

1985
10-11

F. Williams

HEARING ON INDIGENT DEFENSE FUNDS

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS

October 11, 1985

BOARD OF DIRECTORS MEETING

Meeting held at the Mountain Air Lodge, Gilford, New Hampshire, on Friday, October 11, 1985, commencing at 10:35 A.M. and ending at 3:15 P.M.

BOARD OF DIRECTORS OF LEGAL SERVICES CORPORATION PRESENT

Lorain Miller
Pepe Mendez
LeaAnne Bernstein
James Wentzel
W. Clark Durant III, Chairman
Basile Uddo
Claude Swafford
Hortencia Benavidez
Robert Valois
Michael Wallace

Others Present:

Tim Baker, Board Coordinator and Assistant to General Counsel
Dennis Daugherty, Secretary to Board
Thomas Smegal
Paul Eaglin

NOT PRESENT:

Richard Bagenstos, General Counsel

1 MR. DURANT: I will now call to order the Board
2 meeting of the Legal Services Corporation.
3 We're only starting thirty minutes
4 behind. Before we begin, I'd like
5 to call on Reverend Raymond Wixsin,
6 to give the invocation. Rev. Wixsin
7 is the pastor of the Gilford Community
8 Church for the last ten years. He's
9 very active in community affairs.
10 He also is Doug Hill's sailing partner.
11 Rev. Wixsin.

12 REV. WIXSIN: Thank you, Mr. Durant. I would like
13 to take a moment just to greet each
14 of you and to welcome you to this region.
15 You've chosen a wonderful day and a
16 nice time to be here and I'm very happy
17 to be a representative of the religious
18 community and to lead you in the experience
19 of prayer. Let us stand together as
20 we bow in prayer. Almighty God, we
21 bow humbly in this moment to give thanks
22 for the glory of the world around us.
23 We thank you for the beauty of this
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1 place and for the source of strength
2 that comes to us as we are bathed in
3 the beauty. We thank you for the excitement
4 of the changing season and we pray
5 that through this experience, you will
6 heighten our awareness of the excitement
7 of changes in our lives and in our
8 times. We bow in this moment, to give
9 thanks for the institutions of our
10 society and for the privilege to invest
11 ourselves in them, particularly as they
12 relate to justice and mercy and order.
13 We ask your blessing upon your proceedings
14 this day and upon all those who share
15 in the decision making process. Make
16 us mindful that there are individuals
17 who stand in need and that what we
18 do in this place is designed to reach
19 out to that need and to bring the appropriate
20 resources to bear. So grant us your
21 wisdom, your patience, the ability
22 to listen to each other and to decide
23 with righteousness and fairness and
24

1 for what is accomplished, we will give
2 you the praise, in Jesus' name, Amen.

3 Members: Amen.

4 MR. DURANT: The first item on our agenda is going
5 to be the adoption of the agenda.
6 We had an executive session on Wednesday,
7 pursuant to appropriate certification
8 and Board action. Good morning, Michael.
9 I would ask for a motion to adopt the
10 agenda.

11 MR. WALLACE: Mr. Chairman, I'll move the adoption
12 of the agenda.

13 MR. MENDEZ: Mr. Chairman, I move the adoption of
14 the agenda with one exception or one
15 addition. There will be a motion from
16 Mr. Uddo and I will request your pleasure
17 as to where you would most appropriately
18 like it to come. I would suggest maybe
19 six A.

20 MR. DURANT: That is before the activities before
21 the ABA Standing Committee on legal
22 services providers, Legal Aid and Indigent
23 Defense. Is there a second to that

24

1 motion?

2 MS. BERNSTEIN: I second.

3 MR. DURANT: Any discussion? All in favor say 'Aye'.

4 Response: 'Aye'.

5 MR. DURANT: Opposed. The next item will be the
6 adoption of our minutes from the last
7 meeting, since I was not present.

8 MS. BERNSTEIN: Before that, can I move to close the...

9 MR. DURANT: Sure.

10 MS. BERNSTEIN: I mean I think that's the way we generally
11 do it, so..

12 MR. DURANT: That's right. Ms. Bernstein, do you
13 have a motion?

14 MS. BERNSTEIN: As is the Board's practice, we try
15 to get the executive session taken
16 care of the night before the Committee
17 meetings begin, and the next meeting
18 will be in Santa Anna and I believe
19 the evening of November the 6th, would
20 be the time for the executive session
21 and I don't have the exact starting
22 time yet but I move to close a portion
23 of our Board meeting and the meeting
24

1 to begin on the 6th, in the evening,
2 sometime. I presume 7:30 or eight
3 to discuss personnel, personal litigation
4 and investigatory matters and the Sunshine
5 Acts, 552(b) (c), 267 (9) (b) and (10) and 45
6 CFR 1622.5 (a) (e) (f) (g) and (h).

7 MR. MENDEZ: I second it.

8 MR. DURANT: Any discussion? We'll have to do it
9 as a roll call vote. Mr. Smegal, all
10 those in favor of closing the executive
11 session prior to the meeting in Santa
12 Anna, signify by saying...

13 MR. SMEGAL: We didn't establish a time.

14 MR. DURANT: It will be the Wednesday evening the
15 6th, immediately pre...the Wednesday
16 immediately preceding the meeting.

17 MR. SMEGAL: We're not going alphabetically; we're
18 going from left to right, as they say
19 in Boston. Aye.

20 Response: Aye, Aye, Aye, Aye, Aye, Aye, Aye,
21 Aye, I abstain.

22 MR. DURANT: Since our General Counsel isn't here,
23 it's my understanding that under the
24

1 regulations he may certify in writing
2 before the next meeting, of the ap-
3 propriateness of the call. The next
4 item on the agenda is the adoption
5 of our minutes from our meeting of
6 September 6th, since I was not present
7 and Mr. Valois, you were carrying on
8 in my absence. If there are any questions,
9 I will ask that you address them.
10 Has everyone had a chance to review...

11 MR. VALOIS:

12 I've got my hand up here. I'm on page
13 six and I see, at the top of the page
14 that Lea Anne has reported to have
15 moved for two amounts at a total of
16 \$906,000 and then I get to the bottom
17 of that page and I see that Mr. Wallace
18 is seemingly talking about that same
19 amount of money but there it becomes
20 eight hundred and six, so either I
21 don't add well or something happened
22 as the page came down. Shouldn't it
23 be nine hundred and six, at the bottom,
24 is I guess what I'm saying?

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1 MR. DAUGHERTY: I believe you're correct, Mr. Smegal.
2 Nine Hundred and Six Thousand.
3 MR. SMEGAL: I have a follow up question. I
4 spoke to the Region Eight Administrators
5 Seminar, earlier last month and
6 advised them they were all getting
7 computer equipment very soon. I'm
8 wondering when they're going to
9 get it.
10 MEMBER: The PC is in the mail.
11 MR. DURANT: Is there an agreement on the change
12 of the numbers? Does anybody disagree
13 with the proposed change? There's
14 apparent agreement. Any other corrections
15 or additions to the minutes?
16 MS. SWAFFORD: I have a question to ask. It's
17 on page three. And it's in the
18 first, second, and third paragraph
19 down there. It reads like, 'Expand
20 the basic core of attorneys who
21 are exposed to assisting indigent
22 clients.' And I wondered if we
23
24

1 MR. DURANT: Well, I'm glad to hear that. I
2 knew that he would.
3 MR. VALOIS: Thank you, Mr. Mendez.
4 MR. SMEGAL: And I think we should endorse that
5 by a vote of six to five.
6 (Laughter)
7 MR. DURANT: Are there any other corrections
8 or additions to the minutes?
9 MR. SMEGAL: Mr. Durant, I did ask if we could
10 have an update on what's happening
11 with the computer equipment.
12 MR. DURANT: Can we take care of the minutes
13 first.
14 MR. SMEGAL: Oh, sure. He's ready though. He's
15 got his answer.
16 MR. DURANT: Is there a motion to adopt the minutes
17 as they are?
18 MEMBERS: So moved.
19 MR. DURANT: With the adjustments.
20 MS. MILLER I make that motion.
21 MR. DURANT: Is there a second?
22 Seconded
23 MR. DURANT: Any discussion? All those in favor,
24

1 signify by saying Aye?

2 MEMBERS: Aye.

3 MR. DURANT: Opposed. Mr. Gessner.

4 MR. GESSNER: The Office of Information and Management
5 is in the process of obtaining proposals
6 from various vendors who might provide
7 the equipment. They'll be selecting
8 the vendor, sometime fairly shortly.
9 They're on the track and moving
10 in that direction. I don't know
11 exactly when, though.

12 MR. DURANT: So you don't have a specific time-
13 table. We can't...

14 MR. GESSNER: No. They are working on it. They've
15 talked with a few vendors at this
16 point.

17 MR. DURANT: Roche can't plan on a specific for
18 the equipment to arrive, or send
19 a truck up right.

20 MR. GESSNER: The computer's in the mail.

21 MR. ROCHE: I have an easier one for him which
22 could be in the mail, while you're
23 on updating. In Salt Lake, you

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1 put out about two thousand or some
2 at one time, Mike, and that was
3 what, two, three months ago. And
4 I was wondering what had happened
5 to that. That hasn't come out either
6 and a grant awarder of the checks.

7 MR. DURANT: Well, I tell you what. I'm sure
8 in the President's report, that
9 item will be taken care of.

10 MR. ROCHE: He's mailing his report.

11 MR. DURANT: At this point in our agenda, I would
12 like to ask Jonathan Ross, who is
13 the president of the New Hampshire
14 Bar Association to come forward
15 to address the Board, in any way
16 that he would like. I'd also like
17 to say that when I was in Boston,
18 not too long ago, I had the pleasure
19 of meeting Mr. Ross, for the first
20 time. We had lunch together and
21 chatted and I have very much welcomed
22 his comments and the correspondence
23 that he and I have had regarding
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1 legal services, so Jon, I'm glad
2 that we're here in New Hampshire
3 and I'm glad that you're here to
4 kick off our meeting for us.

5 MR. ROSS:

6 Thank you very much. Chairman Durant,
7 President Wentzel, members of the
8 Board of Directors and the staff
9 of the Corporation, on behalf of
10 the New Hampshire Bar Association
11 and its almost twenty-five hundred
12 members, of whom about seventy-five
13 percent practice law in this state,
14 I welcome you to New Hampshire and
15 thank you for choosing our state
16 as the site for your meeting. I
17 hope that your presence here signifies
18 your dedication to the principle
19 that citizens of the United States
20 are entitled to equal access to
21 our institutions and to the protection
22 of law regardless of their socio-
23 economic status. I hope that your
24 presence here affirms that you,

1 as a Board, represent a commitment
2 to serving the legal needs of the
3 poor of this country and to finding
4 ways to increase the ability of
5 our government to respond to the
6 needs of its people. Each of you
7 has a unique opportunity, by virtue
8 of the leadership position for which
9 you have been chosen and which you
10 have graciously accepted. To you
11 has been entrusted the management
12 of the social and moral conscience
13 of America and how it treats its
14 citizens. That is a sacred trust
15 and one which carries a heavy respon-
16 sibility. New Hampshire Legal Assistance
17 has been in existence since 1971.
18 According to its 1984 annual report,
19 this organization has helped over
20 one hundred and fifty thousand people,
21 with their most difficult legal
22 problems. With offices in Berlin,
23 Claremont, Concord, Manchester and
24

1 Portsmouth, lawyers for New Hampshire
2 Legal Assistance handled over ten
3 thousand six hundred cases in 1984
4 in addition to providing community
5 legal education, legislative advocacy
6 and providing a standard of legal
7 service for the rest of our Bar
8 to emulate. When New Hampshire
9 Legal Assistance first opened its
10 doors, some members of this Bar
11 complained that we didn't need this
12 organized institution to handle
13 the needs of our poor people; that
14 lawyers had always done it on their
15 own, pro bono and when New Hampshire
16 Legal Assistance began to spend
17 some of its energies in the legislature
18 and before the Public Utilities
19 Commission on public issues for
20 the poor, many of us were upset
21 and disenchanted that our monies
22 could be used in this fashion.
23 All of that is ancient history here
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and those of us that wondered and those of us that complained loudly, for the most part, understand that unorganized, the Bar and its various lawyers, no matter how dedicated some of them may be, cannot adequately provide for the needs of poor people. We also understand that those less fortunate than most, need a means to access to our institutions that does not depend upon the whim or fancy of any particular lawyer in deciding to take on that person's case. We have also come to recognize that there are many sides to public issues and that the side of those who are less fortunate than most, needs a spokesperson who is unencumbered by personal interest and whose job it is to speak on behalf of the poor. The United States Congress has made a continuing commitment to funding, for these services,

