, is that the authority which A-122  
16 was relying upon for -- or part of the authority which  
17 it was relying upon, was a General Treasury rider.  
18 That General Treasury rider is no longer in effect.  
19 It was removed on a point of order in 1983, and it  
20 has not been attached to appropriations in '84 and  
21 '85. It is not in the General Treasury Bill. There  
22 is no longer a General Treasury rider in effect today.

23 Of course, the provisions in our Act, 98-411,  
24 and 98-466, the same, those incorporate the provisions  
25 of the General Treasury rider with regard to LSC, but

1 the General Treasury rider is no longer in effect,  
2 and I think that's in terms of OMB. I just think  
3 you ought to know that.

4 Now, what I would like to do, since we are  
5 on lobbying, which I prefer to call by its correct  
6 name, Legislative Administrative Representation,  
7 Organizing and Training, I would like to briefly  
8 go over a couple of the major concerns that we have,  
9 and then if you might, I would like Allan Ramsaur  
10 just to make a few comments from his own experience,  
11 and then I will briefly discuss the other regulations.

12 First --

13 MR. WALLACE: Let me ask you before you do  
14 that, because the way I would anticipate doing this --  
15 You have done what we asked you to do. We asked the  
16 Legal Services community to give us this in great  
17 detail.

18 Before we start going through it part by part,  
19 what I would like to do is get other general comments  
20 from other members of the public that are here, and  
21 I think I would like to get our General Counsel back  
22 up at the table, and let's go through this, because  
23 I'm going to have questions to refer to him, just as  
24 I do to you.

25 MS. BERNSTEIN: This document that you're

1 talking about, was it sent to all members of the  
2 Board?

3 MR. HOUSEMAN: No. It was part of the  
4 comments. We did send it to some members of the  
5 Board, but not all.

6 I was assured that it was being --

7 MS. BERNSTEIN: Well, I didn't get one of --  
8 one of the mailings missed me, the plane left first,  
9 so maybe it's in that, but I just --

10 MR. WALLACE: Ms. Bernstein, if I may say.  
11 The comment was divided up in the package I got.  
12 When the General Counsel and the Secretary divided  
13 these things part by part, it took -- it separated  
14 the parts, so you have probably got it in there.

15 MR. DAUGHERTY: You will find it. The book  
16 you have in front of you is broken down by the five  
17 parts of regulations before us.

18 The first entry after the text of the  
19 regulation is Mr. Bagenstos' summary of the comments.  
20 You have a few single comments, and the last item  
21 in each section is the coalitions proposed to  
22 substitute regulations.

23 MR. WALLACE: So, it is right here in the  
24 book.

25 MR. DAUGHERTY: It is in the book before you,

1 if you didn't have it previously.

2 MR. WALLACE: All right. That tells us  
3 where everything is.

4 Mr. Ramsaur, you may have some of those  
5 general sorts of comments, based on your experience  
6 that I was soliciting, so if you would like to go  
7 ahead at this point, please feel free.

8 MR. RAMSAUR: Mr. Wallace, I guess I would  
9 say that I might be more helpful when we get into  
10 the situation of asking Mr. Houseman a question,  
11 of illustrating an -- or illustrating from examples  
12 from experience, as to exactly how that impacts in  
13 working through language, or working through general  
14 comments with Counsel and Mr. Houseman, that might  
15 be a good place to plug those in, rather than making  
16 a general set of comments about the way in which  
17 it works.

18 MR. WALLACE: Okay. That suits me fine.  
19 Let me ask at this point.

20 I see we do have more people here this  
21 morning. Is there anybody else here, that wanted to  
22 make a general statement to the Board, on the subject  
23 of these regulations? Do we have anybody else that  
24 wants to speak?

25 (No response.)

1           At this point, what I'm going to ask then --  
2 Mr. Houseman, you can stay right there -- Mr. Ramsaur,  
3 it might be more helpful if you just sat on the  
4 front row where you could be grabbed if necessary.

5           If our General Counsel would come forward,  
6 we will start working through our Board book, and  
7 I would propose, unless there is sentiment to the  
8 contrary on the Committee, that we take them in  
9 the order in which the General Counsel took them  
10 this morning, deferring the Part 1612 to last. I  
11 think Ms. Bernstein has raised two good questions  
12 about 1612 this morning, and we may want to get  
13 other people's opinions before we get any final  
14 decisions on those.

15           But let's start on 1601, defer 1612, and get  
16 through the others, and do 1612 last.

17           Mr. Houseman, we have been through -- most of  
18 us, I think, have had a chance to see these proposed  
19 changes. Whether we knew they were all one package  
20 or not, they have been in the comments.

21           MS. BERNSTEIN: I will say that that was very  
22 confusing. I would just ask that in the future we  
23 try to make a designation as to whether they are  
24 proposed changes, you know, from within the Corporation,  
25 from without the Corporation. The presentation is

1 something less than --

2 MR. WALLACE: In what we got in the mail?

3 MS. BERNSTEIN: Yes.

4 MR. WALLACE: Okay.

5 MS. BERNSTEIN: And I would just -- You know,  
6 there is no way to do other than just ask, you know,  
7 that if one Board members gets any material from  
8 any of you from the outside, I just think it would  
9 be appropriate for all the Board members to get it.

10 MR. WALLACE: I did get it in the mail in my  
11 capacity as Chairman. I appreciated it, but I think  
12 that's right, that all members of the Board would  
13 appreciate seeing it.

14 We can start with Part 1601. The first change  
15 you have got in here is on the Conflict of Interest  
16 section.

17 Is there anything you want to say on that,  
18 Mr. Houseman, and is there anything that any members  
19 of the Board want to say about that?

20 MR. HOUSEMAN: No, I have nothing. I've  
21 said everything there is to say about that.

22 MR. WALLACE: I would say that's one of the  
23 symbolic changes we have talked about, and my view  
24 of the symbolism would be to keep it the way it is,  
25 unless there is some sentiment on the Board, on the

1 Committee, to the contrary.

2 MR. SMEGAL: Leave what, the way what is?

3 MR. WALLACE: Have you got the Board book in  
4 front of you, Mr. Smegal, because the way --

5 MR. SMEGAL: Well, I've got the material  
6 that was sent to me by Federal Express, that I've  
7 gone through, so I'm working with that, Mike. Now,  
8 what do you want me to do with it?

9 MR. WALLACE: Okay. The way the staff has  
10 set up the Board book for us, is right after the  
11 Minutes, they've got the By-Laws as they exist,  
12 following the By-Laws they have General Counsel's  
13 Memorandum on the comments, following the Memorandum  
14 on the comments, they have the portion of Mr.  
15 Houseman's presentation on behalf of the several  
16 organizations that address the By-Laws. They are  
17 broken down part by part in the Board book.

18 I, too, marked up my copy that I got from  
19 Mr. Houseman in the mail. I do think that the Board  
20 book is arranged in a fairly convenient fashion.

21 It's Page 95 of Mr. Houseman's submission.  
22 The Board book page isn't numbered, but it's under  
23 the first part, 1601 By-Laws.

24 MR. SMEGAL: Okay. I'm on Page 95, Mike.  
25 Now, where is it?

1 MR. WALLACE: All right. We are on Page 95  
2 of their proposed changes. Section 1601.11(a), there  
3 is a suggestion that we strike "other than the  
4 Legal Services Corporation".

5 Is there any discussion of that? Is there  
6 any sentiment on this Committee, to adopt that  
7 particular change?

8 MR. SMEGAL: Yeah, I think there is.

9 MR. WALLACE: Okay. Mr. Smegal, go ahead  
10 and say.

11 MR. SMEGAL: I mean, I don't know what it's  
12 in there? Why would we add it? I see nothing from  
13 Counsel, or anywhere else, pointing out why that  
14 phrase was needed?

15 MR. WALLACE: There was a Counsel's opinion  
16 given, and I sat next to Ms. Bernstein at the  
17 confirmation hearings when the conflict of counsel's  
18 opinion came up, as to whether or not as an officer  
19 of the corporation, she was eligible to be --

20 MS. BERNSTEIN: Or even just an employee.

21 MR. WALLACE: -- or as an employee of the  
22 corporation, whether she was eligible for nomination  
23 to the Board.

24 The General Counsel of the Corporation rendered  
25 an opinion, as I recall, that she was eligible.

1 Senator Eagleton took issue with that. I presume  
2 what the Board did when it adopted this change, was  
3 to incorporate its General Counsel's opinion into  
4 the text of the regulation.

5 MS. BERNSTEIN: Mike, it goes further than  
6 that, because during that confirmation hearing  
7 process, there was also an opinion given from the  
8 Office of Legal Counsel, interpreting that section  
9 of the Act, and Senator Metzenbaum asked the  
10 Congressional -- whatever that arm of --

11 MR. WALLACE: Congressional Research Service,  
12 or?

13 MS. BERNSTEIN: -- to issue an opinion, and  
14 to my knowledge, I've never seen that opinion.

15 MR. HOUSEMAN: There was an opinion, and it  
16 was consistent with the Legal Counsel's opinion, and  
17 the General Counsel's opinion.

18 MS. BERNSTEIN: That it was appropriate, or  
19 it was reasonable for someone who had been an employee  
20 of the Corporation, to later on the Board.

21 MR. HOUSEMAN: Uh, huh.

22 MS. BERNSTEIN: The words that are here, as I  
23 understand it, were included in the By-Law changes  
24 simply for clarification.

25 If the question has come up once, it might come

1 again. There is no point in not -- when you're  
2 cleaning up the By-Laws, clean them up.

3 MR. WALLACE: Mr. Smegal?

4 MR. SMEGAL: Well, my concern is that I'm still  
5 where I was. I don't see why they are necessary at  
6 all then.

7 We have a legal opinion that says a staff  
8 person, or a person of the Legal Services Corporation  
9 can serve on the Board. General Counsel said so, and  
10 apparently some other report says so, so why do we  
11 need to encumber our By-Laws with a particular  
12 organization?

13 I mean, it seems to me illogical to put it in  
14 here, when it is already a matter of fact. We have  
15 Counsel's view that that particular instance -- What  
16 if somebody comes along and is serving in some other  
17 organization, and we get another General Counsel's  
18 opinion? Would we then stick another By-Law change  
19 in here? Everytime this comes along, we'll have  
20 another By-Law change.

21 MS. BERNSTEIN: I would think, Tom, that this  
22 would serve exactly the opposite purpose, which is to  
23 say that this is the only exception.

24 MR. SMEGAL: Well, it is the only exception so  
25 far, because this is the only exception that General

1 Counsel has been asked to react to.

2 MS. BERNSTEIN: Well, I don't think that's  
3 true, because General Counsel's opinion -- and  
4 obviously, I haven't seen the other opinion --

5 MR. SMEGAL: I haven't seen any of them.

6 MS. BERNSTEIN: You've seen them, Alan, but  
7 the only reason I have seen those, Tom, is because  
8 they were pertinent to my confirmation. I had to  
9 see them.

10 But the concern that was in the text of those  
11 opinions, was that the reason for another organization  
12 not being represented on the Board, would be that  
13 there would be a conflict of interest, and that the  
14 Legal Services Corporation itself is a national  
15 entity, and the Board itself presumably have the  
16 same interests, and so, therefore, there could not  
17 be a conflict, and that discussion was included in  
18 those opinions, and to that extent, I think that the  
19 language in the By-Laws would simply clarify that  
20 there is one exception to this blanket, specifically  
21 to any firm or organization, and that exception is  
22 that if you are a part of the organization you're  
23 going to become a part of, that you don't have a  
24 conflict.

25 MR. SMEGAL: Again, I haven't had the benefit

1 of seeing any of those opinions, but what does the  
2 term, "Legal Services Corporation" mean? Does it mean  
3 the staff in Washington? The officers? Does it  
4 mean the Regional Offices?

5 MS. BERNSTEIN: The Regional Offices, as well.

6 MR. SMEGAL: Does it mean grant recipients?

7 MS. BERNSTEIN: No, not recipients.

8 MR. SMEGAL: Regional Offices are --

9 MS. BERNSTEIN: The recipients are at arm's  
10 length with us, I would hope.

11 MR. SMEGAL: Dick, is that correct, that the  
12 opinion --

13 MR. BAGESTOS: Anybody who is employed directly  
14 by the Corporation.

15 MR. SMEGAL: Well, I -- I'm not going to  
16 oppose it Mike, but I think it is so clear to everybody  
17 in this room that these words are not necessary.

18 MR. WALLACE: I would think so too, Mr.  
19 Smegal, if I hadn't been in a room where it wasn't  
20 clear to a lot of people. And it is in here as it  
21 exists, and I don't see any sense in taking it out.

22 MR. SMEGAL: All right. Well, let's go on.

23 MR. WALLACE: On the next page, the first two  
24 lines are more or less redundant. I don't have any  
25 objection to putting them in, or keeping them out.

1            Obviously, it says--it restates the supremacy  
2 clause is what it does. I don't know that we need  
3 to do it. But I would like to ask members of the  
4 Board regarding the change in 15(b) about rescheduling  
5 meetings.

6            If we push one back, we get five days notice.  
7 If we bring one forward, we get 21 to 15 days notice

8            I'll ask the President of the Corporation  
9 whether he is familiar with our prior practice  
10 under this, and what -- what's the existing situation  
11 right now, on moving up a meeting?

12           MR. OPSUT: Well, we haven't had much of a  
13 history on moving up a meeting. We have been running  
14 late on scheduling meetings, as Mr. Houseman knows.  
15 We are trying to cure that in terms of giving as  
16 much notice as possible, but in terms of a history  
17 with this, I don't think we've had a history with it.

18           MR. WALLACE: There is no provision in our  
19 regulations now, for moving one up, is there?

20           MR. OPSUT: No. For moving a date up?

21           MR. WALLACE: Yeah, that's what this sentence  
22 would do.

23           MR. HOUSEMAN: Mr. Wallace, this was taken from  
24 the old By-Laws. So, I'm just proposing that it be  
25 reinstated, and I have not changed it for anybody.

1 MR. WALLACE: Okay. Does anybody know if  
2 we've ever used it?

3 MS. BERNSTEIN: Well, just going through the,  
4 as far as the corporate records, when we were asked  
5 by Senator Hatch to provide a list, or by that  
6 Committee, to provide a list of the scheduling of  
7 meetings in -- this was in reference also to the  
8 litigation regarding the scheduling of meetings, and  
9 notice -- it is the case that in the history of the  
10 Corporation, the notice has generally complied with  
11 the Sunshine Act.

12 There have been a few exceptions that ran  
13 from, well, from '76 through '84. There have been  
14 a few situations which -- I guess in '84, we didn't  
15 have any problems. We always had seven days published  
16 notice.

17 As I understand it, just from looking at the  
18 history of the first By-Laws, when the first Board  
19 adopted these, the concern, and the reason that those--  
20 that section was in the By-Laws, was simply to address  
21 the annual meeting, and that you had to have addi-  
22 tional notice if, for instance, Board members, when  
23 you have eleven Board members and they mark off days  
24 on their calendar and they are told that the annual  
25 meeting is going to be -- is changed from its annual

1 date, then they should have some notice.

2 I don't have any particular problem with that,  
3 except that the practical -- the realities of the  
4 Corporation are that we have basically dispensed with  
5 annual meetings in favor of monthly meetings, and  
6 you know, the whole question of, you know, whether  
7 or not the quarterly meetings are set out in our  
8 By-Laws are even --

9 MR. WALLACE: Yeah. Well, this does only  
10 apply to regular meetings, and quite frankly, now  
11 that I read it and understand it, I remember that  
12 we had some discussion when we first came on, as to  
13 whether or not we could reschedule our annual meeting  
14 for the convenience of the Board. We decided we  
15 couldn't do it. I think this sentence wouldn't let  
16 us do it.