1 through Legal Services Corporation.
2 In this connection, it is certainly
3 within the purview of Congress, to
4 some extent to the Corporation's
5 board and staff, to determine the
6 general guidelines for which funding
7 will be available and once these
8 broad areas have been outlined,
9 in my humble opinion, neither Congress
10 nor the Corporation's board nor
11 staff has any place inside the
12 attorney/client relationship. Once a
13 lawyer accepts a client for a legal
14 matter, that is within the scope
15 of his authorized activity. That
16 relationship is protected by an
17 ancient privilege and one that must
18 be held to be out of bounds of policy
19 makers. For example, it may be determined
20 by Congress that Legal Services
21 lawyers should not do divorce work.
22 If, however, Congress decides that
23 Legal Services lawyers, should do
24

1 divorce work, how they do it and
2 the tools of lawyering that they
3 make available to those clients,
4 should be free of interference from
5 policy makers. In New Hampshire,
6 aid to the poor, by virtue of New
7 Hampshire Legal Assistance, is a
8 non issue. New Hampshire Legal
9 Assistance is now one of our institutions,
10 well respected and well regarded.
11 The job it does needs to be done
12 and it hampered only by a lack of
13 money, facilities and firm national
14 commitment to helping it do its
15 job for all those who need it in
16 an effective way. Since the mid-
17 1970s, our Bar Association has sought
18 ways to augment the services of
19 Legal Assistance. Initially some
20 cases were handled by individual
21 lawyers on a very low fee referral,
22 particularly in the domestic relations
23
24

1 field, but eventually the Bar approached
2 this problem in an organized fashion.
3 The result is our current Pro Bono
4 Program, which uses private lawyer
5 involvement on a no-fee basis, as
6 its principal source of services
7 to the public. The structure that
8 permits this operation to maintain
9 its place in society is funded by
10 your corporation. In New Hampshire,
11 we are proud to have between seven
12 hundred and a thousand lawyers in
13 our Pro Bono Program, handling anywhere
14 from one to three or more cases
15 per year. We have large law firms
16 committed to this program, donating
17 staff time on a regular basis, for
18 a number of cases per month. We
19 have attracted interest from our
20 Attorney General's Office, which
21 is now studying ways in which its
22 lawyers might participate in this
23 program, even though faced with
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1 a statute preventing private practice
2 while in public service. In an
3 effort to gain efficiency and better
4 service to the public, we have completed
5 a long program of consolidating
6 our legal services to the poor under
7 one roof. We now have a Pro Bono
8 Program, an experimental reduced
9 fee panel program and a lawyer referral
10 information service program with
11 shared personnel under a single
12 director. We are doing a job that
13 has to be done and we are doing
14 it in the face of mounting difficulties
15 from a national perspective. We
16 are grateful for the restored funding.
17 We do not wish to have that same
18 conversation year in and year out
19 with the Corporation, with the Congress
20 and with the administration. Our
21 energies are much better spent in
22 serving the poor than in fighting
23 for dollars to permit us to operate
24

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1 the program that allows others to
2 give up their time to discharge
3 this moral responsibility. I understand
4 that there is some consideration
5 of what might be called an entrepreneurial
6 approach to meeting the legal needs
7 of the poor. As I understand this,
8 the Corporation, through its local
9 agent, would award contracts to
10 the private Bar to service the poor
11 and that these contracts would be
12 awarded on the basis of low bids,
13 thereby allowing the marketplace
14 to set the costs and values of these
15 services. I strongly urge you to
16 reject this idea. The experience
17 of contract attorney low-bidding
18 processes in criminal cases across
19 the country, have resulted in extreme
20 criticism. The articles written
21 on this subject suggest that the
22 process shortchanges the client
23 and generally ends up with the least

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1 capable or least interested lawyer
2 being awarded the case. I recently
3 had the privilege of serving with
4 the New Hampshire Judicial Council
5 in setting the standards for hiring
6 lawyers to handle criminal defense
7 cases on a contract basis. The
8 Judicial Council, led by its chairman,
9 Gregory Smith, our former Attorney
10 General, rejected the idea of low
11 bids in awarding these contracts.
12 Instead we determine, based on public
13 defender experience, what a reasonable
14 average unit cost of service should
15 be and invited applicants for the
16 contracts at a cost that we determined
17 would be facially fair. We then
18 interviewed all lawyers who were
19 interested in being awarded this
20 kind of work and through that personal
21 interview process, done by volunteered
22 time, contracts were awarded to those
23 people that a majority of the Council
24

1 thought were capable, trained and
2 interested in providing high quality
3 legal service to the clients that
4 were to be served. We have also
5 left room in that program for the
6 unusual case, so that a lawyer faced
7 with a problem for a client, that
8 fails, falls beyond the expectation
9 of reasonable cost, can apply for
10 additional compensation so that
11 that lawyer might do a complete
12 job for that client. The cutting
13 edge of change requires the freedom
14 to be innovative and different.
15 Legal services for the poor should
16 be designed to encourage, not eliminate
17 that kind of creativity. When I
18 assumed the office of President
19 of the Bar of New Hampshire, I was
20 a stewardship of an organization
21 that has been committed to the delivery
22 of legal service to the poor for
23 many years before I became its leader.

24

1 Regardless of my personal beliefs
2 about the delivery of legal service
3 to the poor, I assumed with my office,
4 an obligation to take a wider and
5 more global view. For example,
6 I am a senior partner in one of
7 New Hampshire's largest law firms.
8 The activities of New Hampshire
9 Legal Assistance in what could be
10 called lobbying could easily be
11 described as seeking results that
12 are against my self interest and
13 perhaps those of my or my partners'
14 clients. I do not believe that
15 I nor any of us in public service
16 can put our personal needs or those
17 of our friends ahead of our broader
18 public responsibilities and I am
19 sure that you take a similar view.
20 You are directors of a national
21 organization that was developed
22 specifically to meet the needs of
23 the poor in this country, for access
24

1 to our lawyers and our institutions.
2 Regardless of your personal beliefs
3 about whether that is right or wrong,
4 I believe that you will and do set
5 aside your personal feelings and
6 discharge the public duty that your
7 office has thrust upon you. I hope
8 that you are planning, in your meetings,
9 ways to better serve the poor, to
10 discharge the public responsibility
11 that we have, rather than directing
12 your energies to ways of reducing
13 or negating the good work that has
14 gone before. No society should
15 be shy of self-examination under
16 bright light. Legal assistance
17 to the poor, adequately funded and
18 adequately staffed, helps to keep
19 that light shining brightly and
20 helps all of us to become proud
21 and stay proud of the way our society
22 operates. You are in Yankee country.
23 We are self-reliant, proud and conservative

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1 people. We say little and confide
2 less. We don't like to ask for
3 help and we usually wait until
4 spoken to before we offer advice
5 or encouragement, but once you get
6 to know us, the people of New Hampshire
7 are warm and caring and are willing
8 to give a lot for each other. We
9 mistrust government. We have a four
10 hundred and twenty-four member legislature,
11 a people's legislature. We guard
12 our liberties very carefully. Our
13 liberties are inextricably entwined
14 in the business of government and
15 we believe that all of our citizens
16 should have access and the Legal
17 Services Corporation can help to
18 insure it and as its board and officers
19 and staff, you can get that done
20 and I know that you will. Welcome
21 to New Hampshire. Thank you.

22 MR. DURANT:

22 Two things, Jon. One, Mr. Mendez
23 has some questions that he'd like
24

1 to ask you. Second, do you have
2 copies of that you can make available
3 to every member of the Board?
4 MR. ROSS: I will do that. I don't have that
5 many with me.
6 MR. DURANT: Okay.
7 MR. MENDEZ: Mr. Ross, you made reference to
8 low fee basis and I would like
9 to have you explain to us a little
10 bit about how it was created and
11 what it presently is.
12 MR. ROSS: The reduced fee program that we
13 have?
14 MR. MENDEZ: Yes, please.
15 MR. ROSS: We applied for a grant.
16 MR. MENDEZ: If you would like, it's probably
17 more comfortable there.
18 MR. DURANT: Did you bring your whole family
19 here, by the way?
20 MR. ROSS: Yeah, I did. I've learned that
21 you need a cheering section, particularly
22 in this job. We applied for a grant,
23 sir, to try and provide a system
24

1 for service to what some call the
2 near-poor, those that are outside
3 the guidelines for Pro Bono and
4 Legal Assistance, who really don't
5 have access to and can't afford full-
6 fee lawyering and we are just now
7 in the process of putting that,
8 actually in the motion. We are
9 taking our Pro Bono panel and our
10 Lawyer Referral Information Service
11 panel and trying to get all people
12 on that to join this program and
13 what the program basically does
14 is say, if I join, I agree to charge
15 a reduced fee to people who qualify
16 who are referred by the central
17 office of the Bar Center. It has
18 to be...there is no fixed fee, because
19 we were concerned about price fixing,
20 if you will. What we've recommended
21 to panel members is that their fees
22 follow what our Supreme Court has
23 set as indigent defense reimbursement
24

1 fees or something similar and we've
2 left it to each lawyer to try and
3 decide what that is for him or herself.

4 MR. MENDEZ: Right. So it's really not a sliding
5 fee scale?

6 MR. ROSS: No, sir, it's not. It's not a sliding
7 fee scale.

8 MS. BERNSTEIN: Where was the grant from?

9 MR. ROSS: We got money from, I think IOLTA,
10 our Interest on Lawyer Trust Account
11 and one other place and I can't
12 tell you. I'd have to ask my staff
13 to...

14 MR. HILL: As a member of the IOLTA Grant's
15 Committee, that was the principal
16 source, as I recall.

17 MR. ROSS: We were the second state in the
18 nation to have that up and running,
19 behind Florida.

20 MR. HILL: The IOLTA Grant's Committee felt
21 very strongly about this one twenty-
22 five to one fifty or one twenty
23 five to one seventy five gap. We
24

1 felt that we were missing an awful
2 lot of people in New Hampshire who
3 really are very, very poor people.
4 Looking at the one twenty five guideline
5 and looking at costs of housings
6 and utilities and that sort of thing,
7 particular in the wintertime around
8 here, there's a real, real layer
9 of very poor people who simply aren't
10 eligible for the other programs.

11 MR. MENDEZ: When do you anticipate your low
12 fee basis will be starting?

13 MR. ROSS: It's up and running now.

14 MR. MENDEZ: It's up and running?

15 MR. ROSS: But it's just begun and we won't
16 have a clear idea of how successful
17 it is until this time next year.

18 MR. MENDEZ: Can you tell me a little bit about
19 how the Bar in New Hampshire is
20 encouraging lawyers to participate
21 in Pro Bono?

22 MR. ROSS: We do it on a one to one basis.
23 We do it by example. We do it by

24

1 advertisement in our weekly magazine.
2 We do it by rewarding publically
3 those lawyers who do it, by a certificate
4 of appreciation in honoring them
5 at our mid-winter meeting. We use
6 everything we can and we've been
7 very successful.

8 MR. MENDEZ: You have one of the highest rates
9 in the country and I always like
10 to get ideas so that we can pass
11 them around to other states in the
12 country and see what we can do in
13 terms of generating other information.

14 MR. ROSS: I really can't explain to you, why
15 it is, that as President of this
16 Bar, I have more than a hundred
17 volunteers that I can't place on
18 Bar committees, because I have too
19 many people asking to serve, but
20 it's like that in everything we
21 do.

22 MR. DURANT: Mr. Ross, how large is your firm?

23 MR. ROSS: I have thirty nine lawyers.
24

1 MR. DURANT: Okay. How, when you, just roughly,
2 I mean, how many cases are in your
3 firm?
4 MR. ROSS: I can tell you exactly. Our commitment
5 from our firm is to take...
6 MR. DURANT: Not pro bono. I'm talking about
7 your total client list?
8 MR. ROSS: Total client list. I couldn't tell
9 you. I have no idea.
10 MR. DURANT: Any ballpark figure?
11 MR. ROSS: Number of clients? No, I couldn't
12 tell you.
13 MR. DURANT: If the county you supervise, if
14 you do at all, the different attorneys
15 in your office, do you have case
16 review sessions to talk amongst
17 yourselves in terms of ideas for
18 clients and approaches for particular
19 kinds of cases? How do you do it?
20 MR. ROSS: Well, we have both a principal
21 attorney who's responsible for a
22 file and working attorneys and it's
23 based upon, we have two departments.
24

1 We have a commercial department
2 and a litigation department. The
3 chairmen of those departments generally
4 assign the work and its assigned
5 to the level that we think the case
6 warrants in terms of experience
7 and capability.

8 MR. DURANT: How much involvement do they have
9 in the actual case, in terms of
10 knowing the details of the case
11 and whatever, in terms of the...

12 MR. ROSS: Well, in our litigation area, generally
13 they know quite a bit about it.
14 They will have reviewed the file
15 or at least a summary of the file.

16 MR. DURANT: With the person who is also on the
17 front line, sort of doing the trial
18 work?

19 MR. ROSS: Well, perhaps. It depends on whether it
20 comes to the firm or comes to an
21 individual.

22 MR. DURANT: And is that kind of consultation
23 going on fairly constantly, I mean...

24

1 MR. ROSS: It's going on regularly. We have
2 a fairly extensive training program
3 for our younger lawyers and do what
4 we euphemistically call green feeding.
5 I have two young lawyers who are
6 responsible to me for training.
7 I read green carbon paper copies
8 of everything they do, weekly.
9 It's like being a school marm, but
10 you have to teach them how to write
11 and you have to find out what they're
12 doing.