17 MR. SMEGAL: That's right. We were unable  
18 to do that, Mike. In fact, I wanted to reschedule  
19 it, because it would be conflicting for me, and we  
20 had no way of doing that.

21 MR. WALLACE: Yeah. If this would permit us  
22 to do that, it looks to me like that's a good change,  
23 worth having it in. I don't see what harm it does.  
24 Is there --

25 MS. BERNSTEIN: I don't really care one way or

1 the other. I think it is somewhat unworkable in some  
2 senses to have -- if we come up to an annual meeting  
3 which is supposed to be on -- let's just take the  
4 January meeting. It was to be on the 25th of January,  
5 or whatever. If we found out on the 10th of January  
6 that everybody was available on the 24th. We would  
7 be prohibited from meeting on the 24th.

8 MR. WALLACE: Right now, we're prohibited from  
9 meeting on the 24th anyway.

10 MS. BERNSTEIN: I don't think so, if we --

11 MR. WALLACE: We could have a special meeting  
12 on the 24th.

13 MS. BERNSTEIN: If you call it a special  
14 meeting, and then we postpone the regular meeting.

15 MR. WALLACE: Well, all this applies to is  
16 to regular meetings. We can reschedule and schedule  
17 special meetings at anytime, and right now, there is  
18 no mechanism for rescheduling regular meetings, and  
19 this provides one.

20 If we want to have a special meeting on the  
21 24th of January and cancel the one on the 25th, maybe  
22 we could do that, but right now we can't do anything  
23 with the one on the 25th, except hold it, and this  
24 looks like it solves the problem we had.

25 MS. BERNSTEIN: Except that if we don't have a

1 quorum, we wouldn't have the meeting anyway.

2 MR. WALLACE: Yeah, okay.

3 MS. BERNSTEIN: So, I mean, it is kind of a  
4 distinction without a difference, so I don't really  
5 care.

6 MR. WALLACE: Okay. I think it is useful  
7 to have.

8 Mr. Smegal, Ms. Miller, if there is no senti-  
9 ment to the contrary, this looks to me like a change  
10 that we can agree to by consensus.

11 Now, I'm making notes on this. I hope the  
12 Secretary of the Board is going through item by item.  
13 This is not -- We are not adopting things formally,  
14 but we may ask you to prepare a document embodying  
15 our consensus that we will vote on, at a later time.

16 Section 1601.16 talks about conference calls,  
17 participating in a special meeting of the Board by  
18 means of conference calls.

19 Now, I think at our first Directors Meeting,  
20 the President explained to us that we had to have  
21 a quorum physically present, in order to utilize  
22 this.

23 That may be wrong, I don't recall, but I would  
24 ask the General Counsel to enlighten us on how these  
25 telephone meetings are supposed to work, and whether

1 or not they are consistent with the Sunshine Act.

2 MR. RAMSAUR: The author of the Sunshine Act  
3 has expressed concern that there should not be a  
4 meeting telephonically held without a quorum  
5 physically present.

6 He also has a concern about how there can be  
7 public attendance at such a meeting.

8 Looking beyond the legal concern, you know,  
9 you have got a technical problem, I guess, with  
10 regard to that. But, yes, I think it would have to  
11 work that there would have to be a quorum physically  
12 present, and it would serve only to allow those  
13 not physically present to participate in the meeting,  
14 if there was a quorum there.

15 MR. WALLACE: Okay. Ms. Bernstein?

16 MS. BERNSTEIN: May I just add something  
17 there? It's just another historical note.

18 This was a question that was considered, and  
19 I should have dug it out of the file again, but this  
20 was considered, again, with the original By-Laws,  
21 the question of telephonic meetings.

22 The discussion of the Board members, at that  
23 time, was that, of course, we have the right to  
24 participate by telephone, because we're a private  
25 corporation, and private corporation's Boards of

1 Directors generally have that right, and so they  
2 didn't see any point in putting it in the By-Laws,  
3 because they presumed it.

4 I don't -- As far as the access to the public  
5 as to what was being said, let me just say that as  
6 far as the experience of the corporation, is that  
7 we have allowed Board members to participate by  
8 telephone.

9 There has not been any question -- there was  
10 not any question raised at the time, and those Board  
11 members spoke by way of speaker phone, and the  
12 speaker phone allowed everyone to hear what they  
13 were saying. They asked questions of the audience,  
14 they had interchanges with not only the other Board  
15 members, but also with members of the audience, and  
16 their votes were recorded, and their statements were  
17 recorded by the Court Reporter.

18 So, therefore, I don't think that the access  
19 from the public is the question. If there is a concern  
20 from the standpoint of the Sunshine Act, with regard  
21 to the quorum being physically present as a  
22 prerequisite to another -- in other words, that the  
23 person who is participating by telephone, does not  
24 make up the quorum, then I think that goes to whether  
25 or not a meeting is scheduled inconveniently to the

1 Board, and is partly a matter of some kind of protocol  
2 among the Board.

3 I don't particularly see it as a legal  
4 problem, but I --

5 MR. OPSUT: I've had the practical, because  
6 when I was the Secretary of the Corporation, I  
7 handled one of these telephonic meetings, and at that  
8 point, we were operating on a five member Board.  
9 We had two members physically present, and two members  
10 participating by phone -- one from France, and one  
11 from Princeton, New Jersey, and --

12 MR. WALLACE: Did we call that a quorum?

13 MR. OPSUT: And we called that a quorum. And  
14 other than the awkwardness of it -- we had speaker  
15 phones, people were able to ask questions, and have  
16 their questions answered, and other than taking  
17 time to set it up mechanically, it ran fairly smooth.

18 MR. WALLACE: Mr. Smegal, you were about to  
19 comment.

20 MR. SMEGAL: Well, yeah, I had misunderstood  
21 this, I guess, because what I understood here was that  
22 everybody was going to be meeting by phone, and I  
23 would certainly have some trouble with that.

24 LeaAnne has given me a different interpretation  
25 of this from what she said. Maybe I haven't read the

1 material clear enough.

2           What I understand LeaAnne to be saying now  
3 is there is a physical meeting somewhere, and some  
4 absent Board member is only able to be there via  
5 a conference call, where the public is physically  
6 present at the meeting, other than for the absent  
7 Director, or Directors.

8           MS. BERNSTEIN: Uh, huh, and the only time  
9 that I could find, in going through the records of  
10 the Corporation, the only time in which the Board  
11 or what they considered to be the Board, had had a  
12 meeting in which everyone was on the telephone, and  
13 there was no physical meeting with no more than --  
14 you know, with at least one or two members present,  
15 was when the members of the Board in 1982, in  
16 February, had a telephonic meeting, in which they --  
17 it was an executive session, so the public would not  
18 have been allowed anyway -- but as it turns out, they  
19 were not actually members of the Board at that time.  
20 They had been replaced by the recess appointments, and  
21 they were meeting to discuss that.

22           So, it was kind of a non-meeting. But the  
23 only other instance in which the majority, besides  
24 the one that Tom mentioned, which was a problem with  
25 a very few number of Board members, was when the

1 recess Board was appointed in 1981, and they had,  
2 I think three or four members of the Board present  
3 physically in Washington, and then there were another  
4 five or six members who were present by telephone,  
5 for a special meeting.

6 MR. WALLACE: For my own part, I have a little  
7 trouble with not having a quorum physically present.  
8 I don't know whether it's required by the Sunshine  
9 Act, or not.

10 As a matter of good policy, I do better looking  
11 people in the face than dealing with them over a  
12 conference call, and it would be my own sentiment  
13 that there is nothing wrong with this section as it  
14 is, if we clarify that there ought to be a quorum  
15 physically present, and anybody else can participate  
16 by telephone.

17 Now, that is my sense of the matter. Do any  
18 other members of the Committee have a view on the  
19 question?

20 MS. BERNSTEIN: Well, I think to some extent  
21 that once again we are abandoning the independence  
22 that a private corporation would have and --

23 MR. WALLACE: I think if I were running a  
24 private corporation, I would want a quorum to be  
25 physically present.

1 MS. BERNSTEIN: I'm simply saying though that  
2 we're in Tennessee, that had a snow storm but not  
3 quite as bad it could have been, and if we ended  
4 up with one member not getting there because of a  
5 snow storm, and everyone else gets there and you  
6 don't have a quorum physically present, but that  
7 member, and there are plenty of other members that  
8 are there, then do you just cancel the meeting for  
9 a lack of a quorum, or do you allow that member to  
10 call in from Chattanooga?

11 It just seems to me that the purpose of the  
12 public disclosure of the meeting is being carried  
13 out through the speaker phones and the physical  
14 presence, at which people from the community can  
15 interreact with the Board, and I don't see any  
16 magic in a physical quorum.

17 MR. WALLACE: Any other comments from the  
18 Committee members on that?

19 MR. SMEGAL: Well, I'm still back at the  
20 basic issue, I guess, and while it would certainly  
21 be more convenient for me, than anyone I think,  
22 seeing that I come the furthest to go to meetings  
23 in Washington, I would hate to have a crutch that  
24 could let me sit in my office and participate in  
25 these meetings from San Francisco.

1 I'm not particularly in favor of this. I  
2 think you should be physically present.

3 I mean, Mike, further that I not only think  
4 you should have a quorum, but I think if you want to  
5 participate in these meetings, you should be present.

6 I'm going to vote against this. I am going  
7 to vote for what is here, the proposal to strike  
8 this, because I think if you're to be on this Board,  
9 you should be here, and there is so much more to be  
10 added.

11 I remember some committees I've run in the  
12 Bar Association, the State Bar of California, where  
13 we have a group from Los Angeles and San Francisco  
14 and we met by conference call. We met with video  
15 cameras. The good news is the meetings are a lot  
16 shorter. The bad news is that I don't think they  
17 are as effective, and I really think you have got to  
18 be present and get the flavor of what is going on  
19 in order to be a productive member of the Board of  
20 Directors. If you are not willing to make that kind  
21 of a commitment, I think you're just not part of the  
22 quorum.

23 MR. WALLACE: Any further thoughts?

24 (No response.)

25 Let me leave it this way. I don't think we want

1 to take a vote right here, but we've got three  
2 separate thoughts on this. One is to leave it as  
3 it is, one is to make the strikes that are suggested  
4 by Mr. Houseman, and the other is to leave it as it  
5 is but say you have to have a physical quorum  
6 present.

7 I'm going to ask the Secretary to see that we  
8 have got proper language drafted, and when we get  
9 that draft before us, we will take a vote.

10 1601.19(c), about reasonable effort shall be  
11 made to send the notice to the governing Board of  
12 every recipient.

13 Is there any practical reason why we can't  
14 send it to the Director, and to the governing Board?

15 MS. BERNSTEIN: (Nods negatively.)

16 MR. DAUGHERTY: That's what we do.

17 MR. WALLACE: In fact, that is what we do.  
18 If that is, in fact, what we do, I would suggest the  
19 consensus of the Committee is, let's say so.

20 MR. SMEGAL: So, we are going to leave the  
21 words, "governing Board" in, and add to it?

22 MR. WALLACE: And add "governing Board and  
23 Director".

24 The next has to do with quorum. Now, it is  
25 my understanding that the language -- well, maybe it

1 is not my understanding -- I'm under the impression  
2 that this language proposed here is what we had under  
3 the old By-Laws, and what we have now is a majority  
4 of the Directors, or in no event, less than four.

5 Anybody on the Committee want to start with  
6 any thoughts on where we ought to go with regard to  
7 what a quorum ought to be?

8 MS. BERNSTEIN: I think the words -- I don't  
9 have the original right here in front of me, but  
10 I don't think the words, that, "In no event less  
11 than four," was in our By-Laws before. Those were  
12 new, to this -- not to the proposal, but to the  
13 By-Laws we are presently acting under.

14 That was a clarification to make clear  
15 the D. C. Corporation Act which sets --

16 MR. WALLACE: Four is the dead minimum anyway.

17 MS. BERNSTEIN: Well, in light of the number  
18 that we would be able to have on the quorum.

19 MR. WALLACE: Yes.

20 MS. BERNSTEIN: But again, the purpose of the  
21 change was suggested, if we're going to go through  
22 and clean up the By-Laws, let's be careful that we  
23 be in compliance with the Act under which we have  
24 organized, and so that was the only reason for it.

25 MR. WALLACE: Mr. Houseman?

1           MR. HOUSEMAN: What happened was -- I agree  
2 that the four should be in there, and of course,  
3 we've kept that, and that is what the D. C. Corporation  
4 law requires.

5           What we are proposing here is merely that  
6 the old provisions be put back in, and the basic  
7 reason is to make sure that there are as many possible  
8 people at Board meetings making decisions affecting  
9 a grantee.

10           That's all there is. This is not the central  
11 issue of the day.

12           MR. WALLACE: I understand the sentiment.  
13 My own view is the House and a majority of the House  
14 or a Senate is a quorum, and a majority of the  
15 serving Directors ought to be a quorum, and I'm  
16 satisfied with the language as it is.

17           Mr. Smegal, do you have any views?

18           MR. SMEGAL: Mike, as long as there is a  
19 majority, I think maybe the concept of having a  
20 minimum number makes sense. I don't see any reason  
21 for two-thirds, or seven or eight. I have served  
22 on a lot of Boards, Mike, and I think a majority  
23 is fine.

24           I think Mr. Houseman's comment though is a  
25 good one with respect to a minimum number of people.

1 MS. MILLER: I agree.

2 MR. SMEGAL: Now, how we do that, I guess  
3 we're going to take half and half, huh?

4 MR. WALLACE: Yes.

5 The next change they have got has to do with  
6 Executive sessions, and voting on consideration of  
7 a specific matter should be closed to public  
8 observation.

9 I'm going to ask our General Counsel, or  
10 Assistant General Counsel who is here, to tell us  
11 how that works.

12 Does this add anything to what we already do,  
13 or does this make a real change?

14 MR. BROOKS: I'm sorry, you are going to have  
15 to point me to where you are.

16 MR. WALLACE: We are on Section 1601.22.  
17 Their change is on Page 98 of their draft. It adds,  
18 "All meetings shall be opened to the public, unless  
19 a majority of all Directors in office determines  
20 by a recorded vote...", and then they add, "The  
21 consideration of a specific matter should be closed  
22 to public observation, pursuant to the Corporation's  
23 regulations."

24 What is the practical effect of that language,  
25 as compared to what we do now?

1 Mr. Bagenstos, you usually certify for us.

2 MR. BAGENSTOS: The procedure right now is  
3 that we tend to certify it by category, rather than  
4 by specific matter.

5 The difference would be, I think, that the  
6 specific matter to be discussed would be aired only in,  
7 you know, the topic of it, and then the voting would  
8 take place on that.

9 MR. WALLACE: Let me ask Mr. Houseman, what's  
10 the intent of the proposed change?

11 MR. HOUSEMAN: Well, the proposed change is  
12 made for two reasons.

13 First, this was consistent with the old By-Laws.  
14 Secondly, the case law under the Sunshine Act, and  
15 there's a series of them, I've only cited one on  
16 Page 103, indicates that everytime the meeting is  
17 closed, there must be a statement as to the specific  
18 exemption and the specific issue.

19 So, I'm trying -- This proposal, I think, brings  
20 your By-Laws in conformity with the Sunshine Act,  
21 as interpreted by the Courts.

22 You don't have to say, "We're going to discuss  
23 the personnel policies of Joe Blow," but you have  
24 to say, "We're going into Executive session to discuss  
25 personnel policies."

1 MS. BERNSTEIN: We do that.

2 MR. HOUSEMAN: I know, I understand. I'm just  
3 saying that what this requires is to specify each  
4 of the things that you are going to discuss, and it  
5 just makes clear that that is the case.

6 It was taken out of the old By-Laws for reasons  
7 I don't know, and it seems to me that to more conform  
8 to the language of the Sunshine Act, you should put  
9 it in.

10 MR. SMEGAL: Put it back in.

11 MR. HOUSEMAN: Put it back in, yes.

12 MR. SMEGAL: Can anyone tell us why it was  
13 taken out? LeaAnne, do you know?

14 MS. BERNSTEIN: I think when these were redone  
15 with regard to the Sunshine Act, it was to conform  
16 with the other Sunshine Acts, the other agencies  
17 Sunshine Act, and they simply make reference to, like  
18 the exception, that you have to cite the exception.

19 MR. WALLACE: It has now that if we have  
20 three excepted matters, we say, "Personnel, litigation,  
21 and such and such," and we take one vote on them.

22 Now, are you saying that we ought to take  
23 one vote on personnel, and one vote on litigation,  
24 and one vote on whatever?

25 MR. HOUSEMAN: No, no. I'm saying that you have

1 to specify that. I don't think the -- This language  
2 frankly is taken from the model, the Justice  
3 Department model, my proposed language, to be quite  
4 clear.

5 MR. WALLACE: Okay. I mean, I think this is  
6 what we do right now. If that is wrong, Mr. General  
7 Counsel, let me know.

8 MR. BAGENSTOS: No, that's right. That's  
9 what we do right now.

10 I should say that the Assistant General Counsel  
11 who gives the most attention to Sunshine matters,  
12 believes that the appropriate way to handle it is to  
13 take a separate vote on each of the items.

14 MR. WALLACE: Oh, dear. If this is the same  
15 as what we do now, what's the sentiment of the  
16 Committee? I don't mind having it in here, if this  
17 is what --

18 MR. SMEGAL: I think we should put it in, Mike.

19 MS. BERNSTEIN: I don't care. As I understand  
20 it, it was just some terminology cleaning up.

21 MR. WALLACE: Okay. The next thing is public  
22 participation.

23 I think adding, "The Board welcomes comments",  
24 is a fine addition, and taking out the matter about  
25 written requests.

1           Let me say what I understand that language to  
2 say, and how we have all seen it to work in practice.

3           What it says is, "By written request, you may  
4 seek to be invited by the Chairman." It doesn't  
5 say that if you don't write in advance, that you  
6 can't be invited by the Chairman.

7           Our Chairman, I think has been quite liberal  
8 in inviting anybody to speak under any terms  
9 whatsoever.

10           As the Chairman of this Committee, I am  
11 delighted to have had people contact me in advance  
12 about wanting to speak. It helps. I think that  
13 that doesn't mean I'm not going to let folks speak  
14 under terms and conditions established by him, unless  
15 the Board or the Committee otherwise directs.

16           I think adding that sentence at the beginning  
17 is fine, and I think it states the view of this  
18 Board. I don't see any need to take anything else  
19 out, just because having a written request is an  
20 assistance to the Chairman, and he is certainly free  
21 to go beyond that, as he has, as a general rule.

22           Does anyone on this Committee have a different  
23 view?

24           MR. SMEGAL: Maybe a slightly modified view,  
25 Mike.

1 MR. WALLACE: Okay.

2 MR. SMEGAL: It seems to me -- Halfway through  
3 that Section 23, we've got a sentence that starts  
4 with "members". If we were to insert the word,  
5 "other", before "members of the public," we would  
6 make it clear that there would be another vehicle  
7 by which you could address the Board, other than by  
8 a written request in advance. So, it would read,  
9 "Other members of the public may address the meeting  
10 of the Board upon invitation," making it clear that  
11 you aren't estopped from addressing our Board merely  
12 because you haven't submitted a written request.

13 MS. BERNSTEIN: That's okay. As long as it is  
14 permissive, I --

15 MR. WALLACE: Yes, I consider that a friendly  
16 amendment.

17 MR. SMEGAL: Like all of my amendments.

18 MR. WALLACE: I would say then, that it is the  
19 consensus of the Committee that we add "other" at  
20 the beginning of that sentence, and leave everything  
21 that is in here, whether it's underlined, stricken  
22 through, or just sitting. That's a satisfactory  
23 paragraph to us.

24 MR. DAUGHERTY: Could you specify where the  
25 "other" goes?

1 MR. WALLACE: "Other" goes in what would be  
2 the third sentence of the revised paragraph. "Other  
3 members of the public may address a meeting of the  
4 Board, upon invitation of the Chairman." That's  
5 how that sentence would read.

6 1601.24 has to do with emergency proceedings,  
7 and I think, at this point, since Ms. Bernstein was  
8 present at the meeting that I think probably  
9 instigated this regulation, I'm going to ask her to  
10 begin by telling us why this is here, and whether or  
11 not we need it, in her view.

12 MS. BERNSTEIN: The concern with regard  
13 to the carrying out of business by the Corporation  
14 Board, was brought to a very unfortunate head at  
15 a December meeting in 1982.

16 The meeting digressed from a meeting, into  
17 something really more akin to a demonstration, and  
18 I suggested to Mike that before we make any ultimate  
19 decision with regard to this, that I think that it  
20 would be useful for us to bring the video tape of  
21 that meeting, and actually show the Board members  
22 that meeting.

23 That is not to say, and I am herewith not  
24 endorsing the language, the present language, of  
25 1601.24. I think that there may be alternatives that

1 would be more constructive.

2 As I have read the comments, the concern of  
3 persons who have commented on this, was that it  
4 was closing off public access to the meeting. That  
5 was not the intent, as I understand it, of the Board  
6 members who promulgated this.

7 Their concern in moving the members, as opposed  
8 to ousting the disrupters, was that it would, in the  
9 long run, be less disruptive to the business that  
10 was taking place.

11 There may be other procedures, not one of  
12 those, that would fulfill the concerns of the  
13 Sunshine Act, and at the same time, be more construc-  
14 tive to the purposes, without the selection process  
15 that is offensive to some people in the community.

16 So, I would just say that there are probably  
17 alternatives that should be explored in this, but  
18 I think it would be important in order to understand  
19 the reason for an emergency procedure, which, as I  
20 understand it, is provided for in several other  
21 governmental agencies. The Post Office, I think has  
22 a procedure for emergency procedures, or removing  
23 a disrupter from a meeting.

24 There are several other agencies that deal  
25 with the problem of a disruptive meeting, and the

1 solution has been basically removing the disrupter.

2 I think it's important to see the video tape  
3 of that meeting, to see why that may not be the  
4 best solution.

5 MR. WALLACE: Okay.

6 Mr. Houseman, I'm going to ask you to explain  
7 the view of the folks that you represent on this  
8 provision, and then I'm going to throw it open to  
9 the Committee.

10 MR. HOUSEMAN: Sure. I don't know why it  
11 didn't appear here, but under the Sunshine Act  
12 provisions, we provided the alternative of removing  
13 the offending members, if you wanted to have a  
14 provision.

15 In our view, that is the only provision that  
16 is consistent with the Sunshine Act.

17 I have reviewed a number of the provisions  
18 in other Federal agencies, and reviewed a Justice  
19 Department review of them, and no other Federal agency  
20 that I know of, and I'm not saying it was an  
21 exhaustive search, contains the emergency proceedings  
22 that are here.

23 Finally, I think that under the Sunshine Act,  
24 the emergency proceeding would violate it, unless  
25 you were going into an Executive session. It would

1 require you to go through the same motions as an  
2 Executive session, and subject yourself to the  
3 exemptions in order to proceed.

4 Therefore, I would propose that this be  
5 removed to be consistent with the Sunshine Act, and  
6 secondly, that if you want language, you go to the  
7 proposed language that allows you to remove an  
8 offending member of the public, or members of the  
9 public.

10 MR. WALLACE: Comments from the Committee?

11 (No response.)

12 What I would say then, a prerogative of the  
13 chair, we will meet again in about two weeks in  
14 Washington, and I think it would probably be useful  
15 for us to see that tape, or parts of it, for those  
16 of us who haven't seen it.

17 I am going to ask Ms. Bernstein, if you would,  
18 to work with the General Counsel and Secretary, and  
19 look at some of the other regulations, and if there  
20 is alternative language that will address these  
21 concerns in an effective manner, let's do it. There  
22 may not be, but I want ya'll to work on that between  
23 now and the next meeting, and we will try to get a  
24 view on whether to keep it, toss it out, or change  
25 it, when we meet in Washington.

1 Mr. Smegal?

2 MR. SMEGAL: Mike, I'd like to make just one  
3 comment on this.

4 It seems to me this is the old, the analogy  
5 that comes to mind, is that this is a -- let me see,  
6 how does this go -- an overkill to the Government  
7 standards. It's an elephant. We don't really  
8 need all of this. I have seen that particular  
9 video tape, and I agree that it would have been nice  
10 for the Board to have some mechanism by which that  
11 particular process could have been handled, but I  
12 think this is just an overkill. I don't think we  
13 need all of this.

14 This is just an onerous task. I started to  
15 write on this thing, and I share it with Bob here,  
16 that you know, maybe it should be a circumstance  
17 under which all of the Directors unanimously vote.

18 MR. WALLACE: Yes.

19 MR. SMEGAL: Some mechanism where everybody  
20 feels that there is no way to proceed. It seems to  
21 me that this is just an overkill.

22 MR. WALLACE: I'm inclined to agree that it is  
23 an overkill, and I will invite any members of the  
24 Committee -- I had extended it specifically to  
25 Ms. Bernstein, because you had asked for the opportunity

1 to work on some alternative language, but I think  
2 we are all of the sense that this is probably an  
3 overkill, and before the next meeting, let's try to  
4 come up with some language that is responsive to  
5 our concerns.

6 The last thing under this section, because  
7 as I say, Page 100 simply restates the supremacy  
8 clause, when you get to Page 101, the provision  
9 or with any entity with which -- this a conflict  
10 of interest provision, about hiring persons with  
11 whom any former officer or employee is associated.

12 My only feeling on this, is that all this says  
13 is we may do what we may do. I don't think it has  
14 any real substance to it, from word one to word last.

15 Mr. Houseman, if you would care to state  
16 ya'll's views on why it is important to strike that  
17 last phrase?

18 MR. HOUSEMAN: Oh, I essentially agree. It's  
19 more symbolic, I suppose.

20 But I just want to say that the reason -- First  
21 of all, I think you are completely protected up to  
22 the last word, to the last phrase, and the concern  
23 with the last phrase is that you don't create  
24 problems for recipients who might hire former Board  
25 members, or former officers of the Corporation, by giving

1 some fear that in hiring them, you are going to create  
2 problems for them, in continuing to get grant funds.

3 I agree that you should have the -- and have  
4 the authority to regulate the conduct of the  
5 Corporation with former officers and employees. You  
6 have that. It is here in the By-Laws.

7 This is sort of a unique phrase. It doesn't  
8 come from any kind of model By-Laws. It was added,  
9 and I just think it's much cleaner if you don't have  
10 it, and I think it will ease any worries that  
11 anybody has about this.

12 MR. WALLACE: Does anyone know why this is in  
13 here, to begin with?

14 Ms. Bernstein?

15 MS. BERNSTEIN: I'm trying to figure out  
16 what the origin of it is, in specifics.

17 Let me give you one of the concerns. Obviously,  
18 this neither beast nor fowl status of the Corporation,  
19 and it puts us outside the gambit of the Government  
20 and Ethics Act, and therefore, we don't have the same  
21 kind of protections that agencies do, with regard  
22 to the activities of our former employees.

23 There have been, I think, a few instances in  
24 the past, in which there has been concern that our  
25 former employees have taken positions which carry the

1 appearance of a conflict of interest, which would be  
2 a violation under the Government and Ethics Act, and  
3 in fact, in some situations, their actions would have  
4 been prosecutable under 18 U.S.C., the attorneys  
5 representing a client that they had represented within  
6 two years, if they had worked for an agency.

7 We don't have any mechanisms like that. Our  
8 Act doesn't provide us, anybody with any standing  
9 to sue. It would not be a basis necessarily for  
10 reprimanding a program, whereas we really -- it  
11 would be nicer to be able to reprimand that individual,  
12 but we are at arm's length with our grantees, and so  
13 that individual is no longer subject to any sort of  
14 reprimand from us.

15 This would be -- As I remember it, this was  
16 more of a Caesar's wife position, that, you know, we  
17 are in a position of public scrutiny, and there is  
18 not anything to be harmed by being as clear as we  
19 can to our grantees about that scrutiny that we  
20 want them to feel, because we are under it, and the  
21 fact that there may not be a legal recourse should  
22 not prevent us from being able to take whatever  
23 kind of preventive measures we can, to try to guide  
24 the appropriate action.

25 MR. HOUSEMAN: But the provisions, as I've

1 drafted, provide for all of that. I'm not changing  
2 any of that.

3 MR. WALLACE: Yeah.

4 Mr. Smegal?

5 MR. SMEGAL: LeaAnne, this language that  
6 Mr. Houseman has struck, how would that have affected  
7 Clint Lyon, going from the Corporation to NLAA?  
8 Would that have involved him specifically? When  
9 I read this, I thought it was a Clint Lyon amendment,  
10 is what came to my mind.

11 MS. BERNSTEIN: Well, I'm not aware of that  
12 if it is, and I would personally feel that it would  
13 be inappropriate for us, in a public meeting, to  
14 be discussing that.

15 So, I don't think in terms of specific, you  
16 know, named individuals --

17 MR. SMEGAL: Well, I'm trying to understand  
18 what application it would have, and I'm suggesting  
19 to you a fact situation that occurred before this  
20 particular regulation was promulgated, may have  
21 given rise to it, such as the one we talked about  
22 earlier with respect to you.

23 I was just wondering if it would have  
24 affected Clint Lyon.

25 Alan, do you have a comment?

1 MR. HOUSEMAN: I don't know why it was in  
2 there. It may well have, although, of course, it  
3 doesn't say you can't do something. It just provides  
4 authority.

5 Our concern is that programs not be under any  
6 kind of a restriction on who they can hire, if a  
7 local Board decides to hire someone. That's our  
8 concern, and we certainly believe the Corporation, I  
9 believe it, should regulate the kind of, and has the  
10 power, and in effect should regulate the conduct of  
11 former officers and staff, in terms of grants and  
12 things to them.

13 I think that is both the appearance of a  
14 conflict of interest, and may well be a conflict of  
15 interest. At least speaking from my point of view,  
16 it is a provision that should be in there.

17 MR. WALLACE: I guess my own view on this is  
18 two things.

19 Without this language, the language that is  
20 left here, still says that we can regulate the  
21 conduct or transaction of the corporate business,  
22 with any former officers or employees of the  
23 Corporation, and I think implicit in that is that you  
24 can regulate business with any entity with which those  
25 officers or employees are associated.

1           The other thing is, the first sentence says  
2 the Board "may". I mean, this regulation doesn't  
3 do anything, except say we might do something to  
4 regulate a conflict of interest someday.

5           I'm happy to strike that language, because I  
6 mean, it's kind of a double redundancy, it seems to  
7 me.

8           MS. BERNSTEIN: Mike, before we strike it,  
9 let me just ask a question of the Board.

10           Are there any personnel policies -- and maybe  
11 Tom, since you've been on the Board all of what?,  
12 two weeks -- you may not know this -- but do you know  
13 whether we have any personnel policies in the  
14 Corporation, which say to our employees or officers,  
15 "Thou shalt not"?

16           I mean, I think that this says that the Board  
17 may, from time to time, adopt rules and regulations  
18 governing the conduct of officers.

19           Do we have any such rules? I mean, I have  
20 looked at the regulations and we have got some  
21 conflict of interest kinds of regulations in  
22 the enforcement, and other sections -- but do you know  
23 of any rules?