13 MR. DURANT: And is there any point in the process
14 when that green sheeting, if you
15 will, doesn't take place anymore
16 or is that even within the peers,
17 if you will, not so much in the
18 green sheets but in terms of working
19 on cases and knowing what's going
20 to happen.

21 MR. ROSS: After two or three years, it's usually
22 not done on a regular basis, but
23 in our commercial department, copies
24

1 of everything that is done is circulated
2 among department members so they
3 know what's going on and we have
4 a process where any complicated
5 document, will, trust or contract,
6 goes out of our office, is reviewed
7 by at least two lawyers.

8 MR. MENDEZ: Do you use time sheets?

9 MR. ROSS: Yes.

10 MR. MENDEZ: How long have you had them in effect?

11 MR. ROSS: Maybe ten years, in varying forms.

12 MR. MENDEZ: Could you get along without them?

13 MR. ROSS: Now that we have the computer, yes.

14 MR. MENDEZ: The computer does time sheet...

15 MR. ROSS: Oh, sure.

16 MR. MENDEZ: The equivalent of time sheets.

17 MR. ROSS: Absolutely. It's made us very profitable,
18 because it forces us to write down
19 what we do for people.

20 MR. DURANT: And do you include your pro bono
21 work in that?

22 MR. ROSS: Yes, we do, as a management tool.

23 MR. MENDEZ: When you say as a management tool,
24

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1 what do you mean? A management
2 tool for pro bono, I'm specifically
3 referring to.

4 MR. ROSS: I want to know because it's part
5 of our lawyer's review and part
6 of their compensation, whether they're
7 a senior partner or not, what they
8 contribute back to the community
9 and to the Bar, where they serve,
10 Our evaluation forms for our lawyers
11 include a section on civic, charitable
12 and Bar Association activities and
13 if you're not involved and you don't
14 give the time, then you haven't
15 made the grade, so it's important
16 to us to know how we spend our time.

17 MR. DURANT: You give some credit for those kinds,
18 I assume?

19 MR. ROSS: Absolutely.

20 MR. MENDEZ: Do you make a distinction between
21 pro bono activities and other civic
22 activities, or is that all lumped
23 together?
24

1 MR. ROSS: We break it out but we make no distinction
2 on it. We leave it to the lawyers
3 to choose where they think their
4 time should go but our firm policy
5 is that we, as a firm, will support
6 pro bono and take a certain number
7 of cases at a time.

8 MR. MENDEZ: And take two a year.

9 MR. ROSS: We take two cases a month and have
10 a standing, active case load of
11 twenty-four in the office at all
12 times.

13 MR. MENDEZ: We received some materials yesterday.
14 Essentially that's family matters
15 or are you part of...I notice there
16 was a certain percentage which
17 were wills and trusts. What is...

18 MR. ROSS: We've done some of each. It's mostly
19 family matters. I spent yesterday
20 afternoon in the superior court
21 in Nashua, on a custody matter for
22 a young woman. Doing that kind
23 of thing for pro bono.

24

1 MR. MENDEZ: I wish to compliment the New Hampshire
2 Bar. I think that you're doing
3 a really good job.
4 MR. ROSS: Thank you.
5 MR. DURANT: One last question. The multi-attorney
6 involvement in the particular files,
7 the green sheeting or whatever,
8 you obviously don't feel that that
9 violates the attorney/client privilege?
10 MR. ROSS: It's the same attorney. Under our
11 code of ethics, anything I know,
12 if you're my partner, so do you.
13 MR. DURANT: That's fine. Okay. Thank you.
14 MR. ROSS: My pleasure.
15 MR. DURANT: At this point in the agenda we have
16 a report from our President, Mr.
17 Jim Wentzel.
18 MR. WENTZEL: Thank you, Mr. Chairman, members
19 of the Board. I have a couple matters,
20 the first of which Mr. Uddo has
21 graciously said that he would give
22 a summary of this testimony on behalf
23 of the corporation.
24

1 MR. UDDO:

2 I attended the meeting of the ABA
3 Standing Committee on Legal Aid
4 and Indigent Defendants on September
5 27th, 1985 in Chicago and the Committee,
6 at that time, was hearing public
7 comment on the proposed standards
8 for providers of civil legal services
9 to the poor. As Mr. Wentzel said
10 I went on behalf of the Corporation
11 to express some concerns that the
12 Corporation had and some that I
13 had individually. There are a few
14 basic points that I made in the
15 testimony before the Committee which
16 I'll summarize. The first point
17 that I made that I think is an important
18 point is the question of whether
19 or not we need separate standards,
20 at this time, especially in light
21 of the fact that the ABA has just
22 recently spent a good deal of effort
23 developing the new model rules and
24 my point to the Committee was that

1 those model rules are pretty good
2 and for those states that haven't
3 adopted the model rule as yet, the
4 model code is also a pretty good
5 document describing the responsibility,
6 the professional responsibility
7 of attorneys and I suggested to
8 the Committee that not enough effort
9 had gone into considering whether
10 a separate set of standards was
11 really necessary. Then three specific
12 points that I made on the substance
13 of the standards that the Corporation
14 was concerned about; first that
15 there were some provisions in the
16 proposed standards that I thought
17 and the Corporation thought would
18 discourage Pro Bono involvement
19 and impose certain rather burdensome
20 regulations on organizations that
21 delivered legal services outside
22 of the LSC funded grantees and that,
23 at this stage of the development
24

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1 of the mixed delivery systems that
2 we have, that that would be counter-
3 productive to adopt a set of standards
4 that would discourage Pro Bono involvement.
5 The second substantive criticism
6 that I made was that a great deal
7 of the language in the standards
8 and in the comments to the standards
9 perpetuated what I thought was a
10 very unhealthy attitude for a document
11 purporting to define the professional
12 responsibility of a lawyer. I agree
13 with Mr. Ross that the attorney/client
14 relationship is an extremely important
15 relationship and it's one that the
16 profession has traditionally taken
17 very seriously and I found that
18 the standards threaten that traditional
19 relationship by, in many cases,
20 referring to the lawyer's obligation
21 or responsibility to a client community
22 and in some cases, actually pitted
23 the interest of the community against

24

1 the interest of the individual client
2 and I didn't think that that was
3 a healthy addition to the traditional
4 understanding of the lawyer/client
5 relationship and I articulated some
6 criticism about that. Thirdly,
7 I raised some concern that the Corporation
8 had and that I agreed with that
9 there was also some language both
10 in the standards and in the comments
11 that impeded or undercut the legitimate
12 concern of the Corporation or the
13 obligation of the Corporation in
14 monitoring its grantees and suggesting
15 that the responsibility of the Corporation
16 was not an important responsibility
17 when yet it is a statutory obligation
18 that we have and I suggested to
19 the Committee that that had not been
20 carefully enough thought through.
21 Those were the three major substantive
22 criticisms that I made. I indicated
23 that there were some other concerns
24

1 that we had that we were going to
2 supply in writing and I might say,
3 for the Board's information, that
4 I thought the Committee was an extremely
5 receptive Committee. It was a Committee
6 of obviously very interested and
7 dedicated men who had spent a good
8 deal of time on this question and
9 I found them very receptive to the
10 suggestions and to the discussion
11 that we had and I think that
12 they are interested in on-going
13 dialogue to try to develop a clear
14 attitude, A, about whether standards
15 are necessary at this time and B,
16 if so, what they should really look
17 like.

18 MR. DURANT:

Mr. President, I have a resolution
19 I'd like to offer relative to Mr.
20 Uddo's testimony, but since it's
21 being typed, I don't have it yet.
22 I can give that to you later.

23 MR. WENTZEL:

Okay, I'll just go forward at this
24

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1 point. Recently the Controller
2 General's Office released its report
3 entitled 'The Establishment of Alternative
4 Corporations By Selected Legal Services
5 Corporation of Grant Recipients.'

6 I've asked the secretary of the
7 Corporation to present to the Board,
8 a summary of that report. Dennis.

9 MR. DAUGHERTY:

10 Thank you. You should have before
11 you, a copy of the report of August
12 22nd, issued by the General Accounting
13 Office in response to Senators Oren
14 Hatch and Jeremiah Denton, along
15 with a brief summary that I prepared
16 for your other report. This grew
17 out of the 1983 oversight hearings
18 of that committee which examined
19 a variety of legally questionable
20 activities of prior corporation
21 management in the early '80s aimed
22 at resisting restrictions on an
23 aggressive, politically aggressive
24 legal services program. The senators

1 were concerned that alternative
2 or mirror corporations were being
3 promoted by the corporation as a
4 means of evading congressional restrictions
5 on Legal Services' activities or
6 for generating profit and they asked
7 GAO to specifically look at three
8 such corporations. GAO noted that
9 indeed the corporation had encouraged
10 its grantees to explore alternative
11 delivery structures including mirror
12 or clone corporations but it did
13 not attempt to determine how many
14 such alternative corporations were
15 established at that time, or whether
16 those that they examined were typical.
17 They looked at three specific ones
18 that the senators had identified,
19 Down East Law Offices established
20 by Pine Tree Legal Assistance in
21 Maine, the Texas Rural Legal Foundation,
22 established by Texas Rural Legal
23 Aid and the South Central Connecticut
24

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1 Legal Services, which was established
2 by the New Haven Legal Assistance
3 Program, in fact, with the intention
4 that South Central become a recipient
5 instead of New Haven. It found
6 that in two of three instances,
7 that the corporations were used
8 to circumvent or effectively used
9 to circumvent restrictions in the
10 LSC Act and Regulations. It noted
11 that there was no restriction in
12 the act or regulations on the establishment
13 of such corporations per se, but
14 that they could not be used for
15 funds so transferred could not be
16 used in violation of the act of
17 regulations. They found that the
18 Down East Law Offices were, in fact,
19 did not present that problem. They
20 were, in fact, a separate corporation
21 with a separate board of directors,
22 that it served a legitimate corporate
23 purpose of Pine Tree in that it
24

1 enabled them to reduce expenses
2 at a time that their LFC income
3 was going to drop. It enabled them
4 to dispose of surplus space that
5 they were no longer going to have
6 need of and allowed for the continuation
7 of cases by attorneys that were
8 experienced in handling those cases.
9 In the other two cases, however,
10 it did not find that there really
11 was a separate identity established.
12 They, in fact, the new corporations
13 were, in fact, the alter egos of
14 the parent organizations and were
15 used to avoid the policies of the
16 corporation and the Congress. In
17 the case of Texas Rural Legal Assistance,
18 the concern was especially that
19 the fund balance policies that had
20 been established were being circumvented.
21 GAO. as long ago as August 1980,
22 had expressed concern that LSC grantees
23 had been accumulating millions of

24

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1 dollars that were not being used
2 to provide current client services
3 and that became a particular concern
4 of your predecessors in 1982, when
5 they found that while many programs
6 were closing offices, turning away
7 clients, that others had fund balances
8 as large as fifty percent of their
9 grants. We imposed a policy at
10 that time, that would allow the
11 corporation to recover excess fund
12 balances and redistribute it to
13 programs in need. GAO reports that
14 Texas Rural evaded that policy.
15 It was able to, for the creation
16 of a foundation, put Seven Hundred
17 and Thirty-Six Thousand Dollars
18 in the bank, of which Three Hundred
19 and Two Thousand still remains along
20 with another Two Hundred Thousand
21 Dollars worth of interest that has
22 not yet been used, 1981 funds that
23 have not yet been used to provide
24

1 service to clients. GAO felt that
2 it was...that the corporation should
3 treat Texas Rural Legal Foundation
4 and Texas Rural Legal Assistance
5 as, in fact, one organization, look
6 at their combined fund balance and
7 impose our policy and among the
8 reasons that they concluded that
9 was the fact that they had the same
10 staff; they used the same facilities;
11 they had the same management. The
12 executive director at Texas Rural
13 served as the foundation's president.
14 He presided at their board meetings,
15 was a member of a three-man committee
16 that decided which cases would be
17 undertaken. The foundation's records
18 were kept at TRLA's offices in two
19 file drawers. In fact, the foundation's
20 articles of incorporation provided
21 that they and its by-laws could
22 not be changed without TRLS's approval.
23 The GAO found that, in fact, using
24

1 the principles of the alter-ego
2 doctrine that we should treat those
3 documents as one and the same and
4 should impose and enforce our fund
5 balance policy with respect to the
6 Texas Rural Legal Foundation. They
7 also expressed concern about the
8 fact that there seemed to be no
9 time limit on the performance of
10 the sub-grant agreement and noted
11 that the foundation, in fact, with
12 a revolving litigation fund, advancing
13 fees to attorneys to pursue cases
14 that it was anticipated would produce
15 attorneys' fees that could be returned
16 to the fund, that that would be
17 in violation of the private attorney
18 involvement regulations on the books
19 since 1984.