24           MR. OPSUT: I've looked at a lot of things  
25 in the last two weeks, but that wasn't one of them.

1 I would be glad to take a look at that, and before  
2 you strike it, report back to you whether there is  
3 any.

4 MS. BERNSTEIN: I think it would be useful for  
5 us to go through this, and find out, not just -- I  
6 would hesitate to say, to use Tom's terms, in terms  
7 of singling out an individual, but if we could get  
8 some examples in terms of looking -- hypothetical  
9 examples of where this might apply, and why it might  
10 be important to also include entities in addition  
11 to the officers and employees.

12 I would just ask for a little forbearance  
13 on this, until we examine it.

14 MR. WALLACE: If I have the prerogative, I'm  
15 to exercise it, and I'm going to say that is a  
16 reasonable request.

17 Let's find out what rules we do have, before  
18 we decide what to strike.

19 MS. BERNSTEIN: And again, just some  
20 hypotheticals of what might happen, and where this  
21 would put us, in either being able to enforce our  
22 regulations, or not being able to enforce our  
23 regulations if we don't have it.

24 MR. WALLACE: Okay. We will get a report on  
25 that at the next meeting, and we will try to make that

1 determination at the next meeting.

2 I had indicated that we would skip lobbying  
3 for the time being, because we've had some Part 1612 --

4 Do you want to --?

5 MR. SMEGAL: I only have a question. Mr.  
6 Houseman has put together an incredibly effective  
7 document, and we've used it.

8 I'm wondering -- he skipped a lot of sections,  
9 and I'm assuming that is because those sections weren't  
10 changed.

11 MR. HOUSEMAN: That's correct.

12 MR. SMEGAL: Rather than you didn't have an  
13 opinion on them. You've got everything in here that  
14 has been changed. We have had the benefit --

15 MR. HOUSEMAN: I looked over them, and in terms  
16 of what my group that I work with, in our Legal  
17 Services community, felt that we didn't have any  
18 other suggestions on the rest of the By-Laws. There  
19 may be other problems with the By-Laws, but we only  
20 looked at it from our point of view.

21 MR. SMEGAL: Well, maybe we should ask of  
22 the rest of the --

23 MR. WALLACE: The Chair does stand corrected.  
24 I think that's reasonable. We have two alternative  
25 sets in front of us, and we worked hard on them, but

1 if anybody on the Committee, and if anybody anywhere  
2 has anything else to say about our By-Laws, Part  
3 1601, of the regulations, speak now.

4 MS. BERNSTEIN: I don't know whether this is  
5 answering Tom's question. He asked what other  
6 changes were made in the current By-Laws, as opposed  
7 to the previous By-Laws.

8 There were numerous small changes in terms  
9 of making it clear that we were talking about  
10 Directors. I mean, they were substantive from the  
11 sense that they said something. They weren't just  
12 commas, but they did not change the total import  
13 of the By-Laws, and there was some cleaning up using  
14 similar terms in similar situations.

15 MR. SMEGAL: Such things as the President  
16 being ex officio, I recall some of those but --

17 MS. BERNSTEIN: Yes.

18 MR. SMEGAL: Okay. So, I guess what has  
19 happened here now, is that anybody else who had  
20 comments, that either they have been embodied in  
21 Mr. Houseman's, or they don't rise to the level of  
22 having to be concerned about them.

23 MR. WALLACE: Okay.

24 MR. DAUGHERTY: I was going to say that I think  
25 that Mr. Bagestos has reviewed all the written comments

1 of people who aren't in the room today.

2 MR. WALLACE: And you know, I think most of  
3 us have gone through those particularly well.

4 Mr. Bagenstos, are there any salient points  
5 that rise to your mind that we have not covered?  
6 We have been through your memorandum.

7 MR. BAGENSTOS: Not in any substantial way.

8 MR. WALLACE: Okay, thank you. It is true  
9 that people aren't here, and I appreciate the  
10 correction, members of the Committee, and Mr.  
11 Secretary.

12 We will take a recess.

13 (A short recess was taken.)

14 MR. WALLACE: I am going to declare the  
15 meeting back in order, everybody that is within the  
16 sound of my voice anyway.

17 We have decided to forbear on the lobbying  
18 regulations, Part 1612.

19 There have been two suggestions that Ms.  
20 Bernstein made, and with the consent of the Committee,  
21 I am going to ask that these be put into effect for  
22 the next Committee meeting.

23 The General Accounting Office has offered to  
24 review Part 1612, and to give us their views on it.  
25 I think that ought to be done as fast as possible.

1 Ms. Bernstein has raised the issue of A-122.  
2 The consensus seems to be that it probably doesn't  
3 apply to us. Maybe it does. I would like for that  
4 to be submitted to the Office of Legal Counsel at  
5 the Justice Department, because if that does apply  
6 to us, they would be the ones to know it, and we  
7 are going to have to take that into consideration on  
8 Part 1612.

9 I don't think we can get much farther on  
10 lobbying today, and with the time before us, I think  
11 we ought to wait those two reports, do what we can  
12 at the next meeting. I can't really expect we are  
13 going to have both of those reports before us at the  
14 next meeting, but one can always hope, and if we can  
15 make some decisions there, fine. If we can't, we  
16 can't.

17 Part 1614 is Private Attorney Involvement.  
18 In our Board book, we have the existing regulations,  
19 we have some comments, and we have the line by line  
20 suggested amendments from Mr. Houseman.

21 Before I get into the line by line, I would  
22 like to ask the Staff members present two things.  
23 One, is how much information we actually have on the  
24 way the present regulations are working; and two, I  
25 would like to ask for the Staff's reaction on the

1 practicality of putting into effect a system like  
2 that recommended by Terry Roach in his letter.

3 His letter is in the Board book. It comes  
4 right behind -- First, we have Mr. Bagenstos' memo,  
5 then we have the letter from Congressman Castenmeyer  
6 and then we have Terry Roach's letter saying that  
7 we should focus on funds involving local private  
8 attorneys, or on taking on so many new clients.

9 That looks like a reasonably flexible  
10 proposal to me, that is worth looking at.

11 So, I have got two questions for the staff.  
12 What do we know about how it is working now, and  
13 what do you think of Terry Roach's proposal?

14 Dennis, if you're the best person to answer  
15 it at this point?

16 MR. DAUGHERTY: The best people to answer  
17 it aren't here, Mr. Wallace.

18 MR. WALLACE: That would be the Office of  
19 Field Services?

20 MR. DAUGHERTY: The Office of Field Services.

21 You had a report at your last meeting from  
22 the former Director of that office, with respect to  
23 case service reports. We can get that data for  
24 you, for your next meeting, and you can draw what  
25 conclusions you wish from it, but I would think we would

1 do better to defer that until we had them available.

2 MR. WALLACE: Do we know whether a specific  
3 study has been done on private attorney involvement?  
4 Has a specific study been done, or does it just come  
5 back in the case status reports?

6 MR. DAUGHERTY: We do monitoring evaluations  
7 of each of our recipients, and those have, although  
8 not perfectly, tried to look at the private attorney  
9 component, as well as the overall performance of the  
10 grantee.

11 We had a consultant that looked indepth at  
12 about ten or twelve private attorney programs.

13 We have not, as of this date, to the best of  
14 my knowledge, done an overall evaluation of the  
15 performance.

16 Keep in mind, if you would, that the first  
17 private attorney involvement requirement became  
18 operational in October of 1982. The 12-1/2, the  
19 raise to 12-1/2 percent took effect in January of  
20 1984.

21 MR. WALLACE: '84 or '85?

22 MR. DAUGHERTY: '84.

23 MR. WALLACE: The 12-1/2? It went up to  
24 12-1/2 in '84?

25 MR. DAUGHERTY: Yes, sir. There, of course, is

1 a lag in your case statistic. There, of course, is  
2 a lag in terms of time that you get into monitoring  
3 those programs.

4 You had a report at your last meeting, that  
5 there are programs that -- there are entirely too  
6 many programs that haven't been monitored at all  
7 since 1982, when the PAI first came into effect.

8 So, our information is imperfect with respect  
9 to this requirement, as it is imperfect with respect  
10 to our program generally.

11 MR. WALLACE: When was the existing Part 1614  
12 put into effect?

13 MR. HOUSEMAN: The current reg?

14 MR. WALLACE: The current Part 1614. Mr.  
15 General Counsel?

16 MR. BAGENSTOS: I'm not sure of the exact date,  
17 but it was in mid-84.

18 MR. WALLACE: Mid-84?

19 MR. BAGESTOS: Yes.

20 MR. WALLACE: April 29th?

21 MR. BAGENSTOS: Yes.

22 MS. BERNSTEIN: 28th.

23 MR. WALLACE: Was it retroactive to the first  
24 of 19 --

25 MR. DAUGHERTY: No. The first policy was

1 adopted by instruction and grant condition.

2 MR. WALLACE: Okay.

3 MR. DAUGHERTY: That resolution of the Board,  
4 grant condition and instruction. A subsequent  
5 resolution of the Board, grant condition and -- I'm  
6 sorry -- and instruction -- no grant condition was  
7 necessary. It took effect in January of 1984, raising  
8 their requirement of 12-1/2 percent, imposing some  
9 of the revisions of the original policy, that are  
10 now reflected in the regulation, the first regulation  
11 on that subject, which is that that is before you now,  
12 which was adopted by the Board of Directors, at their  
13 late April meeting.

14 MR. WALLACE: Okay, I think I understand.

15 MR. HOUSEMAN: Could I just add?

16 MR. WALLACE: Yes.

17 MR. HOUSEMAN: I think, just to be clear, I  
18 think Dennis didn't mean what he said.

19 The first instruction, the 10 percent instruc-  
20 tion, came into effect, in January of '82, with the  
21 1982 -- not in October of 1982.

22 MR. DAUGHERTY: It was April. It became  
23 effective, but it did not require the expenditure  
24 until October of '82. The first three quarters of  
25 the year were to be involved in planning, and

1 coordination with Bar Associations.

2 One did not have to expend dollars on private  
3 attorney involvement until October.

4 MR. WALLACE: Okay, I appreciate the  
5 clarification.

6 Let me ask the members of my Committee whether  
7 they have had a chance to review the letter from Mr.  
8 Terry Roach, which is in our Board book, and which  
9 would permit people to satisfy their private attorney  
10 involvement, one of three ways.

11 One is to spend 12-1/2 percent of your money  
12 on private attorney involvement; two, is to involve  
13 12-1/2 percent of private attorneys in the area to  
14 serve eligible clients at pro bono or reduced rates;  
15 and three, would be to get private attorneys in the  
16 area to take 12-1/2 percent of all new clients coming  
17 before the program, and its cooperating private  
18 attorneys.

19 That is fairly flexible. I think that it gives  
20 our people, and I'm a good Republican, and I really  
21 do believe you don't throw money at problems, it  
22 works better to throw people at problems. This lets  
23 local Board decide whether to throw money or people  
24 at problems.

25 I don't know if this would work. I consider it

1 a hopeful suggestion. I'm open to comments from my  
2 Committee.

3 MS. BERNSTEIN: My only concern, Mike, and  
4 I'm not really -- I'm not going to say that this  
5 wouldn't be a possible option, but my concern is  
6 that what we're hearing is that it's not fair for you  
7 to make a decision as to whether or not 12-1/2  
8 percent works without information.

9 It is not fair for us to be in a situation to  
10 assume that the 87-1/2 percent is working, without  
11 proof, you know, and therefore, I think that the  
12 comparison and the kind of monitoring intensity that  
13 we've got to have in terms of looking at programs --  
14 just in terms of our fact book, you can see that  
15 programs that are funded equally, staff programs  
16 that are funded equally, one program may do three  
17 times the litigation, and three times the advice only,  
18 of a similar program, funded at the same level.

19 Well, there is something wrong there, and if  
20 some program isn't using their 10 percent, or their  
21 12-1/2 percent effectively, then maybe they need  
22 some additional help from the Corporation, and  
23 maybe we aren't in a position to give them that  
24 help right now.

25 But I think we don't need to attack the

1 philosophy of the bringing in of additional persons  
2 to help serve poor persons with the idea that the  
3 status quo is ipso facto better.

4 That is the part that I object to, and that  
5 the letter that Mr. Roach offers here, I don't have  
6 an objection to the constructive elements of it.  
7 What I object to are the implicit assumptions that --

8 MR. WALLACE: That everything is fine now.

9 MS. BERNSTEIN: Right.

10 MR. WALLACE: I think the Board has made  
11 itself fairly clear in its previous meetings. I  
12 think Mr. Mendez, who is not here today, has been  
13 most forceful on it, is that we want to have enough  
14 money to find out what is going on in the field, and  
15 we want our staff to be able to tell us.

16 I think many of the members of the Board feel  
17 like, on any of these issues, we are groping in the  
18 dark to a certain dark.

19 MS. BERNSTEIN: Well, let me just say that if  
20 we end up in a situation in which we provide addi-  
21 tional flexibility for the programs, through Mr.  
22 Roach's suggestion, or another suggestion, let me just  
23 say that at that same time, I would not want that  
24 to be the end of this matter.

25 I would ask that the Committee ask the

1 Corporation staff to provide for us, and if they  
2 don't have time by the next Committee meeting, then  
3 by the Board meeting, a plan of how we are going to  
4 get this information, and a schedule, and an objective,  
5 not only for the efficacy for the 12-1/2 percent,  
6 or the 10 percent, but for our programs in general,  
7 because I think that's the least, the minimum that  
8 this Board is bound to do.

9 MR. WALLACE: I don't disagree with that at  
10 all. I think we are putting a lot of burden on our  
11 staff right now, in a period of transition, and we're  
12 asking a lot to be done, but I think we can ask, and  
13 I'll ask the Secretary and the President to transmit  
14 to the Office of Field Services, and the Office of  
15 Compliance and Review, whoever would be responsible,  
16 to try to give us an idea of what they can do, and  
17 when they can do it.

18 It is my feeling, it is my sentiment, that  
19 the private attorney involvement is going to be one  
20 of the most important things we do.

21 I think we can afford to do it with some  
22 flexibility. I don't necessarily think that there  
23 is any necessity to put mandatory numbers on people  
24 until we have a good feeling of what they are doing  
25 with the programs we have now, and I don't have that

1 good feeling, at this point.

2 I will say this. We are planning to be around  
3 here a few years, and when our -- if our staff comes  
4 back to us a year from now and tells us that voluntary  
5 programs aren't working, I won't have any hesitancy  
6 whatsoever, to vote for mandatory programs.

7 But my feeling right now is that I don't know  
8 enough about this, to know whether the old guideline  
9 is working, and I'm not sure about locking people  
10 into something, until I know exactly how it is being  
11 done.

12 MR. SMEGAL: Well, I'm in the unique position  
13 of agreeing with what LeaAnne has said, from the other  
14 tunnel though. I agree with her fully. We have no  
15 information upon which to go on, and I also agree  
16 with what Mike just said.

17 We really don't know whether 10 percent is  
18 working. Whether what is happening out there over  
19 the last couple of years is really what we want  
20 to happen, and whether this program should be  
21 expanded to 12-1/2 percent.

22 Everybody who has written to us and commented  
23 on this, says, "You don't have any information," and  
24 that's right, we don't.

25 For us to go ahead and just blindly say,

1 "All right, 10 is good, and therefore, 12-1/2 percent  
2 must be better," is just ridiculous, and I think we  
3 have got to back off, go back to 10 percent, get  
4 some information on how the 10 percent is working,  
5 and if it appears that what we are doing with the  
6 10 percent makes sense to raise it to 12-1/2, or 15,  
7 or whatever, then we do that, Mike, whereas we can't  
8 do it now.

9 MR. WALLACE: Here is where we are, and this  
10 is what I'm going to ask.

11 I don't know whether we want 10, or whether  
12 we want 12-1/2. Apparently, we have been using  
13 12-1/2 as a guideline for the last year, except as  
14 to State Support Centers, so we may have some idea  
15 about how that --

16 Now, I see some people with their hands up,  
17 so please tell me in what sense I'm incorrect on  
18 that.

19 You are in a State Support Center.

20 MR. RAMSAUR: I'm Allan Ramsaur. I am in a  
21 State Support Center, but my remark is not as it  
22 relates to State Support Centers.

23 It's not a guideline. It's a strict 12-1/2  
24 percent, by accounting standards, that is being  
25 applied in the last fiscal year, and again, in this

1 fiscal year.

2 It is not just a measure, but it is an absolute  
3 minimum by accounting guidelines, that's being  
4 applied, or by accounting principles, which is causing  
5 difficulties in many local programs, trying to hit  
6 the 12-1/2 percent precise target.

7 You know, if you have \$1-million grant,  
8 125 thousand dollars, point zero, zero, zero.

9 MR. WALLACE: I see how it could. Mr. Daugherty?

10 MR. DAUGHERTY: I think it would be useful  
11 to start this discussion not with 1982, with the  
12 instruction, but Mr. Brooks was prepared to tell you  
13 a little bit about how the voluntary approach that  
14 occurred before that, that has been tried before, and  
15 I think that might be a useful precedent to this  
16 discussion, if you are getting into that policy  
17 discussion.

18 MR. WALLACE: Thank you, Mr. Secretary.

19 I will defer to Mr. Brooks, if you have got  
20 some historical perspective for it, and Mr. Houseman,  
21 we will get to you after that.

22 MR. BROOKS: Mr. Chairman, I think the history  
23 which led up to the imposition of the 10 percent  
24 requirement itself, I think quite clearly shows, and  
25 I don't know of anyone who disagrees with this, was

1 that when the attempt was made on a voluntary basis  
2 to substantially involve the private Bar in the actual  
3 delivery of legal services to eligible clients, that  
4 as a matter of fact, such substantial efforts were  
5 not taking place.

6 The fact of the matter is that the Staff  
7 Attorney model continued to predominate on a  
8 clearly measurable basis.

9 MR. WALLACE: What time period are you talking  
10 about?

11 MR. BROOKS: I'm talking about from as early  
12 as 1965, which is when OEO took over the program.  
13 I think the history of that takeover clearly demonstrates  
14 that OEO expressed or articulated a clear preference  
15 for the Staff Attorney model. That model has  
16 predominated to this day, and it was in response to  
17 the predominance of the Staff Attorney model, that  
18 the 10 percent requirement in and of itself was  
19 imposed.

20 It wasn't imposed pursuant to any studies that  
21 I'm aware of. It wasn't imposed through any  
22 particular numbers, per se, but more the result of  
23 a recognition of a lack of substantial involvement  
24 by the private Bar in delivering legal services.

25 MR. WALLACE: Okay. And that 10 percent

1 guideline came in in '82, is that right?

2 MR. BROOKS: It was mandated in '81, to be  
3 effective in '82.

4 MR. WALLACE: Okay. Mr. Houseman, I will  
5 hear your view of the history.

6 MR. HOUSEMAN: Okay. Well, first of all, I  
7 think any review of the history must start with  
8 the delivery system study, which is the most  
9 comprehensive study that has ever been done on  
10 delivery problems, and regardless of what mythological  
11 difficulties there are, and there are some with it,  
12 no one, no one anywhere, doubts that it is the most  
13 thorough study ever done.

14 That will document the kind of private Bar  
15 involvement that was occurring in the program, up  
16 until 1980, and there was a substantial amount of it,  
17 and it's wrong to say that there wasn't.

18 Secondly, the 10 percent requirement clearly  
19 rose out of the delivery system study, and the  
20 interaction between the leadership of the American  
21 Bar Association, and the Corporation, in 1980 and '81,  
22 and there was a continuing interreaction which Bill  
23 McCalpin and others who were intimately involved with  
24 it can recount for you, as to why we got the 10 percent.

25 The 10 percent requirement, thirdly, is a

1 requirement that provides substantial flexibility,  
2 but it was a requirement that I think all reports  
3 that you have show was working.

4 Not only are the comments, but Bar Associations  
5 across the country think it's working. There was, in  
6 fact, a study done, contrary to what has been said  
7 here, a study done by a quite reputable Social  
8 Scientist, on this, which I can make available to  
9 you, that looked at the effect of the 10 percent  
10 requirement in '82 and '83, and I think if you read  
11 that, you will get a sense of what was going on in  
12 the programs, and how well it was working.

13 Finally, the comments, the comments in relation  
14 to the instruction that was discussed in 1983, the  
15 comments on the regulations by Bar Associations,  
16 comments before Congress by Bar Associations, indicated  
17 that the 10 percent provision was working, and working  
18 well, and that that provision was the needed pressure  
19 on programs, to substantially involve private attorneys  
20 in the delivery of legal services.

21 I think that is the background that you will  
22 have to look at. That doesn't differ with anything  
23 I think that was said here, other than there is a  
24 substantial amount of information about this, and to  
25 suggest that there isn't, I think is not only incorrect,

1 but is misleading in terms of how you view it.

2 Now, let me just say one thing about Terry  
3 Roach's proposal.

4 I have had a brief opportunity to look it  
5 over, to give some thought to it. I have not had  
6 a chance to talk with Terry, who I could not reach  
7 yesterday, and I think there are some positive aspects  
8 of this proposal, and it may be, it may be the best  
9 way to go, but I have some concerns.

10 Before we assume that this is the answer, I  
11 think we ought to think about these concerns.

12 First, we do not know what the impact of his  
13 proposal would be. We haven't thought about it.

14 For example, it may affect some programs more  
15 adversely than others. That is, programs that  
16 receive only LSC funds, and there are some programs  
17 that do, may have a much more difficult time under  
18 this proposal, than programs that receive non-LSC  
19 funds, private funds, and public funds, given the  
20 way the proposal is drafted.

21 I'm not sure we want to create that kind of  
22 a dichotomy.

23 Secondly, his proposal quantifies a number of--  
24 quantifies much more than the current proposal, and  
25 I think there are some dangers to that.

1           One, it too may interfere with some local  
2 agreements, and local flexibility that have been  
3 worked out in good faith between programs and  
4 local Bar Associations, and agreements that are  
5 working well, and I don't think we want to set up  
6 a system that is going to undermine or interfere  
7 with those agreements.

8           Moreover, this approach may force you and may  
9 force programs into much more record keeping than  
10 they now do, because if you have to talk about the  
11 percentage of clients you're serving, the percentage  
12 of attorneys who are serving clients, that may get  
13 you into more record keeping and not less, and I  
14 think that is a danger in this approach that has to  
15 be thought about.

16           What I would suggest, is that we give some  
17 more thought to Terry's proposal. It is a constructive,  
18 positive approach, I agree. And that we also give  
19 thought to returning to the kind of language that  
20 we are proposing in our proposal, taking us back  
21 essentially to this 10 percent provision, but adding  
22 some additional requirements in there.

23           I think that most of the changes that we have  
24 proposed, are consistent with the underlying philosophy  
25 of this Board, and the legal services community, and

1 we can meet in some sense on this, and I would urge  
2 that instead of assuming that Terry has come up with  
3 the answer, that we think about it, but that we  
4 start with the presumption, and I think the best  
5 presumption to start from is that the 10 percent  
6 approach was working, and we ought to go back to it,  
7 and we ought to give it a chance.

8 I agree completely with what you said. If,  
9 after a period of time, it is clear that it is not  
10 working, it is clear there are problems, then I think  
11 it has to be re-examined, and we welcome that  
12 re-examination, but I do not think that's the record  
13 on which you are asking now.

14 MR. WALLACE: Let me ask the people to do this.

15 You have mentioned a study that you have,  
16 of what was done in 1982 and '83. I think most of the  
17 members of the Board would be happy to have a copy  
18 of that.

19 I would ask that it be made available to  
20 the staff, and what I would like for the Office of  
21 Field Services, and Office of Compliance and Review,  
22 whoever does it, between now and our next meeting  
23 in Washington, let's look at their data, let's compile  
24 our data.

25 You said, Mr. Houseman, that the 10 percent

1 guideline provided needed pressure, and I think that  
2 confirms what Mr. Brook said about the history. That  
3 some pressure was needed, to make people get into  
4 private attorney involvement.

5 MR. HOUSEMAN: Not everybody.

6 MR. WALLACE: Not everybody, but some people.

7 MR. HOUSEMAN: Right.

8 MR. WALLACE: And our concern is whether or  
9 not more pressure is going to be needed. Whether  
10 what we have now, whether what we had last year, or  
11 whether what Mr. Roach has proposed, or whether what  
12 you have proposed, is the way to go.

13 I don't have the factual basis in front of  
14 me to make a comfortable judgment on that right now.

15 I would like to see it, and we'll need Field  
16 Services before us next time --

17 Just a second, Mr. Brooks, Ms. Bernstein has  
18 her --

19 MS. BERNSTEIN: I was just going to ask that  
20 in addition to those things, I would just ask that  
21 whoever prepared the report that you are referring  
22 to, would you give us some of the credentials involved  
23 for that individual, along with the report?

24 MR. HOUSEMAN: Sure.

25 MS. BERNSTEIN: And also, I would ask that since

1 this substantial private attorney involvement arose  
2 through the process, the legislative process that  
3 culminated in H.R. 3480, that someone at the  
4 Corporation give us a history, and give us some  
5 salient congressional comments regarding this private  
6 attorney involvement.

7 I think the Corporation records contain some  
8 of the correspondence between the Wisconsin Bar, and  
9 the Corporation, and the Corporation and the ABA,  
10 and I would like to have a fairly concise summary  
11 of the kind of machinations that went into the  
12 language that appeared in H.R. 3480, and which  
13 ultimately, because that was passed in the House,  
14 served as the impetus for the Board of Directors in  
15 1981 to implement the 10 percent guideline.

16 I think that that would be helpful in putting  
17 this in perspective, because the fact of the matter  
18 is, the 10 percent was a benchmark, a beginning.  
19 It was not meant to be the culmination.

20 MR. WALLACE: Mr. Brooks, you were about to  
21 speak.

22 MR. BROOKS: Yes. Mr. Chairman, not to  
23 overly prolong this discussion, but I simply wanted  
24 to, by way of response to some of Mr. Houseman's  
25 remarks, to just indicate that with respect to the

1 delivery systems, that what I said, that leading up  
2 to the requirement that mandated programs to allocate  
3 10 percent of available funds to the involvement of  
4 private attorneys, I was not discounting the delivery  
5 system study.

6 I think rather in my opinion, what the  
7 delivery study did, more than review what had  
8 occurred to date, was to mandate the study of  
9 demonstration projects, to get an idea of whether,  
10 in fact, private attorney models could compete with  
11 already existing staff attorney models, on the basis  
12 of quality of representation, and cost effectiveness.

13 I think the record still, prior to the inception  
14 of that study, still clearly demonstrates that left  
15 on a voluntary basis that the main local programs  
16 were not substantially involving private attorneys.

17 MR. HOUSEMAN: One thing I think might be  
18 helpful, given that we are dealing with history, and  
19 I think the history, from my point of view as a  
20 person inside the Corporation, is incorrect as stated.

21 I think it might be useful to get Bill McCalpin,  
22 who is clearly the leading actor, Chairman of the  
23 Board, who was the leading negotiator within the  
24 ABA, his views of private attorney involvement. He is,  
25

1 of course, Chairman of the ABA Standing Committee,  
2 and I would specifically encourage you to ask that  
3 he come to the meeting as well, and make a presenta-  
4 tion. He knows this issue as well as really anybody  
5 in the world.

6 MR. WALLACE: We have a long letter from Mr.  
7 McCalpin in our briefing book today. I will consult  
8 with members of the Committee over the next few days,  
9 as to whether we think any purpose would be served  
10 by asking him to come in person and reiterate those  
11 views.

12 But let me say this. I think the Staff has  
13 a fair idea of the things that we are looking for.

14 Before we leave this, I do want to ask the  
15 General Counsel. Well, we have done it in such a  
16 general form, I don't think there is any real point  
17 to see if there are any comments we have missed,  
18 because we're coming back to it in great detail.

19 Are there any members of the general public  
20 here, who have anything to say about Part 1614, which  
21 is Private Attorney Involvement? We are going to be  
22 doing more on this as I think you can guess.

23 Mr. Ramsaur?

24 MR. RAMSAUR: Just a brief comment on the  
25 State and National support issue. I'm not sure I'm

1 going to make it to your next meeting.

2           When private attorney involvement sort of  
3 became a buzz word -- Alan calls it "needed pressure"--  
4 there was meeting after meeting in Tennessee, with  
5 State Bar officials, and local Bar officials as to  
6 the way in which the guideline was going to impact,  
7 ways in which the sort of new spirit of cooperation  
8 needed to work, and on everyone of those occasions,  
9 the Tennessee Bar, when they looked at their system  
10 for delivery, which is -- which only involves the  
11 Lawyer Referral System, and that's principally in  
12 rural areas. The metropolitan Bars, or the city  
13 Bars, the big cities have their own Lawyer Referral,  
14 they decided that their Lawyer Referral system could  
15 not handle any kind of pro bono on delivery, nor were  
16 they in a position to try to encourage that system  
17 to handle pro bono delivery.

18           They looked at, and we discussed with them,  
19 what role the State Support Center should and could  
20 play in the private attorney involvement arena, and  
21 in examining those kinds of interchanges, we came up  
22 with a design that said that the State Support Center  
23 is going to work with people in the local programs.

24           I was specifically assigned to go to some of  
25 the national training on what was happening in

1 pro bono in other areas, what was happening in  
2 compensated programs in other areas, and it was  
3 the design of the State Bar and the State Support  
4 Center, that we would handle, in effect, the private  
5 Bar relations with the State Bar, and with some  
6 of the local Bars, in trying to get programs and  
7 Bars to work together.

8 The PAI reg seems to say we've got to go  
9 further than that. It seems to say that rather than  
10 taking that role as designed by the two entities,  
11 that we should get into a direct delivery model on  
12 those activities that we undertake at a delivery  
13 level, at a direct representation level, or that  
14 at least, we should use that as the benchmark for  
15 measuring how much private attorney involvement we  
16 should have.

17 That just doesn't feel like it fits with the  
18 system of private attorney involvement that has  
19 evolved in Tennessee. It's a good relationship, it's  
20 a cooperative relationship, as Ms. Swafford can speak  
21 to. It's a relationship that results in the President  
22 of the Tennessee Bar trying to have a reception for  
23 the Legal Services Board to tell you what he is about.  
24 He tried to, but couldn't get a room here.

25 It's a relationship that I think a strict

1 requirement on our office to get involved in some  
2 other way, may be comprised, and here is how.

3 We are spending resources, my time, energies  
4 in my office, to develop this role. If we are  
5 forced to begin to spend resources on the direct  
6 representation arena that we operate in, we may have  
7 to compromise, and the area that we are going to have  
8 to compromise in, is in that private attorney  
9 relations arena. That's because the resources just  
10 aren't there to deal with all the other direct  
11 representation things, which frankly are at a higher  
12 priority for my Board, and for other areas.

13 MS. BERNSTEIN: Can I ask you, what is the  
14 amount of your grant?

15 MR. RAMSAUR: Roughly, \$180,000.

16 MS. BERNSTEIN: Okay, \$180,000. How much of  
17 that grant do you expend in direct delivery, rather  
18 than support?

19 MR. RAMSAUR: Our estimate, and it is only  
20 an estimate, because we've never had -- I mean, that  
21 is the other issue there, that we have never had a  
22 strict accounting that said direct delivery, and  
23 non-direct delivery.