20 MR. MENDEZ: Dennis. May I, Mr. Chairman.

21 MR. DURANT: Surely, surely.

22 MR. MENDEZ: Hortencia and I are particularly
23 concerned about Texas Rural Legal
24

1 Services and in that regard, we
2 wanted to know if Texas Rural Legal
3 Service and I specifically want
4 to know, were they given an opportunity
5 to comment about the GAO reports?

6 MR. DAUGHERTY: They were given an opportunity to
7 comment. Their comments are attached
8 to the document that you have.
9 Those comments were reviewed by
10 GAL and most parts were rejected.
11 GAL found that the fact that they
12 had a separate board of directors
13 was not all that pertinent, since
14 all the major decisions were made
15 by this administrative committee.

16 MR. MENDEZ: Dennis, before we leave today, I
17 think it would be helpful to both
18 Hortencia and myself if we could
19 meet with you and go through the
20 report to sort of see what all it
21 says, if you would, please.

22 MR. DAUGHERTY: The other grantee that was examined
23 was in New Haven, Connecticut, where,
24

1 I mentioned earlier, New Haven Legal
2 Assistance created a new corporation,
3 South Central Legal Services, through
4 a successor and interest agreement,
5 arranged for that organization to
6 become the LSC grantee for New Haven.
7 It was the concern of GAO that the
8 LSC act needed to be enforced with
9 respect to New Haven Legal Assistance
10 particularly section 1010(c) of
11 the act that limits one's discretion
12 in using private funds, to those
13 purposes that are not prohibited
14 by the LSC act. In particular there
15 was concern that some of the New
16 Haven funds were useful organizing
17 activities that were prohibited
18 by the LSC act and again it found
19 that the organization in New Haven
20 really was not a separate, in fact,
21 a separate corporation. It noted
22 that 70% of the grant that we provide
23 South Central is, in fact, in turn
24

1 contracted to New Haven Legal Assistance,
2 to render service to clients. It
3 found that they have the same executive
4 director. That they albeit, that
5 they share facilities, albeit, they
6 had a joint collective bargaining
7 agreement. Thirteen of seventeen
8 of their board meetings have been
9 held in common and two thirds of
10 the board membership of South Central
11 overlaps with membership with New
12 Haven and that's not accidental
13 in that the executive director wrote
14 the appointing organizations and
15 requested that they appoint the
16 same individuals.

17 MR. MENDEZ:

17 Now, I understand that you're not
18 an accountant, but new proposed
19 functional guides and new proposed
20 audit and accounting guides, would
21 require corporations that are somewhat
22 similar to this, to incorporate
23 themselves together and file a consolidated
24

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1 financial agreement, now I shouldn't
2 say corporate, but they would have
3 to file a consolidated financial
4 statement. Is that a fair statement
5 or do you know?

6 MR. DAUGHERTY: I have not reviewed the proposed
7 audit and accounting guide.

8 MR. MENDEZ: Fred, is that correct?

9 FRED--- Yes, it is, sir.

10 MR. DAUGHERTY: In his reply to GAO, Mr. Opset (ph)
11 pointed out that many of its recom-
12 mendations were, in fact, carried
13 out through the sub-grant regulations
14 that the corporation adopted in
15 1983. Any such transfer of funds
16 in the future is subject to LSC
17 approval, is subject to a specific
18 time limit of a year before it's
19 subject to reconsideration and the
20 fund balances will be considered
21 jointly, but Mr. Opset noted also
22 that the corporation agreed with
23 the GAO's findings and would, when

24

1 the facts warrant, apply the alter
2 ego doctrine to determine the legal
3 obligations of the mirror or alternative
4 corporation to observe LSC Act in
5 terms of the grant, etc. We have
6 been in the process of monitoring
7 both Texas Rural and South Central
8 Connecticut with somewhat different
9 experiences. Texas Rural rejecting...
10 telling us that we needed to make
11 a separate approach to the Texas
12 Rural Legal Foundation, adhering
13 to the position that they took here,
14 that it was, in fact, separate.
15 South Central and New Haven were
16 both very cooperative with the monitoring
17 agreement, monitoring effort and
18 we'll soon have a report on their
19 joint activities.

20 MR. WENTZEL:

Thank you, Dennis. Are there any
other questions?

22 MR. MENDEZ:

Mr. President, I think I would like
to read into the record, one item

24

1 concerning this that really disturbs
2 me and I just want to make sure
3 that the record has it. It's on
4 the first page of the GAO report
5 to Mr. Hatch, Honorable Orrin Hatch
6 and Honorable Jeremiah Denton, United
7 States Senate, last paragraph of
8 the first page. It says, 'GAO recommends
9 that LSC apply restrictions in the
10 LSC Act and regulations to the grant
11 recipients and alternative corporations
12 in Texas and Connecticut as though
13 they were single entities because,
14 since early 1982, they have maintained
15 such close relationships and such
16 an identity of interest that, in
17 GAO's view they are not separate
18 entities for the purposes of compliance
19 with the LSC Act. Thank you. I
20 just want that in the record.

21 MR. WENTZEL

Thank you.

22 MS. BERNSTEIN:

Could I add to that, that since
23 GAO did not look at more than these
24

1 three entities that I would concur
2 with what you said, but overall
3 that I think that this should be
4 our policy, that those fit the same
5 criteria.

6 MR. MENDEZ: Well, I wanted this in the record,
7 and I'll have a motion concerning
8 this whole issue a little bit later.

9 MR. WENTZEL: Are there any other questions?

10 MR. WALLACE: I was consulting with the Chairman,
11 and I may have missed his point.
12 What is our current policy on recovering
13 the fund balances? You talked
14 about what our policy was in 1980.
15 Have we got a current policy?

16 MR. DAUGHERTY: Yes, sir, you have a regulation
17 now, on the subject of fund balances.
18 It provides that we will automatically
19 recover fund balances in excess
20 of 10% of the upcoming grant unless
21 a waiver is...unless the grantee
22 can satisfy the corporation that
23 a waiver is justified up to a maximum

24

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1 of 25%.

2 MR. WALLACE: Has the regulation ever been enforced?

3 MR. DAUGHERTY: I'll have to turn to others on that.

4 It has been the matter...when initially

5 adopted, it's enforcement the first

6 year was impeded by law suit but

7 I don't believe that it's currently

8 in effect. Perhap...

9 MS. FRANCIS: My name is Gail Francis, and our

10 office, through the director of

11 field services, yes, we do enforce

12 that regulation.

13 MR. WALLACE: Okay, that's fine. Thank you.

14 I thought there'd been a law suit

15 at some point. I just wasn't sure

16 what the status was these days.

17 Thank you.

18 MR. WENTZEL Are there any other questions?

19 Dennis, thank you very much. I

20 just want to say something publicly.

21 The short time that I've been with

22 the corporation, I have appreciated

23 your support immensely. If you

24

1 don't know, Dennis is leaving the
2 corporation for another position
3 and you've been a fine support to
4 me and I appreciate it very much.
5 Thank you very much.

6 MR. DURANT:

7 Dennis, with your leaving, I'd like
8 to offer a resolution of the Board
9 and let me read it as follows:
10 'Whereas Michael Dennis Daugherty
11 has provided leadership, dedication
12 and loyalty, during a difficult period
13 of time at the Legal Services Corporation
14 and whereas Michael Dennis Daugherty
15 has faithfully served the Legal
16 Services Corporation in many responsible
17 positions for over the past two
18 years and whereas Michael Dennis
19 Daugherty has capably served the
20 Board of Directors as Secretary
21 of the Corporation, and whereas
22 Michael Dennis Daugherty has contributed
23 greatly toward a more effective
24 delivery of legal services to the

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1 poor, now therefore, be it resolved
2 that on this 10th day of October,
3 1985, the full board of directors
4 of the Legal Services Corporation
5 expresses its deep appreciation
6 and gratitude for exemplary service
7 rendered to this board of directors
8 and the Legal Services Corporation
9 by Michael Dennis Daugherty and
10 extends best wishes for health and
11 success in his future endeavors.'

12 I would like a motion to adopt that.

13 Members: (Make motion-in unison)

14 MR. DURANT: Do I have a second.

15 Members: (Second)

16 MR. DURANT: Any discussion?

17 MR. VALOIS: Today's the 11th.

18 (Laughter)

19 MR. DURANT: Any other discussion? All those
20 in favor signify by saying Aye.

21 Members: Aye.

22 MR. DURANT: Opposed. Thank you, Dennis, very
23 much.

24

1 (Applause)

2 MR. DURANT: The new secretary of the Board is
3 going to be Mr. Tim Baker, from
4 the General Counsel's Office. Mr.
5 Baker served faithfully as counsel
6 to the Presidential Search Committee.
7 Mr. Baker, we welcome you aboard
8 in this new capacity and hope that
9 the president will give you a raise
10 because you'll need it.

11 MR. BAKER: I hope so too.

12 MR. WENTZEL: Tough shoes to follow.

13 MR. DURANT: Very tough. Do you have other things?

14 MR. WENTZEL: Nothing further.

15 MR. DURANT: The next item on the agenda is a
16 resolution I want to propose, but
17 at this point, with the permission
18 of the Board, I'd like to skip that,
19 for a moment while I look at the
20 language and move onto a...and I'll
21 come back to that and move onto
22 the report from the Operation and
23 Regulations Committee. Mr. Wallace.

24

1 MR. WALLACE: I'll be happy to report. I see
2 Mr. Roche has a microphone and I
3 know exactly what he's going to
4 ask. You want to give him a chance
5 to ask it, Mr. President?

6 MR. DURANT: Well, before I do that, the president
7 of the Massachusetts Bar is here
8 and, Michael I'm going to let you
9 address, since I've read part of
10 what you're going to say, it's going
11 to fit more as soon as Mr. Wallace
12 gives his report, and then you're
13 on. I haven't forgotten you.

14 MR. WALLACE: Do you want me to go or do you want
15 to let Terry ask...

16 MR. DURANT: Where is Terry?

17 MR. WALLACE: He's right there.

18 MR. DURANT: I didn't see you. You were sitting
19 down. Yes, Terry.

20 MR. ROCHE: I didn't get the computer in the
21 mail and I didn't get the answer
22 to my second question, in the president's
23 report.
24

1 Member: I'm getting that checked out, Terry.
2 MR. DURANT: Mr. Wallace.
3 MR. WALLACE: Thank you, Mr. Chairman. On behalf
4 of the Operations and Regulations
5 Committee, I am happy to present
6 a proposed regulation to the Board
7 for its final consideration and
8 adoption, at this time. This is
9 part 16:14 of Bar regulations concerning
10 private attorney involvement. Mr. Bovard
11 has distributed to members of the
12 Board a final copy of our Committee's
13 report, including yesterday's amendments
14 and I said at the close of my meeting
15 yesterday and I'll say it again
16 here, my Committee deeply appreciates
17 the assistance of New Hampshire
18 Legal Assistance Corporation in
19 providing its facilities and its
20 machinery in getting this ready
21 so the Board could know what it
22 is that it's voting on today. You've
23 been most kind and we appreciate
24

1 that. This resolution... this regulation
2 has been before the Board once before
3 and was approved by the Board and
4 it was sent out for further comment
5 because of the substantial changes
6 that had been made. We received
7 quite a few comments and unlike
8 our prior practice we found it necessary
9 to make some further changes as
10 a result of those comments. I am
11 not going to go over this regulation
12 in great detail. I am going to
13 point out the areas in which my
14 Committee changed this regulation
15 yesterday, from that which had been
16 previously approved by the Board.
17 On page two of the draft, that Mr.
18 Bovard has provided for us, there's
19 a new subsection B, under 1614.1.
20 It's been noted in Salt Lake City.
21 We have a whole regulations on private
22 attorneys that does not define what
23 private attorneys are. We have
24

1 now done that. We have also added,
2 as part of that definition, or at
3 least in the same subsection as
4 that definition, a measure designed
5 to address the revolving door problem
6 that may exist as some grantees
7 attempt to regulate, attempt to
8 comply with PAI. There have been
9 reports and concerns from the monitoring
10 office that staff attorneys leave
11 the staff become private attorneys
12 and immediately start handling the
13 same cases with the same money.
14 That's not what we're trying to
15 do. We are not certain of the extent
16 of this program problem. In order
17 to get it into effect by the end
18 of the year, which we need to do,
19 to make it in effect for 1986, my
20 Committee has recommended that we
21 simply incorporate the provisions
22 of the Ethics and Government Act
23 which is a scheme that has been
24

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4 HAMPTON STREET

CONCORD, NEW HAMPSHIRE 03301

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1 carefully considered by Congress
2 and in such circumstances where
3 those provisions would be violated,
4 then the contacting out of those
5 cases to private attorneys would
6 not be credited toward PAI.. We
7 are not saying that a former staff
8 attorney cannot take a case. What
9 we are saying is that any funds
10 advanced to that private attorney,
11 former staff attorney, in circumstances
12 that would violate the Ethics and
13 Government Act cannot be credited
14 towards the 12½% requirement. What
15 we are also going to recommend is
16 that we immediately republish this
17 single section of the regulations.
18 It will go into effect, the whole
19 regulation will go into effect,
20 but we will republish this single
21 section, make comment on it and
22 determine the extent to which it
23 needs to be modified. This is a
24

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1 quick job, doing the best we can
2 to address a problem which our monitoring
3 office tells us exists. We know
4 we need to do a better job and we
5 will be taking time to do that,
6 over the next couple of months.
7 With regard to this section, I believe
8 Mrs. Bernstein has what I would
9 regard as a technical amendment
10 that she wants to offer and I'll
11 let her bring that up after I've
12 made my report. On page three of
13 the regulation, we deal with joint
14 ventures, under section 1614.2.
15 This is a technical amendment, I
16 think, as it worked out. We had
17 previously had four requirements
18 for approval of joint ventures.
19 The first one was that the Office
20 of Field Services had to approve
21 it. We have moved that up into
22 the main clause, saying that all
23 joint ventures must be approved by
24

1 OFS and these are the three circumstances
2 that must be met in order to get
3 approval and they're the same circumstances
4 that were in the previous draft.
5 We have added one provision, which
6 I think is a clarifying provision
7 in what is now subsection (b) (1).
8 We have stated what the expenditure
9 requirements for a joint venture
10 would be, but we have specified
11 that this expenditure requirement
12 is subject to waiver, under the
13 waiver sections, just like any other
14 expenditure requirement in the appropriate
15 circumstances. The next change
16 and this is a substantial change
17 as well, is on page 13, in section
18 1614.5 of the regulations. This
19 has to do with revolving litigation
20 funds which have been prohibited
21 under the regulations currently
22 in effect. We have tried to rewrite
23 this to make it understandable as
24

1 to what it is we are trying to prohibit.
2 What we are trying to prohibit is
3 systematic violations of our fee
4 generating case prohibitions found
5 in part 1609 of our regulations.
6 We have written that into our definition
7 to make clear that this is what
8 we are doing. It is always prohibited
9 to take a fee generating case, and
10 that is any case that you reasonably
11 expect is going to produce a fee
12 as defined in 1609.2. What revolving
13 litigation funds are are a systematic
14 attempt to encourage the taking
15 of fee generating funds, fee generating
16 cases. I believe the GAO report
17 Mr. Daugherty has just read has
18 indicated that this has been found
19 to be an actual problem in at least
20 one of those programs and it may
21 well be a problem elsewhere. Because
22 it is a problem, we are carefully
23 defining here what the problem is
24

1 and we're saying to cut it out.
2 What we have also done is to clarify
3 that while this does not prohibit
4 the advancement of cost; this does
5 not prohibit the advancement of
6 expenses or fees in cases where
7 that would be appropriate, because
8 you don't think it's going to be
9 a fee generating case. It also
10 makes it clear that if it turns
11 out to be a fee generating case,
12 that there is an attorney's fee
13 awarded, that the Corporation may
14 recover such funds as it has advanced,
15 in that case. That's what we've
16 done in 1614.5. We've made only
17 one amendment in the waiver section,
18 which is 1614.6 and that appears
19 on page 16 of the regulations in
20 subsection (c)(6). We have simply
21 collapsed some of the language in
22 the existing regulation, the existing
23 waiver to make clear that what we're
24

1 looking at is circumstances in which
2 by whatever means, whether through
3 the assistance of the private Bar
4 or through very effective and efficient
5 operation in house, a program is
6 handling 12½% of it's cases but
7 not spending 12½% of its funds.
8 If that concrete standard is met,
9 and if that recipient board of directors
10 concludes that it would not be economical
11 and efficient to spend more money
12 under those circumstances and if
13 OFS approves that, because that's
14 the first thing you see here, in
15 subsection C, than a partial waiver
16 would be available. So we're not
17 really changing the intent of that
18 section. It is largely a drafting
19 of condensation and clarification.
20 The final change is on page 19,
21 where we have added a subsection
22 B, to the section on failure to
23 comply. We state the Board's clear
24

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1 intention that withholding of funds
2 under this section, shall not be
3 construed as termination of financial
4 assistance or denial of refunding;
5 that we consider this to be simply
6 a technical matter of recovering
7 costs from people who did not comply
8 with this regulation. We do not
9 deem it to be withholding termination.
10 Now, that hits, I think, all of
11 the changes that were made by my
12 Committee to the draft that was
13 made, that was approved in Salt
14 Lake. As I say, I understand that
15 Mrs. Bernstein has an amendment
16 to offer. I am going, on behalf
17 of my Committee, to move the adoption
18 of the report. I don't think that
19 requires a second but I'll shut
20 up and defer to the Chairman of
21 the Board.

22 MR. DURANT: Mrs. Bernstein, do you have a amendment
23 or technical correction to make?
24

1 MS. BERNSTEIN: I think it's more in the terms of
2 a technical correction because the
3 discussion yesterday about private
4 attorneys, staff attorneys, definitions
5 applicable, ability of the Ethics
6 and Government Act, was very clear
7 that what we were talking about
8 was applying that if a grantee or
9 a recipient would be under the or
10 subject to the Ethics and Government
11 Act, and either in the wording that
12 was transmitted to Tom Bovard or
13 in the typing or something that
14 we have right now in section D,
15 third line from the bottom, that
16 ..well, I'll start the fourth line
17 from the bottom, would violate the
18 provisions of the Ethics and Government
19 Act, 18 U.S.C. 207, if the corporation
20 were a federal agency and I think
21 that the entire discussion and the
22 import of what we went through yesterday
23 in order to adopt this went to the
24

1 recipients and grantees so I would
2 just suggest that we change the
3 word, if the recipients and grantees
4 were federal agencies, to comport
5 with what our discussion was, because
6 obviously I don't mind the corporation
7 being subject to the Ethics and
8 Government Act but we are only
9 doing the applicability in a narrow
10 sense regarding the expenditure
11 of funds that would be attributable
12 to PAI expenses and obviously that
13 would have to relate to grantees
14 and recipients, so it's really a
15 technical amendment, but I think
16 we should get it right.

17 MR. WALLACE:

Mr. Chairman, as the drafter of
18 that amendment, Mrs. Bernstein has
19 accurately stated my intent and
20 it wasn't a typing mess up; it was
21 my mess up because I drafted it.

22 MR. DURANT:

Should it read, are you saying,
23 if the corporation...
24

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4 HAMPTON STREET
CONCORD, NEW HAMPSHIRE 03301
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1 MR. WALLACE: No. Strike corporation because
2 we're not...

3 MS. BERNSTEIN: We don't, unfortunately we're not
4 required to spend 12½% of our funding
5 towards PAI, but the recipients
6 and grantees, I think it's important
7 to include both, because recipients
8 can have a technical meaning in
9 other areas, so I would just say,
10 be redundant...

11 MR. DURANT: So you're saying it should say,
12 if the recipients and grantees were...

13 MS. BERNSTEIN: Were federal agencies.

14 MR. WALLACE: Now, this is a Committee report.
15 I don't think I can accept a friendly
16 amendment but I am happy to second
17 Mrs. Bernstein's motion.

18 MR. DURANT: Well, let's get this in order.
19 Have you made a motion for us to
20 adopt the...

21 MR. WALLACE: Yes, I did. I moved on behalf of
22 my committee to adopt the report.

23 MS. BERNSTEIN: I could second it, as a....
24

1 MR. WALLACE: It doesn't need a second. What
2 Miss Bernstein has done is moved
3 to amend the main motion on the
4 floor and I just seconded it.

5 MR. DURANT: All right, any discussion on the
6 amendment? All those in favor then,
7 signify by saying Aye.

8 Members: Aye.

9 MR. DURANT: Opposed. Mr. Wallace, anything
10 further.

11 MR. WALLACE: I have made my report, it has been
12 amended. I have nothing further
13 to say.

14 MR. DURANT: Well, Mr. Mendez has just raised
15 a question. In that motion we just
16 passed...oh, we just amended it.
17 Now we've got to do the main one.
18 Mr. Smegal.

19 MR. SMEGAL: Mr. Durant, I hesitate to step in
20 with more technical amendments but
21 I'm going to do that anyway. We
22 did two things yesterday. We rewrote...

23 MR. DURANT: There's no question that he who
24

1 hesitates on this is lost. Go ahead.

2 MR. SMEGAL: If you will hear me out, I've got
3 three comments. I'm starting on
4 page 16 and I want to point to subsection,
5 waiver, subsection six, under partial
6 waiver of subsection (c)(6). Also,
7 which was rewritten as a result
8 of our Committee meeting yesterday.
9 Also subsection D, which we were
10 just amending was the subject of
11 our discussions and it seems to
12 me we would help ourselves greatly
13 if, up in the beginning of this
14 section, we did something as simple
15 as...

16 MR. MENDEZ: What page are you on?

17 MR. SMEGAL: So far I'm on no page. I'm just
18 going to make a general statement.
19 We would simplify our life greatly,
20 if at the beginning of this whole
21 section, 1614, under purposes, we
22 had a term that we were talking
23 about all the way through here and
24

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CONCORD, NEW HAMPSHIRE 03301

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1 it seems to me the term is PAI requirement
2 and, in fact, in subsection C of
3 1614.1, that word appears because
4 of the Corporation's PAI requirement
5 and I would propose that up in subsection
6 A of 1614.1, at the end, and when
7 I say the end, I mean the end of
8 what remains before everything else
9 is stricken, the language is, the
10 last sentence of subsection A, reads,
11 'Funds received from the Corporation,
12 as a one time special grant should
13 not be considered in determining
14 the private attorney involvement,
15 PAI requirement.' I would propose
16 we change that sentence ever so
17 slightly to bring, at that point,
18 the term that we're going to use
19 though this document, so I would
20 change that sentence to read as
21 follows. 'Funds received from the
22 Corporation as a one time special
23 grant shall not be considered in
24

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1 determining...' strike the, and
2 put in a 'recipients'...continuing,
3 'Private attorney involvement.'
4 And then put in, 'Hereinafter sometimes
5 referred to as PAI requirements.'
6 Now that's consistent with what
7 we have in subsection C of section
8 I. I would then use that language
9 in subsection D, just prior...I've
10 got to bring this in at three places.
11 That's the reason I've done all
12 this. I'm proposing to put a definition,
13 put PAI requirement as the term
14 we're going to use. Then I'm going
15 to propose we stick it into subsection
16 D of section I and also into waiver,
17 subsection six, with language that
18 I think simplifies and makes it
19 a lot easier to understand what
20 we've done there. All right, have
21 you got the first one?

22 MR. MENDEZ: All right. Please go back through
23 it.

24

1 MR. SMEGAL: All right. I would propose we amend
2 that last sentence of subsection
3 A of 1614.1 to read, 'Funds received
4 from the Corporation as one time
5 special grants, shall not be considered
6 in determining a recipient's private
7 attorney involvement, hereinafter
8 sometimes referred to as PAI requirement.'

9 MR. BOVARD: May I make a suggestion at this
10 point?

11 MR. WALLACE: This is Mr. Tom Bovard, Assistant
12 General Counsel, who has been responsible
13 for assisting my committee in the
14 drafting of this regulation.

15 MR. BOVARD: There are two things that are used
16 as abbreviations. Well, there's
17 one..PAI is used as an abbreviation
18 all through the regulation and before
19 Mr. . Smegal's amendment, this was
20 the point at which we defined that.
21 The second thing is now we're defining
22 PAI requirement, so I would suggest
23 that the hereinafter referred to
24

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1 as clause, occur after the word
2 requirement, for the reference to
3 PAI requirement, and that the PAI
4 remain after private attorney involvement.
5 I think that would be clear.

6 MR. SMEGAL: Oh, I see, okay, sure. That's fine.

7 MR. BOVARD: So it would read, after the word
8 require...we'd strike the s in requirement
9 and then you'd have, 'Hereinafter
10 referred to as,' and let me get
11 your wording on that.

12 MR. SMEGAL: I'd say, 'Hereinafter sometimes
13 referred to as PAI requirement.'
14 And I'm picking up on what you already
15 have in subsection C, which is PAI
16 requirement.

17 MS. BERNSTEIN: Tom, would you accept a friendly
18 amendment that I think would make
19 it clearer? The only concern that
20 I have in this is that I would like,
21 if we're going to treat this as
22 part of the definition, then I would
23 like to insert, 'A recipient's private

24

1 attorney involvement expenditure,
2 sometimes hereinafter referred to
3 as PAI.'

4 MR. SMEGAL: So you would change requirement
5 to expenditure?

6 MS. BERNSTEIN: No, no, no. I'm simply saying that
7 private attorney involvement expenditure
8 is hereinafter sometimes referred
9 to a PAI requirement. In other
10 words, it's the expenditure that
11 we're talking about, so to just
12 say that the private attorney involvement,
13 as the definitial portion without
14 the expenditure in there, I think
15 is a little bit confusing.

16 MR. SMEGAL: Well, what Tom was suggesting
17 is moving that word to put it
18 after requirement. So you're suggesting
19 LeaAnne, we change the word requirement
20 to expenditure, I think.