24 The regulation, if imposed on us, would require  
25 us for the first time to begin to account for things

1 that way.

2 MS. BERNSTEIN: Give me an estimate.

3 MR. RAMSAUR: Our estimate was 20 percent.

4 MS. BERNSTEIN: Okay. So, you used 20 percent  
5 of \$180,000, which is \$36,000, in --

6 MR. RAMSAUR: It came to \$4,700, at the bottom,  
7 when you figure it --

8 MS. BERNSTEIN: Okay. 12-1/2 percent would  
9 be \$4,700, and would be all that we would be  
10 requiring the State Support, or the Support units,  
11 to expend toward private attorney involvement.

12 Do you have a reason to believe that the  
13 expenditure of \$4,700 in terms of getting some  
14 consulting on an issue that might be something that  
15 hadn't come up before, or setting up the work that  
16 you're doing in setting up a pro bono panel, or  
17 referrals, or so forth, that you would not -- you  
18 are telling me that you would not be able to reasonably  
19 expend \$4,700?

20 MR. RAMSAUR: What I'm saying is, that being  
21 able to account for that in a way in which we  
22 understand the regulation says we should, which is  
23 through direct delivery, the consultation question,  
24 the direct delivery arena, as opposed to the way I --  
25 the way you frame the question as in terms of training,

1 or consultation, or working on private Bar relations--  
2 I could spend the money on training private attorneys,  
3 I could spend the money in those other areas, but I  
4 don't think that it is the most effective and  
5 economical way to spend the \$4,700, on private attorney  
6 involvement.

7 MS. BERNSTEIN: Well, let me just go back to  
8 Alan's characterization of a little bit of pressure.

9 We are funding X number of grantees that do  
10 nothing but direct delivery, and they have had the  
11 pressure, and they have made the communications.

12 Is it unreasonable, only to the extent that  
13 you are involved in direct delivery, to ask that  
14 you also give it that extra push to make those  
15 communications, explore those other avenues, act  
16 cooperatively with the programs that are doing  
17 direct delivery, adding your little bit to their  
18 resources?

19 I guess I'm just -- I'm really querying why,  
20 if you are in the direct delivery business, why you  
21 should be exempt from the direct delivery rules?

22 MR. RAMSAUR: Let me frame it for you this  
23 way. The major areas --

24 MS. BERNSTEIN: I really would rather you  
25 answer it the way I framed it.

1 MR. RAMSAUR: Okay. Well, I was going to speak  
2 to it from some direct experience, and if I can use  
3 that direct experience to illustrate, I think it is  
4 probably a more effective answer.

5 Before I was hired to come with the Legal  
6 Services Program, and my principal responsibilities  
7 have been legislative representation, we had a  
8 part-time private attorney doing legislative  
9 representation.

10 After two years of that model, the organization  
11 looked at how effective and efficient that had been,  
12 and determined that it was not an effective and  
13 efficient method of delivering on legislative  
14 representation.

15 It didn't allow for it to be tied into client  
16 needs, into other staff needs, and the like.

17 That determination led to hiring me full time  
18 to do not only legislative representation, but other  
19 kinds of activities that fit with, fit directly with  
20 that direct representation role.

21 The answer is that we've tried it. My program  
22 has tried it, and found that a better way to deliver  
23 that service was through a staff attorney, responsible  
24 for those activities.

25 So, a push back to a system that we have tried,

1 that wasn't as effective, I think is inappropriate,  
2 if that local Board has made that determination of  
3 what is most effective.

4 MS. BERNSTEIN: I understand, and I am -- I  
5 understand the reasons that you're saying what you're  
6 saying.

7 Let me just say though, that if you were acting  
8 100 percent, and if the funds that you were using were  
9 100 percent used for support functions, to support  
10 those programs which are delivering services directly,  
11 then I would say the exemption from this provision  
12 would be a much stronger argument from your standpoint,  
13 but if you are going to be involved in the community  
14 and delivering legal services, then one of the main  
15 reasons for this 10 percent impetus was to have some  
16 reaching out by Legal Services programs, to involve  
17 attorneys, and I just -- It's really -- I'm struggling  
18 with it, but I don't see if you're in the direct  
19 delivery business, why you're exempt from the direct  
20 delivery rules.

21 MR. WALLACE: Mr. Ramsaur, I appreciate it, and  
22 I think I understood your answer at the outset. We  
23 ought to move off of this section.

24 I see one other hand on the floor back there.  
25 Ms. Exum, do you want to say something?

1 STATEMENT OF JACQUELYN EXUM, DEPUTY DIRECTOR  
2 OF JUDICARE OF MISSISSIPPI, INC.  
3

4 My name is Jacquelyn Exum, and I'm the Deputy  
5 Director for Judicare of Mississippi, Inc.

6 Our program started out as a delivery system  
7 study program under DSS.

8 In participating in this study, I felt that  
9 there were a lot of programs under DDS that were not  
10 given the support that they needed from the  
11 Corporation, in establishing alternate alternatives  
12 for delivering legal services.

13 During the time of the study, there was a  
14 numerous amount of regular field programs that were  
15 opposed to any type of private Bar involvement, and  
16 were opposed to even the study to find out whether  
17 or not there were other methods for delivering legal  
18 services, that were cost effective, and more efficient  
19 than regular field programs.

20 This continues to be an issue in 1985.

21 There are no studies that prove that regular  
22 field programs are more effective, in the delivery  
23 of quality legal services, opposed to PAI programs,  
24 and there are no studies that say that PAI, or  
25 private attorney programs are more cost effective than

1 regular field programs.

2 I think it is only reasonable to ask regular  
3 field programs to explore other avenues in delivering  
4 legal services, and in allocating like 10 or 12  
5 percent of their budgets in PAI.

6 It works in some programs, and in some  
7 programs it does not work.

8 As I said before, regular field programs  
9 proved to be effective and efficient in some areas  
10 of the country, and in some areas, it is not.

11 I suggest that the Corporation continue to  
12 study and find out which type programs work better  
13 where.

14 MR. WALLACE: Thank you, Ms. Exum, we thank  
15 you.

16 I think that is what we are asking the Staff  
17 to provide us with at the next meeting.

18 I appreciate your comments.

19 MR. SMEGAL: Are we going to move off of this,  
20 Mike, because I want to make a brief statement, if  
21 I may.

22 MR. WALLACE: Yes.

23 MR. SMEGAL: If I understand what this is all  
24 about, the PAI program, it is to expand the volume  
25 of legal services that are being delivered, and the

1 mechanism by which this is to be accomplished, is to  
2 involve local lawyers. Not to do away with staff  
3 programs.

4 I don't see that as the objective here, of  
5 transferring funds from staff programs, by eliminating  
6 staff lawyers, to lawyers in the private practice.

7 Now, others have different views, obviously.  
8 I hear that, I see that.

9 I think the point I want to make, is what  
10 we are trying to do, or what we should be trying to  
11 do, is to improve the amount of legal service, the  
12 quantity of legal services being delivered.

13 We have got so many Federal dollars, and  
14 if the -- We haven't any statistics that tell us  
15 whether the staff program is using the money most  
16 effectively or not. That is not the bottom line.

17 The bottom line is how do we get more lawyers  
18 involved, with the amount of Federal money we have.

19 Now, what we did a number of years ago in  
20 San Francisco, when I was the President of the Bar  
21 in '79, we had \$30,000 from the -- I think it was  
22 30, it might have been 50, from the Legal Services  
23 Corporation. We had an administrator in the Bar  
24 Association, we had 500 volunteer lawyers.

25 That particular 30 or \$50,000 was not credited

1 to the account of Sniflaff, or any other organization,  
2 that was funded by the Legal Services Corporation,  
3 much as he may have been.

4 The point that I would make though is, Mr.  
5 Chairman, is that what we're trying to do here, or  
6 what we should be trying to do is to try to involve  
7 more people in this process. Get more lawyers  
8 representing more members of the public, who qualify  
9 for these services, and it isn't a black and white  
10 issue. It isn't a matter of cutting staff at an  
11 existing staff program, and transferring that money  
12 to some other private attorney involvement program.

13 We have got to look at it in the context of  
14 getting people involved for the dollars that are  
15 present. We don't just do that by cutting staff  
16 programs. There is nothing that demonstrates to us,  
17 we have no evidence that should guide us in that  
18 direction.

19 What we should be encouraging these staff  
20 programs to do, is involve the local Bar. Now, if  
21 they can involve the local Bar on a pro bono basis,  
22 if they could do it as Mr. Mendez says, by getting a  
23 credit for transferring cases over to the local  
24 Bar Association to do pro bono, we should encourage  
25 that. We shouldn't have them in a straight jacket that

1 says, "10 percent of your dollars, or 12-1/2 percent  
2 has to go and be distributed in terms of case  
3 involvement of individual lawyers." I think we  
4 have got to remain flexible, and I think if I heard  
5 you correctly, that we're going to put this matter  
6 over, and we are going to discuss it again, as we get  
7 more information.

8 MR. WALLACE: I think that is my judgment,  
9 that we ought to get more information, and I think,  
10 at this point, the general sentiment of this  
11 Committee is to keep some flexibility unless we can  
12 see some reason, at this point, why more pressure  
13 is needed. But we will find out about that, in  
14 Washington, next week.

15 Part 1620 of the Regulations has to do with  
16 setting priorities.

17 This may be another one where we will need  
18 input from Field Services.

19 I will say that after going through all of  
20 this, I am sympathetic with the two thrusts of the  
21 comments that I see.

22 One is that nobody can understand what  
23 substantially equal and what reasonably equal access  
24 means.

25 The other is that there is a lot of record

1 keeping and a lot of busy work here that is not  
2 necessarily going to show us whether one program's  
3 priorities are any better than another program's  
4 priorities, and most importantly, it is not going  
5 to help the program set its own priorities.

6 I would be interested in some historical  
7 perspective from any member of the Committee, or  
8 any member of the Staff, that knows why we felt that  
9 this particular way of establishing priorities was  
10 going to be effective.

11 MR. BROOKS: Well, Mr. Chairman, I think one  
12 particularly salient reason why the undertaking was  
13 approached at all, was I think it became apparent  
14 in attempting to deal with situations that occurred,  
15 I think especially with reference to the Office  
16 of Compliance and Review, to cite a particular event,  
17 was that when it came time to actually take a look  
18 at the program priorities, and in an attempt to  
19 determine, in fact, what the program priorities were,  
20 or are, as has always been required by the Act,  
21 requests either to the programmers or the Regional  
22 Offices, very often was met with something less than  
23 what one would reasonably expect to be a statement  
24 of what a program's priorities actually are.

25 I mean, we'd get anything from documents,

1 notebook size, to statements of priorities which say  
2 what a program doesn't do, without really saying  
3 what a program does do.

4 I think it was that situation that led the  
5 Corporation to attempt -- and I think it's all that  
6 really the Corporation is attempting to do here, is  
7 just to get a clear statement from programs, as to  
8 what their actual working priorities are.

9 Now, I read a number of the comments that  
10 were submitted in this area, and I would agree that  
11 if this proposed regulation, as drafted, is construed  
12 rigidly and inflexibly, then indeed substantial  
13 problems are created.

14 For example, if "substantial equal access"  
15 in fact means geographic equal access, or actual  
16 physical access, then we do have some serious  
17 problems.

18 I agree that if in attempting to assess  
19 not only whether a program has proportionately  
20 allocated its money, but to measure on a case by  
21 case basis, if we're going to -- on the one hand,  
22 the Corporation needs numbers, it needs figures, in  
23 order to make any kind of comparisons at all. I  
24 think the problem arises in considering the nature  
25 of the comparisons, and what it is you're comparing.

1           If we are just simply looking at numbers and  
2 nothing else, and attempting to make comparisons,  
3 in what essentially is a terribly complex area,  
4 then we are in trouble.

5           Various commenters indicated that they thought  
6 if, in fact, that's what the Office of Field  
7 Services is going to do, that it's overly simplistic,  
8 it's overly mechanistic, and I agree that's the case  
9 if --

10           MR. WALLACE: Okay.

11           MR. BROOKS: I'm done.

12           MR. WALLACE: Mr. Daugherty?

13           MR. DAUGHERTY: This regulation largely was  
14 the work of a former Director of Field Services,  
15 Greg Hartley. If you need a historical perspective,  
16 you may wish to invite him to your meeting.

17           It was intended to address I think two  
18 problems, two very different problems.

19           First, the question of equal access in rural  
20 areas. Mr. Hartley was very concerned that there  
21 did not seem to be any concrete policy of the  
22 Corporation, or certainly not one that was understood  
23 and followed in the field, that people in every  
24 County of a program service area, were entitled to  
25 some service.

1           He saw too many programs that accomplished  
2 retrenchment in 1982, when the funding reduction  
3 occurred in 1982, by severely reducing service in  
4 rural areas without requiring the same sort of  
5 reductions in urban areas.

6           We had a gentleman address our Provisions  
7 Committee last year, who was asked how the private  
8 Legal Aid Society in his County coordinated with the  
9 Legal Services program that we funded, and the  
10 answer was that there wasn't too much coordination  
11 required, because the Legal Services grantee only  
12 handled four cases in the County.

13           That problem was one of the problems. That's  
14 the new issue, that that regulation had not been  
15 called upon to address in the past, that Mr. Hartley  
16 sought to have it addressed, and that's the question  
17 of substantially or reasonably equal access.

18           The other provision, the other problem that  
19 we saw was the one that Mr. Brooks spoke of, and  
20 that is, priorities required by the Act, as  
21 implemented by prior regulations, were a "thou shalt  
22 have priorities," but it wasn't very clear how  
23 specific they had to be.

24           This is a means by which a program turns away  
25 clients, saying, "We cannot serve you, because you do

1 not fall within our priorities," and yet the prior  
2 regulation did not require that a listing of the  
3 priorities even be furnished the Corporation. It  
4 did not require that they have a plan for actually  
5 implementing those priorities in terms of the  
6 acceptance of cases.

7 This regulation attempts a great deal more  
8 rationalization of a process that previously was  
9 somewhat a subjective process.

10 I think that is -- We could give you examples  
11 of the priority statements that we obtained at the  
12 request of Congressman Neal Smith when he asked us  
13 this question in 1983, and it was an attempt to  
14 require some more specific thought that did not allow  
15 just a complete -- completely subjective decision  
16 making on the part of the staff attorneys, or project  
17 directors, as to whose cases would be accepted.

18 MR. WALLACE: Let me put it this way, as far  
19 as rural access is concerned.

20 I wouldn't have known from reading this  
21 regulation, and just from reading the English language,  
22 that what Greg Hartley was concerned about, was getting  
23 people out into the countryside, instead of sitting  
24 around their offices. I mean, I think that is a good  
25 concern.

1           We've got a lot of rural counties in Mississippi,  
2 and I'm sure that it's a problem with a staff attorney  
3 based in one place serving people in a rural county  
4 three counties over.

5           That is a real concern. I would like to see  
6 that addressed.

7           I couldn't have told you from reading this  
8 regulation that that is what he was trying to do, and  
9 if it is what he was trying to do, you know, I just  
10 wasn't at all that that is what it is.

11           I think that is a good thing. I think Neal  
12 Smith, being from Ohio, would think that was a  
13 wonderful thing.

14           I wish we could say it a little better, that  
15 that's one of the things that people ought to  
16 particularly concentrate on.

17           I mean, if the problem is, when you have a  
18 cutback in your services, don't pull in your horns  
19 from the rural areas, and do all your work in your  
20 home office, say that. If, when you get more money,  
21 don't put it all in your home office, but put some  
22 of it out in the countryside, and say that, too.