21 MS. BERNSTEIN: No.

22 MR. SMEGAL: Well, that's what you should be
23 suggesting.

24

1 MS. BERNSTEIN: My sentence would read, 'In determining
2 a recipient's private attorney involvement
3 expenditure, hereinafter sometimes
4 referred to as PAI requirement.'
5 I think it makes it clear that we're
6 talking about the expenditure as
7 being the requirement.

8 MR. SMEGAL: So you are deleting the word requirement
9 there and putting the word expenditure
10 in.

11 MS. BERNSTEIN: Sure, yeah. I think the expenditure
12 is the part that, if we're talking
13 definitions, I think it needs to
14 be clear. He said requirements
15 in one part...

16 MR. WALLACE: Did she delete requirement or not?

17 MR. MENDEZ: Yes, she did. She...

18 MS. BERNSTEIN: It's still back in.

19 MR. BOVARD: Perhaps I should read the way I
20 think it reads now. Okay, so, 'Funds
21 received from the corporation, as
22 one time special grants, shall not
23 be considered in determining a recipient's

24

1 private attorney involvement (PAI),
2 expenditure.'

3 MS. BERNSTEIN: No. Okay.

4 MR. BOVARD: (Hereinafter referred to as PAI
5 requirement.)

6 MR. WALLACE: If it says expenditure requirement,
7 I'm with you.

8 MR. MENDEZ: Yeah, it says expenditure, hereinafter
9 referred to as PAI requirement,
10 but I think that's two different
11 things. What you actually expend
12 and you're required to expend are
13 two different things.

14 MS. BERNSTEIN: Then that's fine. We can have two.
15 I can have parenthesis where you
16 have them...

17 MR. MENDEZ: Expenditure requirement. Okay,
18 let me read that again, then. 'Funds
19 received from the corporation as
20 one time special grants shall not
21 be considered in determining a recipient
22 private attorney involvement, (PAI)
23 expenditure requirement, (hereinafter
24

1 sometimes referred to as PAI requirement.)
2 MR. BOVARD: I will try to, with the Board's
3 permission, clean that up and make
4 all references to PAI requirement
5 purely to PAI requirement.

6 MR. SMEGAL: Mr. Durant, if I can have just one
7 more minute. Now that we've got
8 that definition and I think it fits
9 in properly in both of the two things
10 we added yesterday, subsection B
11 of .1 at the fourth line down, the
12 sentence reads, 'In circumstances
13 where the expenditure of...' I would
14 strike the words, 'Funds with respect
15 to.' And substitute for that, 'It's
16 PAI requirement in the employment
17 of the private attorney...'

18 MR. BOVARD: What page are we on?

19 MR. SMEGAL: I'm on page two. Take out the words
20 in line four of subsection D, newly
21 added yesterday or overnight. Take
22 out the words, 'Funds with respect
23 to.' And replace those four words

24

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1 with, 'It's PAI requirement, in the employment
2 of...'

3 MR. WALLACE: Mr. Chairman, I would oppose that particular
4 redrafting and have you put the definition
5 at the bottom.

6 MR. DURANT: What I'd like to do is exercise the Chairman's
7 prerogative. I owe Mr. Michael Greco,
8 the President of the Massachusetts Bar
9 Association a deep apology. I thought
10 what we were going to do was going to
11 be rather quick and I should have known
12 better. Mr. Greco is here as President
13 of the Massachusetts Bar. We had the
14 pleasure of meeting when I made my swing
15 through Boston, back in April. Mr. Greco
16 was at three, I guess, of the different
17 things that I was at and I very much
18 appreciate, along with Jon Ross, his
19 comments to me. They were very helpful
20 and I'm glad that you're here today,
21 and Michael, the floor is yours.

22 MR. GRECO: Thank you, Mr. Durant.

23 MR. DURANT: Accept my apologies.

24 MR. GRECO: No problem. In fact, it is I who thank you

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1 for giving me the opportunity to address
2 you on behalf of the Massachusetts Bar
3 Association. Let me, if I can take just
4 a moment before I begin my remarks.
5 This morning when I left Massachusetts,
6 with my colleague, Randolph Tucker, who's
7 sitting to my left and Randy Tucker is
8 not only a colleague of mine in my law
9 firm but he is Chairman of the Massachusetts
10 Bar Association's section, on Delivery
11 of Legal Services and so he has standing,
12 to be sitting, if you will, next to me.
13 As Randy and I were driving up this morning,
14 on a very pleasant ride and I must say
15 I enjoy coming to our sister state, New
16 Hampshire, I was reminded of a case that
17 came to trial that I thought members
18 of the Board might appreciate hearing.
19 This is a case involving a New Hampshire
20 farmer, who we'll call Farmer Jones,
21 and Farmer Jones was in his wagon with
22 his trusty dog and his trusty horse and
23 while he was traveling on one of the
24

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1 New Hampshire highways, back then, a
2 dirt road, a car drove him off the road
3 and there was a major accident, which
4 predictably resulted in a law suit, Farmer
5 Jones versus the driver and at the trial
6 of that case, after direct examination
7 by Farmer Jones' lawyer, the cross examiner,
8 the defendant's lawyer stood up and on
9 cross examination, said to the farmer,
10 'Isn't it true, Farmer Jones, that right
11 after this accident, a State Trooper
12 came to the scene and you told the State
13 Trooper that you never felt better in
14 all your life? Isn't that a fact.'
15 And the farmer said, 'Yep, yep, I did
16 say that.' And the cross examiner seeing
17 victory in his grasp, got the major admission,
18 sat down and said, 'No further questions.'
19 On redirect, Farmer Jones's lawyer stood
20 up and said, 'Now, Farmer Jones, would
21 you explain for the members of the jury,
22 exactly what happened after the accident?'
23 And Farmer Jones said, 'Sure.' He said,
24

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1 'Well, there I was lying on the ground
2 semi-conscious. I saw my wagon in splinters.
3 My horse, of course, was lying on the
4 ground in agony and my dog was in misery.
5 The State Trooper went to the horse and
6 fired one shot to get it out of its agony
7 and then he walked over to my dog and
8 did the same thing, put the dog out of
9 his misery. And then when he came to
10 me, I said, I've never felt better in
11 all my life.' Now, I, not to be corny,
12 I have never felt better in my life,
13 then being given the opportunity to address
14 you on a subject that is very important
15 to the lawyers of my state, Massachusetts.

16 MR. DURANT:

I have to know who the horse and the
17 dog are.

18 MR. GRECO:

No analogies. No analogies. I know
19 my time is limited and I know that you
20 have a limited agenda and I'm going to
21 be brief, even briefer than the time
22 originally allotted to me but the subjects
23 I do want to address, very simply, are:
24

1 What is it that we in Massachusetts are
2 doing and have been doing in the past
3 four or five years, to deliver legal
4 services to the poor of our state; however
5 members of the private Bar in Massachusetts
6 have worked together with the Legal Services
7 programs which you fund; and most urgently,
8 my message today, is why we urgently
9 need increased federal funding and support
10 for our Massachusetts Legal Services programs,
11 if we are not to negate the valuable
12 work that's been done heretofore. Now,
13 very briefly, who am I? I am honored,
14 I must say, to be President of the Massachuestts
15 Bar Association. We have 16,000 member
16 attorneys, which means that we have two
17 out of every three practicing attorneys
18 in the state as members of my association.
19 We have, in Massachusetts, 13 county
20 Bar Associations and for purposes of
21 that statement, I include the Boston
22 Bar Association as the Bar of the County
23 of Suffolk, although it is called the
24

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1 Boston Bar Association. We have, in
2 Massachusetts, a very proud tradition,
3 of delivering services to all citizens.
4 In addition to the people who can afford
5 those services, we have a history that
6 goes back, at least as long as my Bar
7 Association has been in operation, which
8 is 75 years and even beyond that, to
9 provide equal justice for everyone.
10 Most recently, we have had a partnership
11 and I can call it a partnership between
12 the organized Bar and those local programs,
13 Legal Services programs that you fund
14 throughout the state. I am here today,
15 because that partnership and that tradition
16 in Massachusetts and I believe they are
17 threatened because of what I perceive
18 to be an effort or lack of effort, on
19 the part of the Board, to seek the kind
20 of funding levels, which we, in Massachusetts,
21 believe are necessary to continue the
22 work that we're doing, not only in our
23 state, but as Jon Ross mentioned, in
24

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1 his state and throughout the country.
2 Very simply, I want to tell you that
3 Massachusetts, like other states, has
4 done its fair share, more than its fair
5 share, in the past four years and I want
6 to tell you that the federal government
7 must face up to its responsibility in
8 helping us deliver those services to
9 the poor. I want to echo what Jon Ross
10 said a moment ago. Legal Services to
11 the poor is not longer a debatable issue,
12 in my mind nor in the minds of private
13 attorneys in Massachusetts. It's a moral
14 commitment that we cannot break and we
15 shall not break in Massachusetts and
16 I hope that the federal government funding
17 will help us deliver, continue to deliver
18 on that commitment. Now, what is that
19 we've done in Massachusetts, in response
20 to the President's urging of several
21 years ago that the state's and the private
22 Bar do more than they had been doing.
23 Well, let me just take them on very quickly.
24

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1 In 1983, a statute was enacted in Massachusetts,
2 creating an entity called the Massachusetts
3 Legal Assistance Corporation. We call
4 it MLAC. MLAC is funded by a filing
5 fee surcharge which is imposed now on
6 every complaint that's filed in civil
7 actions in the state. That is every
8 civil action that's filed, whatever the
9 filing fee might be, whether it's twenty-
10 five dollars, or fifty dollars, a surcharge
11 is placed on that fee and that surcharge
12 goes to MLAC and that money, then, is
13 collected and distributed for a wide
14 range of programs including primarily
15 delivering legal services to the poor.
16 The Massachusetts Bar Association and
17 other Bar Associations, endorse that
18 effort, support of the statute. MLAC
19 has been in place now for two years.
20 Last year more than a million dollars
21 was distributed for those programs. State
22 appropriations for delivery of services
23 to the poor, have increased, beginning
24

1 in 1988. That effort began this past
2 year, 1.25 million dollars was appropriated
3 for the purpose of delivering services
4 to needy people, in particular people
5 who have been denied Social Security
6 Disability and Medicare benefits. Jon
7 Ross referred to IOLTA and I think by
8 now we all know what those letters stand
9 for, Interest on Lawyer's Trust Accounts.
10 In Massachusetts, the Supreme Judicial
11 Court, four months ago approved the IOLTA
12 concept. We have an implementation committee
13 that is developing the implementation.
14 I imagine that in early 1986 it will
15 be functional and we expect that a lot
16 of money will be raised through IOLTA,
17 from the lawyer's trust accounts. I
18 want you to be aware of one thing, MLAC,
19 under our IOLTA program will receive
20 no less than 50% of all IOLTA funds and
21 those funds will be used to fund delivery
22 of legal services to the poor. Volunteer
23 and shareable efforts by the Bar Associations,

24

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1 by private attorneys contributing money
2 and services and by citizens in Massachusetts,
3 we have had increases across the board,
4 in all of those funding and program and
5 service deliveries. Private attorney
6 involvement. This is obviously a controversial
7 matter. There was a time, several years
8 back, when the Massachusetts Bar Association,
9 I think it can fairly be said, was a
10 little either antagonistic, a little
11 suspicious, a little concerned, that
12 the private attorneys' interests were
13 not being well enough considered in the
14 scheme of delivery of legal services
15 to the poor. I think I can report that
16 that is no longer an issue. I think
17 the situation we have now in Massachusetts,
18 and in other states, but I speak only
19 for my state, is that there has been
20 a partnership, a respect between the
21 organized Bar and private attorneys and
22 those legal services lawyers who help
23 the private Bar and we help each other
24

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1 in performing a task that appears to
2 be almost an impossible task to perform.
3 We have, with all the increases that
4 we have generated in funding, state funding,
5 with all the increases in services being
6 provided by private attorneys and legal
7 staff attorneys in Massachusetts, it
8 is not enough. It's not enough to meet
9 the need that continues to grow on the
10 part of poor people for legal services.
11 MLAC, in Massachuestts, which is the
12 Massachusetts Legal Assistance Corporation,
13 estimated that the LSC programs and Bar
14 efforts combined last year, met only
15 20% of the legal needs of Massachusetts
16 poor. With all of the things I've just
17 described, we still were only able to
18 meet 20% of the needs that exist in
19 Massachusetts. There are three attorneys
20 for every ten thousand poor persons in
21 Massachusetts. That compares with 26
22 attorneys for every 10,000 non-poor people,
23 general population. You can see the
24

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1 discrepancy there in the very number
2 of lawyers who are available to deliver
3 those services so the antagonism that
4 once existed between private Bar and
5 public Bar isn't there because even with
6 our joint efforts, we're fighting a losing
7 battle because the funding isn't there
8 and the support from the federal government
9 hasn't been there for the past several
10 years. Now, I could be, well, let me
11 give you one other statistic and that
12 is that in 1985, 53% of all funding for
13 LSC programs in Massachusetts, 53% and
14 this is from the 1985 field guide, was
15 supplied from state sources in Massachusetts.
16 That puts us at the top of the list,
17 country-wide in terms of state support
18 to financial programs. But, as I said
19 a moment ago, it's not enough for our
20 state. Well, I could be vitriolic because
21 some of the people who asked me to come
22 up said be firm. Be blunt. That's our
23 custom in the northeast. I don't want
24