23           I don't really think this quite says what  
24 we are trying to say on that problem.

25           Ms. Bernstein?

1 MS. BERNSTEIN: Let me just say, and I'm not  
2 really sure -- I'll be interested in seeing what the  
3 staff develops on this -- but it would be my  
4 impression that we would meet resistance if we tried  
5 to say that.

6 MR. HOUSEMAN: That's just not the case. In  
7 fact, I proposed specific language that addresses  
8 rural access explicitly, it addresses it comprehen-  
9 sively, it addresses it, I think, in a relatively  
10 sophisticated manner.

11 MR. WALLACE: Can you show us where that is,  
12 so that we can --

13 MR. HOUSEMAN: That is in several places.  
14 First of all, in my alternative on Section  
15 1620.3, on Page 78 of my proposal -- or it's not my  
16 proposal, it is the organizational proposal --

17 MR. WALLACE: The one you're representing.

18 MR. HOUSEMAN: Also, the purpose language,  
19 the alternative, on 1620.1, the alternative.

20 Both of those take into account the explicit  
21 problems of rural delivery, and the problems that  
22 were talked about.

23 I want to make one other thing. I'm a little  
24 uneasy about it, because I'm in an odd position on  
25 it, but there was an exhaustive study of rural

1 delivery that the Corporation did.

2 It was completed in 1980, and submitted to  
3 Congress. There is over 180 pages in the discussion  
4 in there, of a detailed survey.

5 I think if you are going to consider this  
6 matter seriously, and I think you have to, that you  
7 ought to take a look at the previous work that was  
8 done on this, and understand both the problems of  
9 rural delivery, and the efforts that the legal services  
10 programs are going to make, to address rural delivery.

11 Finally, there have been quality improvement  
12 project experiments, and a number of experiments  
13 in programs around rural delivery, and many programs  
14 have developed effective devices of reaching of  
15 rural poor.

16 During the retrenchment process, not all of  
17 those approaches were pulled back -- quite the  
18 contrary.

19 I think if you look carefully at this, if  
20 you look at it in terms of what really happened, and  
21 what's really going on, and what the problems are,  
22 that you will see that the approach that I have  
23 suggested is one that will meet the needs that have  
24 been expressed, both of the needs, and yet not push  
25 us into simplistic, mechanistic, essential overkill,

1 and language that we don't understand. I think it is  
2 important to do that.

3 The final thing I would say about this is,  
4 Neal Smith is very concerned about it. Neal Smith,  
5 of course, wrote a letter saying that he disagreed  
6 with the priority setting regulation, and I think  
7 any further communication with him, will point out  
8 that he does not believe that this is the answer  
9 to his concerns about the rural poor.

10 I think the kind of approach that we are  
11 trying to come up with here, and maybe it can be  
12 improved, will, in fact, address those concerns.

13 There are also field people here in the  
14 audience who have been through this process, and  
15 who can speak, I think fair eloquently about it --  
16 I'm not sure who all is here, but a couple of them  
17 I know -- and if you're going to consider this  
18 further, I think it would be useful to hear from  
19 some of those people who have struggled with this  
20 rural delivery process.

21 There is group within legal services  
22 representing rural programs. They have fought this  
23 thing through a lot. They know a lot about rural  
24 delivery. It would be very useful to hear from them  
25 at the next meeting, and I can make sure that one of

1 their representatives gets to the next meeting.

2 MR. WALLACE: Okay. Before we take up on  
3 that, or anybody else from the audience, I want to  
4 move from rural access, which I understand to be one  
5 of thrusts of this regulation, to the mechanisms  
6 of setting priorities.

7 There is a whole lot of record work in here.  
8 Something called a "case acceptance schedule," which  
9 they say they don't understand, and I'm not sure I  
10 understand either.

11 What is it we are trying to do? I mean, it  
12 seems to me that we're trying to make people set some  
13 priorities and tell us what they are, and if we are  
14 going to go beyond that, we almost need to give them  
15 a survey mechanism from the national level, to tell  
16 them how to cover their communities. I don't think  
17 we are in a position to do that.

18 Now, if we're trying to do something between  
19 those two extremes -- conduct a scientific survey,  
20 or set your priorities and tell us what they are --  
21 we're trying to do something in the middle of this  
22 regulation and tell me what it is.

23 Maybe all the right people to ask aren't  
24 here, but Mr. Secretary if you recall what Mr.  
25 Hartley was up to, or Mr. Bagenstos?

1 MR. BAGENSTOS: The initial draft of this  
2 regulation, the proposed draft, included a requirement  
3 for a needs assessment. I don't understand what that  
4 is exactly, but I understand it is a term of art  
5 and it's very complicated, and a very expensive kind  
6 of thing to do.

7 In the course of considering comments, the  
8 Corporation determined that it was not a requirement  
9 that the Corporation felt was fair to impose on the  
10 programs at this time; therefore, it went back to  
11 old language, the appraisal language, which, as far  
12 as I know, is not a term of art, and so people do it  
13 in different sorts of ways.

14 One of things that was discussed on the  
15 corporate level was the possibility of developing  
16 a national instrument for a needs assessment, which  
17 could then, with technical assistance, be provided  
18 to the programs so that they could actually do it.

19 So, I think we come down somewhere in the  
20 middle right now, but the Corporation at least  
21 considered the possibility that it would do something  
22 in more detail, to both help the programs and to help  
23 the Corporation get a fix on just what the priorities  
24 were.

25 MR. WALLACE: Okay. We have talked about the

1 two main areas.

2 I want to turn to the Committee, and see if  
3 there are any comments from the Committee, and any  
4 sentiment as to where we ought to go with the two  
5 main items in this part.

6 Mr. Smegal?

7 MR. SMEGAL: I'm not clear what it is you wanted  
8 do here today, Mike. We have gone through 1601,  
9 section by section. Do you intend to do that with  
10 1620, or not?

11 MR. WALLACE: I'm not sure whether we are  
12 prepared to. I will be happy to go through 1620,  
13 section by section, if the Committee feels that we  
14 can handle this.

15 I'm not sure any of the language says anything  
16 about rural access, and I'm not sure that anything  
17 here tell -- I mean, what I want to know is, is there  
18 something practically in between a scientific survey,  
19 and a fairly impressionistic survey, because what I  
20 have here tells me that we are asking people to give  
21 us basically an impressionistic survey of what they  
22 think their people need, but to put it in all kinds  
23 of detailed -- something called a case acceptance  
24 schedule that isn't proposed. Tell us how you got  
25 there, tell us how you -- where you go with it.

1 I'm not sure that does much good. I'm not really  
2 prepared to vote on it, Mr. Smegal, because I'm not  
3 sure I know what it is we are trying to do, or what  
4 we can do.

5 I mean, if you think you have got a good feel  
6 for it, I'd like for you to give me some help.

7 MR. SMEGAL: Well, I don't know that I have  
8 a good feel for it either, Mike, but I think what we  
9 have before us, as we did in 1601, is a pretty  
10 elaborate extensive proposal as to how we should go  
11 about this, and getting rid of some of those terms  
12 that are so difficult to understand.

13 And unless we are going to have something more  
14 next Thursday, I guess in Washington --

15 MR. WALLACE: I think we're meeting Friday.

16 MR. SMEGAL: I think as a Committee, we are  
17 meeting Thursday.

18 MR. WALLACE: My notice says Friday, but I'm  
19 not sure. I won't quarrel with you on it.

20 MR. DAUGHERTY: You will find in the front  
21 of your Board books, notices of three Committee  
22 meetings for the 21st and 22nd. It was Chairman  
23 Durant's determination that there was sufficient work  
24 for those Committees, and there would not be time to  
25 have a Board meeting next week.

1 MR. SMEGAL: Oh, it's two days of Committee  
2 meetings. Oh, well, at least I'm going to be there  
3 on the right days.

4 MR. WALLACE: You will be there on the right  
5 days.

6 MR. SMEGAL: In any event, if there is going  
7 to be more material from which we can make a more  
8 deliberate decision next week, I'm fine. Otherwise,  
9 we have got a lot of material here. Mr. Houseman and  
10 his people have done a lot of work, and some good  
11 suggestions it seems to me.

12 MR. WALLACE: I have two concerns about  
13 swagging through this section by section. One is  
14 that we have got another Committee meeting in a  
15 little while; and two is, I think we may have some  
16 more information on this one, but maybe we won't.

17 MS. BERNSTEIN: Could I just ask, for the --  
18 The priority setting, as I understand it, is one of  
19 the concerns when we have monitoring visits, is  
20 that true?

21 MR. SMEGAL: When we have what?

22 MS. BERNSTEIN: Monitoring visits. I mean,  
23 that's one of the compliance aspects, that the  
24 monitoring teams look at, is that true?

25 MR. BROOKS: That's correct.

1 MS. BERNSTEIN: Could we, also, in addition  
2 to some straightening out of this language and maybe  
3 some proposals regarding the rural access, could we  
4 get some sort of an idea as to the kinds of problems  
5 that come up, so we can put the process and the  
6 problems in perspective.

7 In other words, if we are supposed to enforce  
8 compliance as John Hanson from the GAO said, with the  
9 lobbying regulations, it is one thing to put  
10 regulations into effect, and it is another thing  
11 to be able to use them to enforce something.

12 So, I think that in order to use that  
13 perspective on this, what is it that we are trying  
14 to accomplish here? And I would just like some  
15 feedback from the staff, in addition to the language  
16 changes, to give us some sort of sense of why the  
17 priority regs need to be phrased in a certain way  
18 in order to allow us to enforce.

19 MR. WALLACE: With all due respect to members  
20 of the Committee, and to Mr. Houseman, because I know  
21 you have worked real hard on this alternative language,  
22 I think it is necessary for us to hear from our  
23 staff, as to what they were trying to do.

24 My own sentiment is that if the Act didn't  
25 require priority setting, I'd almost throw this whole

1 thing out altogether, because I'm not sure that it's  
2 telling me anything to do any good.

3 But Mr. Smegal, before we vote to do something  
4 like that, I would like to have some explanation as  
5 to where we go, as to what this is trying to do.

6 MR. SMEGAL: Will Mr. Houseman be with us  
7 next week?

8 MR. HOUSEMAN: I don't know when you are  
9 meeting is.

10 MR. WALLACE: The notice says we're meeting  
11 next Friday afternoon, at the Hotel Washington.

12 MR. HOUSEMAN: Okay. Either I will be there,  
13 or people that worked on this with me will be there  
14 for that meeting.

15 MR. WALLACE: Okay. I appreciate it, and I  
16 apologize that we're not -- we're sort of dealing  
17 with legal regulations, when we need some substantive  
18 facts that I'm not sure that we have altogether got.

19 MR. HOUSEMAN: Again, I would urge you to take  
20 a look at the 1007(h) study. It was a study for  
21 Congress. It was carefully considered by the Board.  
22 There were working groups of people that worked on  
23 this. It was a two and a half year study, and there  
24 is an extensive amount of material on rural problems  
25 in there.

1 MR. WALLACE: Let me, if I may, I think we  
2 can move through the Sunshine Act part, Part 1622,  
3 because that pretty much is legal stuff.

4 There is a hand on the floor.

5 MR. THOMPSON: I wanted to make one comment  
6 on the priorities.

7 MR. WALLACE: Please come forward and identify  
8 yourself. We'd be happy to hear from you.

9 -----

10 STATEMENT OF ALBERT THOMPSON, EXECUTIVE DIRECTOR,  
11 MEMPHIS AREA LEGAL SERVICES.

12  
13 It is my understanding that a letter from  
14 Congressman Sundquist was read into the record here  
15 today?

16 MR. WALLACE: It was.

17 MR. THOMPSON: And I would ask the Committee  
18 to strike that letter from the record. The reason  
19 is because the letter itself -- and I have it before  
20 me, now, and I have read it -- talks about a compliance  
21 problem, although it purports to talk about  
22 priorities.

23 This matter is already before the Legal Services  
24 Corporation Staff, in the Office of Compliance and  
25 Review. We are already discussing this. They are

1 supposed to send me a copy of Congressman Sundquist's  
2 complaint to them, which we will be replying to.

3 There is nothing that this Committee at this  
4 time, can actually do with what is alleged in this  
5 letter, and of course, we maintain that the letter  
6 is totally false.

7 For that reason --

8 MR. WALLACE: We appreciate your comments.  
9 I don't think we can strike it from the record. We  
10 have instructed our Secretary to tell Congressman  
11 Sundquist that this Committee is not in a position  
12 to investigate it, at this time. That it is a matter  
13 for the Office of Compliance and Review, which as  
14 I understand it, is continuing its investigation,  
15 and I think that basically what you're saying is  
16 something that we agree with. That those are the  
17 proper channels to go through, and we have received  
18 Congressman Sundquist's letter, and we're telling  
19 him the same thing. That we will continue the  
20 investigation through proper channels.

21 MR. THOMPSON: Thank you.

22 MR. WALLACE: Thank you, sir.

23 ---

24 MR. WALLACE: I believe the last Part 1622,  
25 the Sunshine Act, is something that we can probably

1 deal with here line by line today, because it  
2 doesn't require a lot of facts we haven't got.

3 Where we are is at the end of the Board book,  
4 and Mr. Houseman's proposed changes begin on Page 87  
5 of his text.

6 I would ask our General Counsel to begin with  
7 1622.2, as a matter of law, whether or not the  
8 Sunshine Act requirement of public observation or  
9 participation, or whatever it requires, is more  
10 extensive than what we have here defined under  
11 Public Observation.

12 MR. BAGENSTOS: No, we do not think it is.

13 MR. WALLACE: You do not think it is more  
14 extensive.

15 MR. BAGENSTOS: It is discretionary on the  
16 part of the Board, as to whether participation  
17 would be allowed.

18 The public must observe that the purpose of  
19 the Sunshine Act is to make sure that the public is  
20 aware of, has full knowledge of decisions taken by  
21 groups that are covered by it, but there is no  
22 participation right.

23 MR. WALLACE: Okay.

24 Mr. Houseman, you have suggested that we strike  
25 that language. I will give you an opportunity to

1 explain why.

2 MR. HOUSEMAN: Well, the basic purpose was to  
3 emphasize the point that we dealt with under the  
4 By-Laws, of encouraging public participation, and  
5 this was just one way of doing that.

6 I don't think striking this particular  
7 language is necessary, or unnecessary to that. It  
8 was just a way of highlighting the point.

9 This was added in the last go around on these  
10 regulations. I don't think you need this language  
11 to carry out the Sunshine Act, or to carry out  
12 your processes, and it was found to be somewhat  
13 offensive to members of the legal services community.

14 But keeping it in, or taking it out, I don't  
15 think is the issue. The issue is, agree to what you  
16 are going to permit, the kind of openness you have  
17 permitted today, and you have permitted in the past.

18 MR. WALLACE: Is there a sense on the Board  
19 on this Committee, as to whether this should stay  
20 in or -- I mean, it is consistent with the Act. At  
21 the same time, it may raise some hard feelings.

22 If I could get a -- Let's get some discussion.  
23 Are there any thoughts on the Board, as to what we  
24 ought to do with this language?

25 MR. SMEGAL: I think we should take it off, Mike.

1 MS. BERNSTEIN: I think it should stay on.  
2 The reason I think it should stay on is not in an  
3 attempt, or in an effort to offend persons who want  
4 to attend the meetings.

5 It would be my feeling that people who have  
6 attended the meetings before, and have participated  
7 in the meetings, would agree that public observation  
8 of the meeting does not include any rights.

9 While that may be self-evident to the people  
10 who have been involved in this, I think it may be  
11 useful as a clarification, that we are here to conduct  
12 business, and if time constraints, or the situation  
13 may be such that not everyone is able to speak for  
14 as long as they would like to speak, that no rights  
15 have been violated, and that there is a difference  
16 between observation and participation.

17 MR. WALLACE: Ms. Miller, do you have any view  
18 on whether it stay in, or go out?

19 MS. MILLER: I think it should stay in.

20 MR. WALLACE: And my view is, it's in the Act,  
21 it ought to stay in. I think whether or not people  
22 trust us, is going to be based more on what we do,  
23 than whether or not it stays in.

24 I think there is a consensus on this Committee  
25 to keep it in, and I think that will be our

1 recommendation to the full Board.

2 We have already resolved 22.4, in our previous  
3 discussion about sending notice to the governing  
4 body, and to the Director. I would think we need  
5 "Director" in here, to be consistent with what we did  
6 before.

7 In 22.5, this has to do with closing meetings.  
8 Apparently, our present By-Laws -- Would General  
9 Counsel explain to me why "Committee" isn't in the  
10 present By-Laws, and what that does to us?

11 MR. BAGENSTOS: The position of the General  
12 Counsel's office is that only the Board can close a  
13 meeting, whether that is a Board meeting, or a  
14 Committee meeting.

15 MR. WALLACE: Would adding "Committee" to  
16 1622.5, as proposed here, do you believe that that  
17 would permit the Committee to close itself without  
18 authorization from the Board? Is that what this --  
19 I doubt that that's what Mr. Houseman intended the  
20 language to do, but I don't know whether it would  
21 or not.

22 MR. HOUSEMAN: This was in the old By-Laws.  
23 I'm not -- I would have to take another look at the  
24 Sunshine Act, but I think -- I'm not sure I agree --  
25 I think what this was trying to do, was to make sure

1 that if a Committee is going to close a meeting, that  
2 it comply with the provisions of the exemptions,  
3 and state the exemptions. I don't -- If in some  
4 manner, it is decreasing public rights, and maybe  
5 Dick is right -- I want to take another look.

6 MR. WALLACE: I don't think it's what any  
7 of us wants to do here.

8 MR. HOUSEMAN: Right.

9 MR. WALLACE: Ms. Bernstein?

10 MS. BERNSTEIN: Let me say that the intention  
11 for removing "Committee" from the Sunshine Act here,  
12 was to make it comport with the Sunshine Act, and  
13 because we felt that the Sunshine Act provision in  
14 the LSC regs were out of compliance with the Sunshine  
15 Act. It was to make them in compliance, because  
16 the entire Board only has the right to close the  
17 meeting.

18 MR. BAGENSTOS: That's right. That's exactly  
19 the position that we took on that.

20 Our interpretation of the Act is that while  
21 a Committee meeting can be closed, the Committee can't  
22 close it. It has got to be the Board that does it.

23 MR. WALLACE: I think under those circumstances,  
24 there should be a consensus not to put "Committee"  
25 in there, because I think we all want the meetings

1 to be closed only by Board vote.

2 Okay.

3 Now, 1622.6.

4 MR. HOUSEMAN: This is consistent with what  
5 our recommendations were earlier around -- and what  
6 I think -- as I understood Mr. Bagenstos' position  
7 on the Sunshine Act.

8 MR. WALLACE: Well, now--

9 MR. HOUSEMAN: I really returned to the old  
10 language. This isn't any great drafting on my part.

11 MR. WALLACE: Mr. Bagenstos, can you enlighten  
12 me on this?

13 MR. BAGENSTOS: I don't know that I can  
14 enlighten you, but I'll give you our position on it.

15 I think that both parties here are after the  
16 same thing. We both believe that you have to take  
17 a vote on each part of the Agenda that you are going  
18 to close.

19 The reason that we added the language that  
20 we did, is because we thought that made it clearer  
21 that that's what you have to do.

22 MR. WALLACE: Well, now, I'm confused, because  
23 what we have been doing is taking one vote and we  
24 would list in that vote, each of the subjects that  
25 would be discussed in the closed meeting, and I thought

1 we decided back under the By-Laws, that that was  
2 an okay way to do it, as long as we listed each of  
3 the general areas in that vote.

4 Mr. Houseman's language here in line three of  
5 it, talks about a separate vote.

6 Now, are you saying that we ought to take a  
7 vote to go in on personnel, and then another vote  
8 to go in on litigation, because that's what that  
9 language to me implies. That is not what we do.

10 MS. BERNSTEIN: That is not what they have  
11 ever done.

12 MR. WALLACE: Yes.

13 MR. BAGENSTOS: I agree with all of those  
14 things. It's not you do, it's not what has ever  
15 been done, and yes, that's what we think should be  
16 done, and that's what line one of our version says  
17 we should do, the way I read it.

18 MR. WALLACE: All right.

19 MR. HOUSEMAN: Maybe Mr. Bagenstos and I can  
20 get together, and maybe we can work this out, since  
21 we seem to be in agreement on what has to happen.

22 MR. WALLACE: If it is the view of our General  
23 Counsel that we have to take a separate vote on every  
24 item, we'll do it. I don't see any problem with that.  
25 If that is your view of the Sunshine Act, the

1 Committee would appreciate it if ya'll could get  
2 together and agree on language that says that.

3 MR. BAGENSTOS: Just a very brief justification  
4 or explanation of that. It is very possible that  
5 a Board member, or different configurations of the  
6 Board may agree that certain topics are appropriate  
7 for closure, while others are not. You can't know  
8 that if you vote on them in a batch.

9 MS. BERNSTEIN: Let me just say that in the  
10 past, those things then have been broken out, if  
11 there has been a discussion on the Board, and the  
12 whole business of just listing them for the purpose  
13 of certification, and the vote, was more a matter  
14 of expediency, rather than intention to slide  
15 something.

16 MR. BAGENSTOS: I think you have also had  
17 a request from at least one Board member that we  
18 be more explicit with these topics.

19 MR. WALLACE: Well, I think we have, and I  
20 remember that coming up.

21 I think the consensus of the Committee is  
22 this. We want to do what the Act requires. We will  
23 take separate votes if we need to. If it were  
24 possible to batch them altogether, except where there  
25 is a dispute, that would be fine. But if the law

1 requires a separate vote on each individual item,  
2 let's do it, and let's agree on language that  
3 specifies that.

4 I will ask what is the purpose -- I guess I  
5 can tell what the purpose is. The day after the  
6 meeting, we have to put out Minutes regarding the  
7 Executive Session, with a reference to the specific  
8 exemption, including a statement of reasons as to  
9 why the specific discussion comes within the cited  
10 exemption.

11 What sorts of reasons are you looking for  
12 that phrase, Mr. Houseman?

13 MR. HOUSEMAN: Well, first of all, this comes,  
14 this pretty much tracks the Sunshine Act, just to  
15 be clear.

16 Secondly, what we want to see is -- and I think  
17 what we have to do -- is to state the specific  
18 exemption under which you are going, and then to have  
19 to in a sense rationalize why those discussions come  
20 within it.

21 I think in the past, both in the past from  
22 '81 or '82, to '84, and in the past before that, to  
23 be quite clear what I'm saying, is that this was not  
24 carefully enough done on occasion, and I think it  
25 would be helpful to you if it was done.

1 I also think that you have had some  
2 experience under this Board, where at least arguably  
3 some of your discussions were not keyed to a specific  
4 exemption, and I think it would be useful if you had  
5 to key your discussions to a specific exemption and  
6 justify it under that, and I think that any concerns  
7 that have been expressed about the Executive Session  
8 I think would be cured, and this is really a prophylac-  
9 tic effort to essentially assure that it happens.

10 It does track the Sunshine Act language, so  
11 it is not an addition to the Sunshine Act.

12 MR. WALLACE: Mr. Bagenstos, what is our  
13 practice right now when making our Minutes available?  
14 Do we explain the reasons for the closure in the  
15 Minutes, or the Statement, or whatever we put out?

16 MR. BAGENSTOS: The Secretary would be the  
17 appropriate one to do that. I think we only state  
18 the statutory basis.

19 MR. WALLACE: I see the Secretary in the back,  
20 if you could answer.

21 MR. DAUGHERTY: There is a requirement that  
22 I prepare a statement for the appropriate files  
23 that set forth the reasons for which authority was  
24 voted for -- I have been in this job for all of  
25 two weeks now, and I'd defer it to several other

1 people here that know more about it than I do.

2 Mr. Bagenstos and the staff tells me that in  
3 addition to his certifying, that you have the authority  
4 to close a meeting.

5 That I have to, under a portion of our existing  
6 regulations, that I have to prepare a statement, and  
7 I did prepare a statement on your last meeting, that  
8 says why it was that you closed the meeting.

9 I don't believe that our Minutes have gone  
10 into that subject matter in the past, other than to  
11 cite the sections of the Sunshine Act and our  
12 regulations that authorized the closure.

13 MR. WALLACE: Okay. We don't do it in the  
14 Minutes, but we do have publicly available what is  
15 required?

16 MR. DAUGHERTY: Yes. 16 -- Well, let me  
17 see, just a moment.

18 MR. WALLACE: 1622.6(e).

19 MR. DAUGHERTY: That's correct, sir.

20 MR. WALLACE: Is there anything that we are  
21 being asked to do here, that we don't do already?

22 MR. DAUGHERTY: You are being asked to  
23 deliberate upon that.

24 MR. WALLACE: Are we being asked to deliberate  
25 upon it? I mean, it says, "We refer to the specific

1 exemption, and statement of reasons of why it  
2 comes within the..." --

3 MS. BERNSTEIN: As I understand it, unless  
4 things have changed since I was there, what was  
5 passed down to me in the procedures of the Corporation  
6 under the Sunshine Act, was that there would be  
7 inserted into the file for each Executive Session,  
8 a Certificate from the General Counsel, and a  
9 statement signed by the Chairman of the Board,  
10 declaring that the meeting was held on such and such  
11 a date, that the reasons for closure were to discuss  
12 personnel, blah, blah, blah, and cite the sections  
13 of the regulations that provided for the exemption.

14 However, unless something has changed since  
15 I was there, that is a separate situation from having  
16 a transcript of Minutes of the meeting available  
17 that would, in essence, allow public scrutiny of  
18 any decision that was made by the Board, or the  
19 Committee, that is no longer subject to the exemptions,  
20 and therefore, may be made public.

21 In other words, if the entire discussion is  
22 something that is still an ongoing Executive Session  
23 matter, then none of those Minutes will be subject to  
24 public scrutiny, until that decision is made, and it  
25 is no longer an Executive Session matter.

1           See, what I interpret this to be, is a meshing  
2 of the Chairman's statement, with the kind of, "At  
3 this Executive Session, we discussed the personnel.."

4           MR. WALLACE: I don't see why they have to  
5 mesh. I mean, all this says is that you have to have  
6 publicly available a statement of what you did, and  
7 a statement of your reasons for going into an  
8 Executive Session.

9           They don't have to be in the same document.  
10 They just have to be publicly available.

11           We do that right now, do we not?

12           MR. BAGENSTOS: Yes, sir.

13           MR. WALLACE: Then I don't see any reason  
14 why we don't accept this language.

15           MR. DAUGHERTY: I was directed by General  
16 Counsel to prepare exactly the same document under  
17 (e), that Mr. Houseman describes.

18           MR. WALLACE: Okay. I think that answers the  
19 question. I don't see any reason not to use that  
20 language.

21           The final -- and it is all marked through here  
22 on your sheet, Mr. Houseman, so let me know if I'm  
23 missing anything -- but this, on Pages 89 and 90, all  
24 have to do with the emergency proceedings.

25           MR. HOUSEMAN: It's the same issue. You

1 debated it under the By-Laws.

2 Here is where I included the proposed, the  
3 alternative proposal. It's the same stuff.

4 MR. WALLACE: Okay.

5 MR. SMEGAL: 1622.9? It isn't marked. Is  
6 that -- there should be a heading on it?

7 MR. WALLACE: Yes.

8 MR. HOUSEMAN: Yes. I'm sorry. There's a  
9 typo, yes.

10 MR. WALLACE: Yes. 1622.9.

11 MR. HOUSEMAN: Yes, it's emergency proceeding.  
12 There was just a mistake in the drafting.

13 MR. WALLACE: Okay. And various parties are  
14 going to work on alternative language for that.

15 I will ask Mr. Secretary and Mr. General  
16 Counsel. We have been through the By-Laws and the  
17 Sunshine Act, and with the exception of what we do  
18 about it in an emergency meeting, I think you have  
19 got a pretty clear idea of what we want the final  
20 draft to look like, and at our next meeting in  
21 Washington, I think we might have a final draft to  
22 those provisions.

23 We will make a decision on what to do about  
24 emergency meetings, and we ought to be in a position  
25 to send those two parts to the Board, for their

1 approval, at the next Board meeting.

2 So, if ya'll can have those two parts ready  
3 to go, we would appreciate it.

4 We have asked for the Staff's help on the  
5 other parts here, and before I close the meeting,  
6 I will do two thing.

7 I will ask my Committee if there is any other  
8 business, and then I will ask briefly if there are  
9 any comments from the floor, and then I think we  
10 will adjourn, because we have got another Committee  
11 meeting to go to, most of us.

12 Members of the Committee, any further comments?

13 (No response.)

14 MR. RAMSAUR: Briefly. On 1612, I have  
15 watched you look at the other regulations, and  
16 take sort of a general view.

17 I might suggest that you might sort of put on  
18 the table, some of the things you are looking for  
19 from the Staff, and from Field Programs, in terms  
20 of the kinds of perhaps further investigation, further  
21 documentation, review of studies, and the like,  
22 that you would like to have.

23 MR. WALLACE: With regard to 1612?

24 MR. RAMSAUR: Just to get it on the table,  
25 so that you know what you are -- What I'm afraid of is

1 that you will come to Washington next Friday and  
2 Saturday, look at the other three that you have got  
3 staff requests in for, and then say, "Well, now, let's  
4 get some staff requests on 1612," and again put off  
5 having to consider that.

6 MR. WALLACE: Let me tell you what I anticipate,  
7 Mr. Ramsaur, because I appreciate that concern.

8 I hope we are going to have enough facts from  
9 the staff next week, to make some determinations on  
10 those final two. Not 1612, but the other provisions,  
11 the way we did today on Sunshine and By-Laws.

12 I also hope that we are going to have -- I  
13 can't believe it's possible -- if we have something  
14 from GAO, and if we have something from OLC, on the  
15 applicability of A-122, and what GAO thinks of our  
16 regs, we'll look at that.

17 I think we will probably, whether we have it  
18 or not, we will slog through 1612 the way we did on  
19 some of these others today, with the idea that we  
20 can't make any final decisions without those opinions  
21 from legal counsel, and possibly without getting more  
22 information from the staff, the way we have asked on  
23 these other things.

24 If we get to a final decision on 1612 next  
25 Friday, I will be the most surprised man in the room.

1 So, I think you are going to have lots of time for  
2 input, and certainly before these things are finally  
3 approved by the Board.

4 Any other comments?

5 (No response.)

6 We thank you all for your patience, and we  
7 appreciate your cooperation, and this Committee will  
8 stand adjourned.

9 (Whereupon, at 1:00 p.m., the hearing was  
10 adjourned.)

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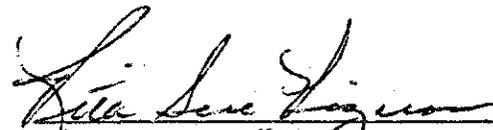
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C E R T I F I C A T E

1  
2 This is to certify that the foregoing transcript  
3 of the Operations and Regulations Committee Meeting  
4 of the Legal Services Corporation, held on February  
5 13, 1985, at the Memphis International Airport  
6 Building, Sheraton Skyport, Memphis, Tennessee,  
7 is a true record of the testimony given.  
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Rita Sue Pigmon,  
Field Reporter