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1 to be vitriolic. I don't want to be
2 disrespectful, but I do want to convey
3 the message from Massachusetts attorneys
4 and that is that it is incomprehensible
5 to many of us in Massachusetts and the
6 word intolerable has also been whispered
7 in my ear. Incomprehensible that the
8 kind of legal funding that is so clearly
9 needed for these programs is not going
10 to be requested, apparently, by your
11 Board in levels that are, we say, clear
12 on their face. I don't know, precisely
13 what funding levels you will end up requesting
14 but I hope that as you hear people like
15 Jon Ross and other people who represent
16 the organized Bar and hear the pleas
17 that we make on behalf, not only of the
18 private Bar but for our brethren in the
19 public Bar, that you will see that the
20 problem of servicing and delivering
21 justice to the poor is one that we cannot
22 do, we cannot continue to perform unless
23 we have additional federal funding which
24

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1 only you, in your authority, can help
2 deliver. I want to mention, very quickly,
3 two other things, if I may. One is that
4 the Mass. Bar Association strongly opposes
5 cuts to the state support center, the
6 Massachusetts Law Reform Institute.
7 The Mass. Law Reform Institute is one
8 of the oldest state support centers in
9 the country and despite cuts, it continues
10 to provide support and education for
11 public and private attorneys in Massachusetts
12 and throughout New England. We also
13 have two national support centers in
14 Massachusetts, the National Center for
15 Law and Education and the National Consumer
16 Law Center. They do outstanding work
17 and cutting their funding really eliminates
18 their ability or reduces their ability
19 to empower private attorneys, to train
20 private attorneys, as well as public
21 attorneys, to do the very kind of work
22 that we've been talking about, and it
23 doesn't make sense to many of us in
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Massachusetts that funding might be taken from a group, such as Mass. Law Reform Institute and given to another center in the country. It's a little like robbing Peter to pay Paul and I think the solution is not to rob either one, but to make funding available so that all of the centers can continue to do the work that they do so well. On the private attorney involvement, I appreciate, Mr. Durant, your interrupting your debate on the regulation to hear me. The only point I'll make on that is that the situation that has existed under the guideline for the last several years, has been a healthy relationship between private Bar and public Bar. The kind of cooperation that we've had, I think, has been enhanced by having a guideline, rather than an imposed requirement, because whenever you eliminate the flexibility and the local control, you have a situation that breeds distrust and breeds competition.

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1 and that can be avoided. We don't have
2 any problem in Massachusetts in working
3 with the public Bar in making sure that
4 private attorneys are both represented
5 in terms of the work and in generating
6 fees and in every other respect so I
7 would urge you, even though it sounds
8 like, from your discussion, that you're
9 going in the other direction, at the
10 very least, build into your regulation,
11 a waiver requirement, a waiver provision
12 which would permit the parties to waive
13 that requirement under the appropriate
14 circumstances. I think that way, the
15 local decision-making, which is made
16 by the way, now most of the boards of
17 these local programs are appointed by
18 the organized Bar so that no longer,
19 I think, do we have a situation where
20 the boards are not reflective of the
21 views of the private attorneys. One
22 last subject I'd like to touch on and,
23 in fact, in the remarks that I have prepared
24

1 and submitted to you, the written remarks,
2 I, in fact, lead off with this subject.
3 I wanted to end with this subject in
4 my oral remarks and that is the subject
5 of children and I think a lot of us,
6 in this country and in this part of the
7 country, don't appreciate the kind of
8 data that has recently been published
9 by the Boston Globe in a series of two
10 articles that appeared in September of
11 1985 and I have attached copies of those
12 two articles to my written remarks.
13 The message in that data is that more
14 than 50% of poor people in this country
15 right now are children and children are
16 the one group that apparently do not
17 have the lobby. They don't have a Claude
18 Pepper. They don't have someone who
19 can...they don't vote. That's part of
20 the problem so that there's no real concern
21 on the part of elected officials. In
22 Massachusetts, I want you to know that
23 in the coming year, the Massachusetts
24

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1 Bar Association is establishing a task
2 force that will address the legal needs,
3 the unmet legal needs of children in
4 our state and when you consider that
5 funding cuts, whether they be federal
6 funding cuts, because the Legal Services
7 Corporation is not asking for enough
8 money, or in any other cuts, the real
9 victim, the real victim of those cuts,
10 more often than not are children and

11 I ask you to remember that when you
12 think about the kind of a hidden majority
13 of poor people who are in desperate need
14 of legal services. Finally, let me sum
15 up. I would simply say the following
16 in sum: First, the need for legal services
17 to the poor has never been greater.
18 It's not abating; it's increasing. Secondly,
19 I urge you, the members of the Board,
20 to follow the Massachusetts example and
21 to increase funding, not to do level
22 funding or decrease funding and not to
23 increase funding is both unfair and unwise

24

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1 and in the case of our children, I guarantee
2 you that in the future, we will reap
3 the results of our not addressing the
4 problems of legal services for children
5 today, because those children will grow
6 to be adults some day and I think we
7 better keep that in mind in terms of
8 making sure that they are helped, in
9 every way, to become responsible citizens
10 as they mature. Next, I think further
11 cuts, I've tried to make the point, would
12 only negate the efforts that have been
13 made across the country by the state,
14 state Bar Association, and the state legal
15 services programs and I end with a plea
16 and the plea is that I think you have
17 seen, as you travel around the country,
18 that there is a crying need for increased
19 federal funding and I hope that when
20 you come to make your decision that you'll
21 search your hearts and that you'll make
22 the decision that will respond to that
23 crying need. I thank you, again, and

24

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1 I'll answer any questions that you might
2 have but I thank you for inviting me.

3 (Applause)

4 MR. DURANT: Mr. Greco, I thank you as well, and I
5 have also had distributed for each member
6 of the Board, your printed remarks in
7 which you touched on the things that
8 you've addressed orally and it is well
9 written and I also appreciate the fact
10 that you included the articles on the
11 increase in child poverty. I think there
12 are some questions and I appreciate your
13 willingness to be available. I have
14 a couple but I will defer, at the moment,
15 to my Board members. Mrs. Bernstein.

16 MS. BERNSTEIN: I was just going to ask, as far as the
17 child poverty is concerned, one of...obviously
18 we've all got hard choices to make when
19 we've got a limited amount of resources
20 and as one of your Senators from the
21 State of Massachusetts has said in a
22 recent speech, the question of more funds
23 is not always the answer. It's a question
24

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of utilizing the funds the most efficient way. I also shares your concerns for children and one of the entities that was the subject of new funding, from the Corporation was the Senate for Medically Dependent Children which has been one that had taken some very strong stands for a very, you talked about being, not having a spokesman, for those who are not only small, but those who are sick and those in the most notorious case that has come forward and are the subject of experiments on the part of doctor, as to who has the proper quality of life. It seems to me that this is a problem and yet we are faced with allegations that certain entities that were created in 1974 or before automatically ipso facto, have a greater right to our scarce funding than to entities which may or may not, and you know, I think that performance is the criteria no matter what the substantive area but may or may not be a more crying

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1 need during the current situation. I
2 just wondered if you had any response
3 to that. Our concerns, do you have to
4 change with the times and an entities
5 longevity may not be the best caliber
6 of whether or not that is most deserving
7 of the funding.

8 MR. GRECO:

9 Let me see if I can answer in the only
10 way I can, because it's a dilemma, but
11 as a father of three children who are
12 under the age of ten and comparing notes
13 with Clark Durant on his visit last year
14 to Massachusetts, a parent who is also
15 a lawyer and who sees the need for services
16 to the poor, country-wide and then you
17 start trying to allocate among those
18 needy groups, what is the most pressing?
19 Is it the elderly? Is the children?
20 Is it...you name it. There are categories.
21 As to allocation among those needy groups,
22 I begin with the touchstone which is that
23 you, as stewards of your program, as
24 parents, either biological or metaphorically

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1 of all these groups, you have it in your
2 power to try to get as much funding from
3 Congress as possible. Then worry about
4 the allocation among these groups based
5 on date of the type that's contained
6 in these two Boston Globe articles.
7 If you read those two articles attached
8 to this you will be startled to see what
9 the condition of children and their mothers
10 are, in this country and I don't think
11 that this is a subject that has yet surfaced
12 sufficiently in connection with legal
13 services. That is, we know that there
14 are all kinds of children's issues, but
15 I ask you, read those two articles and
16 then perhaps I'll ask you to answer
17 own questions. See where the children's
18 needs fit in the hierarchy of things that
19 you've been learning around the country,
20 because you obviously know a lot more
21 about the other groups than I do.

22 MR. WALLACE: Mr. Chairman.

23 MR. DURANT: Mr. Wallace.

24

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1 MR. WALLACE: I've got a serious question. In regard
2 to funding, have you expressed the feelings
3 of the Bar to the distinguished gentleman
4 from the 8th District of Massachusetts?

5 MR. GRECO: Let me make sure I understand who the
6 distinguished member...are you talking
7 about...

8 MR. WALLACE: The speaker of the House of Representatives
9 of the United States.

10 MR. GRECO: He is aware of the efforts, in fact the
11 entire Congressional delegation is aware
12 of our efforts, state-wide. I know that,
13 in fact, Congressman Frank, was present
14 when Mr. Durant came to visit Massachusetts
15 last spring. I think he is supportive,
16 I think they're all supportive of the
17 efforts that we're making state-wide
18 and I think they also are supportive
19 of the organized Bar's efforts to try
20 to persuade the eleven or you, that we
21 have done all that we can, we think,
22 We've reached the limits. We've doubled
23 and redoubled our efforts, financially

24

1 and in programs and now we say to you,
2 after four years, we can't do more.

3 MR. WALLACE: Did he explain to you why the chamber
4 over which he presides, did not give
5 you more than Three Hundred and Five
6 Million Dollars?

7 MR. GRECO: I have not had that conversation with
8 him. Do you know the answer to that?

9 MR. WALLACE: Yeah, I know the answer to that. It's
10 that Congress is not about to appropriate
11 any more than Three Hundred and Five
12 Million Dollars, largely because your
13 friend, Mr. Pepper, who has put most
14 of the federal budget off limits. Further
15 question with regard to local control,
16 since we're making recommendations to
17 Congress. The appropriations statute
18 requires the Bar Association's imposed
19 majority of our Board, but since we're
20 talking about things that we might recommend
21 to Congress, can you explain to me why
22 Bar Associations are the best representatives
23 of the local will?

24

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1 MR. GRECO: They may not be the best, Mr. Wallace,
2 but I think they have the pulse of the
3 organized Bar. In Massachusetts, as
4 I mentioned earlier, we have two out
5 of every three practicing lawyers as
6 members of our association. In Massachusetts,
7 we have a state Bar, my Bar, which has
8 a close relationship with the 13 county
9 Bars. I meet with the county Bar presidents
10 regularly. I know what their concerns
11 are. I know what the lawyers in the
12 hinterlands are concerned about so that
13 I think we have enough of a feel for
14 what the Bar in Massachusetts is thinking
15 about, among other things, delivering
16 legal services to the poor.

17 MR. WALLACE: Well, certainly, I'm sure you do represent
18 the Bar quite well, but there are more
19 people in Massachusetts than lawyers
20 and why are the entirety of the citizenry
21 of Massachusetts, not better represented
22 by permitting directors to be appointed
23 by the Governor of the Commonwealth subject
24

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1 to confirmation by the General Court. If you
2 believe in local control.

3 MR. GRECO: Well, I have no problem with...in fact,
4 I think on the boards that I've served
5 on that have had non-lawyer representation,
6 it's always been a positive thing. I
7 think, though, when you're dealing uniquely
8 with legal services, I think you need
9 to have attorney representation. I think
10 you need to have private attorney representation
11 as well as public attorney representation,
12 so if you're suggesting that we have
13 ...I don't know whether you implied this
14 in your question, but if you're suggesting
15 that we have the Governor appoint citizens
16 who are not lawyers, I don't think that...

17 MR. WALLACE: Oh, you could put that requirement on.
18 You could put the same requirement that
19 the President of the United States is required
20 to appoint lawyers to this court. The
21 Governor of the Commonwealth could be
22 required to appoint lawyers to any board
23 that he should appoint, but why should

24

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1 local boards be, if we're interested
2 in responding to popular will, be appointed
3 any different than the way this Board
4 is appointed.

5 MR. GRECO: Now, I haven't given thought to the question
6 and on first reaction, I think the way
7 we're doing it now it's working very
8 well and there's another expression up
9 in this part of the country and that
10 is, if it ain't broke, don't fix it.
11 I don't think it's broken.

12 MR. WALLACE: I heard that on the Voting Rights Acts
13 too. They fixed it but good.

14 MR. GRECO: But I think reasonable people can disagree.
15 It may very well be that your suggestion
16 should be discussed and see whether it
17 has, in some modified fashion, could
18 be employed, but as I say, we're very
19 comfortable in Massachusetts, with the
20 appointment process now, because these
21 boards are peopled with very knowledgeable,
22 responsible professionals.

23 MR. WALLACE: Thank you. I rest, Mr. Chairman.

24

1 MR. DURANT: Thank you. Mr. Mendez.

2 MR. MENDEZ: Could you tell me a little bit about
3 your Pro Bono program?

4 MR. GRECO: Yes, I will. In the Massachusetts Bar
5 Association, we have several things.
6 First we have a section on the delivery
7 of legal services and as I introduced
8 Randy Tucker, sitting to my left, initially
9 Randy is chairman of that section. That
10 section has 15 lawyers who come from big
11 firms, little firms, from throughout
12 the state. That section is kind of the
13 hub of the Pro Bono activities for the
14 state Bar. We have a lawyer referral
15 service.

16 MR. MENDEZ: How many lawyers do you have participating
17 in your Pro Bono program?

18 MR. GRECO: I would say combining the lawyer referral
19 service, the lawyers who work on various
20 other programs, all under the umbrella
21 of Pro Bono, I would have to say that
22 of the Massachusetts Bar Association
23 lawyers, we're talking in the many hundreds.
24

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1 The Boston Bar Association, which is
2 the Bar for the County of Suffolk, but
3 it's also, I think the oldest organized
4 Bar in the country, and I think many
5 of your members know of the programs
6 of the Boston Bar Association and the
7 Mass. Bar, which is the parent Bar or
8 the state Bar, works closely with the
9 county Bars, including Boston, I don't
10 think there are finer programs in the
11 country than the volunteer lawyers' project
12 of the Boston Bar Association. The Lawyers'
13 Committee for Civil Rights, of the Boston
14 Bar Association.

15 MR. MENDEZ: But what percentage of the Bar is involved
16 in Pro Bono, of your Bar Association?

17 MR. GRECO: I can't give you a percentage number
18 other than to say that it's quite high,
19 that we have tremendous support on the
20 part of the private Bar for delivery
21 of legal services in Massachusetts.

22 MR. MENDEZ: And the private Bar, in fact, engages
23 in Pro Bono?
24

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1 MR. GRECO: Absolutely.

2 MR. MENDEZ: Would you, I don't want to take the time
3 of the Board, but would you send me a
4 letter and I'll give you my address and
5 tell me what percent it is, because New
6 Hampshire is one of the highest in the
7 country and they have approximately 40%.
8 And I'll be very interested to see what
9 your percentage is, because I understand
10 that the state is doing, is actively
11 interpreting. I understand that the
12 national is actively contributing and
13 I would like to see what the Pro Bono
14 effort is in Massachusetts.

15 MR. GRECO: I will supply you that information, Mr.
16 Mendez.

17 MR. MENDEZ: I just have a couple of other questions.
18 Does your Bar Association have any reduced
19 fee provisions for those that are indigent
20 or nearly indigent, to perform cases?

21 MR. GRECO: Our lawyer referral service, which is
22 a state-wide service, has an 800 number.
23 People will call in and if they
24

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1 meet certain criteria, we have either
2 a no fee or a reduced fee availability.

3 MR. MENDEZ: Now, I understand your concerns about
4 the reduction in state support and your
5 concerns about the national support centers.
6 If we can go out and establish a bidding
7 procedure, for the delivery of support
8 services, and if we define in another
9 area of the country, a group of attorneys
10 that is willing and capable of doing
11 delivering services, support services,
12 at a price less expensive than what we
13 are paying right now, would it be appropriate
14 for us to go to the other area?

15 MR. GRECO: Let me answer by saying no. I don't
16 think it would be appropriate and let
17 me tell you why in a nutshell. I'm a
18 trial lawyer. I do a lot of civil litigation
19 and a lot of the civil litigation I do
20 is construction work. I represent architects
21 who have designed buildings that aren't
22 working. I represent contractors and
23 if you look at the construction industry,
24

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1 you'll see that when bids come in on
2 a building, the lowest bidder ain't necessarily
3 the person who's going to deliver the
4 finished building the way that he promises,
5 he or it promises. There's that aspect
6 of the kind of bidding that you have
7 in mind. The other is that when you
8 have programs that, over the years, have
9 proven themselves, and I mentioned the
10 Mass. Law Reform Institute is one. I
11 mentioned the National Center for Law
12 and Education, as another. The National
13 Consumer Law Center in Massachusetts.
14 They, through their outstanding efforts,
15 they are deserving of continued funding
16 to continue doing what they are doing
17 on behalf of both the private Bar and
18 the public Bar, so that I think introducing
19 the bidding element is to make...I know
20 what motivates the thought and that is
21 that, in a free enterprise system, competition
22 is a healthy thing and why not in this
23 area. I don't think that this kind of
24

1 service to the poor should be put on
2 that kind of a basis, because I know
3 that a lot of people would like the contractor
4 to give a bid that's unrealistic, perhaps.

5 MR. MENDEZ: Mr. Chairman, I just have one other question.
6 You spoke that the State Support Center,
7 in Massachusetts, provided support to
8 both private and public attorneys. Did
9 they charge private attorneys for this?

10 MR. GRECO: If you read the written remarks, Mr.
11 Mendez, you'll see that I have a section
12 with...

13 MR. MENDEZ: I just want you to...I've read your remarks.
14 These are questions I want you to follow
15 up on.

16 MR. GRECO: The training that is done by, say, Mass.
17 Law Reform Institute for private attorneys,
18 my understanding is that is largely cost
19 free. I may be mistaken on that and
20 if I am, the director of the program
21 is here.

22 MR. MENDEZ: I recognize that the program's director is here..
23 I just wanted to point out, what your
24

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1 best recollection was.

2 MR. GRECO: My best understanding, as I just said
3 is that I believe it's cost free to the
4 private attorneys who get that training
5 provided.

6 MR. MENDEZ: So they don't, in fact, train private
7 lawyers in other than legal services
8 type programs? To your best information.

9 MR. GRECO: That's a tricky question, because when
10 you train a lawyer on how to draft a
11 complaint, it may be in the landlord/tenant
12 area but that lawyer now knows how to
13 do a complaint in every other kind of
14 a case.

15 MR. MENDEZ: I've been waiting to hear that six weeks.
16 What you're telling me is that I can
17 send a legal service lawyer out to do
18 private...to a private PA...continuing
19 legal education program in some other
20 related area and that that will relay
21 over to legal services area. That's
22 just what you told me. Correct?

23 MR. GRECO: With all respect, Mr. Mendez, I think
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1 you have just slanted my entire remarks.

2 MR. MENDEZ: Well, tell me what...you're telling me
3 that now...where I'm in error.

4 MR. GRECO: Well, I think part of the problem is
5 that delivering legal services to the
6 poor in itself, is an area that a lot
7 of lawyers, myself included, after three
8 years of law school and two or three
9 years in a fancy firm, I was not equipped
10 to do and you do get the kind of specialized
11 training on the substantive issues that
12 you can't get by sending someone to a
13 COE program.

14 MR. MENDEZ: Does the Massachusetts Bar have continuing
15 legal education?

16 MR. GRECO: Yes, we do.

17 MR. MENDEZ: And does the Bar itself, provide continuing
18 legal education to the Pro Bono attorneys?

19 MR. GRECO: We have, I'm just trying to think,. in
20 the past year or two, I think in cooperation
21 with either our delivery of legal services
22 section or some of the programs, we have
23 done that kind of program but I think

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1 you're thinking, Mr. Mendez, in terms
2 of why can't any lawyer do any kind of
3 delivery of legal services to the poor.
4 The answer is that most lawyers probably
5 can, but it's like sending me into court
6 to try a personal injury suit. I'm sure
7 I could do it and I'm sure that I could
8 persuade some people...

9 MR. MENDEZ: I do personal injury suits and you'd
10 be fabulous at it.

11 MR. DURANT: Thank you. Mr. Greco and Mrs. Bernstein,
12 follow up.

13 MS. BERNSTEIN: Yeah, I'm just intrigued by your...if
14 I heard you right, you're saying that
15 you don't believe that the practice of
16 law is reasonably subject to the free
17 market system, that there's something
18 specially different about practicing
19 law and that we shouldn't apply competition
20 in free market. Well, I thought that
21 that's what the base decision basically
22 decided is that the free market system,
23 not only provides for competition in

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1 terms of prices but it provides for competition
2 in knowing what you're getting and information
3 to the consumer and, in fact, Joel Hyatt
4 came before the Board a couple years
5 ago and stated that he felt that the
6 Bates decision has done more for the delivery
7 of legal services for the poor and the
8 near poor in this country, than any amount
9 of federal funding could ever do and
10 I am just intrigued by this notion that
11 somehow competition can be bad when competition
12 only implies that you're trying to get
13 more quality services for your money
14 and excuse me for saying this but I really
15 think that you slanted what was said
16 when you said that Mr. Mendez was implying
17 that you just take the lowest bid and
18 what he had said was that you bid for
19 quality services and you take the most
20 reasonable bid and it seems to me that
21 we're in a position here with limited
22 money again and anybody who's running
23 the program certainly cannot just buy
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the first computer that they see. They cannot buy the first desk that they see. They can't hire the first attorney who walks in no matter what the price that the attorney wants. I think that we're all subject to constraints of dollars.

(Off the record)

1 MR. GRECO: I agree that we're all subject to constraints and
2 I think that if delivering legal services to the
3 poor were truly a free enterprise subject, it might
4 be one thing, but I don't think it quite fits the
5 traditional definition. You don't have thousands
6 and thousands and thousands of private lawyers from
7 big firms rushing out to compete for the business.
8 You get lawyers to represent the poor; first the
9 public lawyers, I call them public, do it, not out
10 of a sense of profit because they are going to be
11 earning a lot of money. There's a certain funda-
12 mental moral obligation that is felt, both by the
13 public lawyers and the private lawyers that do it
14 Pro Bono, so that funding is not an issue, so the
15 competition when you compete for business or compete
16 for dollars is not an issue. Listen, I agree fully
17 that the money that you ask for should be spent
18 wisely and should be spent responsibly. I have not
19 seen evidence of unwise or irresponsible spending
20 by the local programs.

21 MR. DURANT: Mr. Greco, a couple of questions. One is just in
22 terms of your own law firm. How many members are
23 there?

24 MR. GRECO: My firm is one of the larger Boston law firms. It's

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called Hills and Barlow. We have seventy-five lawyers.

MR. DURANT: In the process, you have some form of case review in which different lawyers are involved in one particular case in determining what's being done, and kind of brainstorming about strategy?

MR. GRECO: Yes, we have a system where each case has someone called a responsible attorney who is the lead attorney in that case and he or she will do the strategy planning and there may be another lawyer or two or three, depending on the case, or no other lawyer depending on the size of the case.

MR. DURANT: And is there a process of evaluation in terms of the depositions being done, and whether to get a motion to be filed and whether a complaint should have been filed in the first place?

MR. GRECO: I think that's very similar.

MR. DURANT: And does that process involve each of those attorneys getting intimate familiarity with the case? Sometimes talking with the client, sometimes getting a sense of what other witnesses on the particular trial have said or talking to other witnesses by more than one attorney in the firm in order to evaluate performance and the progress of the cas

1 MR. GRECO: Yes, in a typical case in my firm if we have three
2 lawyers working on it because it's a major piece of
3 litigation, everything that goes out in the case,
4 whether its correspondence or whatever, is sent to
5 the three lawyers so that at any one time those
6 three lawyers can all step in and handle whatever
7 may be happening in the case.

8 MR. DURANT: So you would have the same approach that Mr. Ross
9 talked about where, in effect, the knowledge of one
10 is also going to be the knowledge of another, so
11 that there's more than one person involved in
12 evaluating what, in fact, is going on intimately
13 with that file?

14 MR. GRECO: Yes, I think to do it otherwise is a little mis-
15 chievous because you have one of the three lawyers
16 on the case with a gap as to what might be happen-
17 ing and that's not in the best interest of the
18 client.

19 MR. DURANT: Second, in terms of when we had the pleasure of
20 meeting in Boston, as you know you were also pre-
21 sent during the Harvard debate that went on in
22 terms of the delivery of legal services, you and
23 I had a....I don't know whether it was a question
24 you asked or whether of one of the students;

1 somehow that you and I talked about the efforts
2 that could be made by the Massachusetts' Bar in
3 terms of allowing increasing lawyer advertising,
4 as we know, Yale Brozen's earliest articles in the
5 Law and Economics' Journal out at the University
6 of Chicago, clearly do reduce costs of delivering
7 services but increased knowledge of availability
8 of services and make goods more widely dispersed.
9 Has the Bar been active in trying to increase that
10 kind of advertising and knowledge to consumers?

11 MR. GRECO: The Massachusetts' Bar Association has not actively
12 encouraged lawyers to advertise. It is leaving it
13 up to lawyers. The experience to date is that only
14 a handful of lawyers are advertising in a manner
15 that is becoming increasingly awkward because mem-
16 bers of the public are writing...I've gotten letters
17 this week about a couple of lawyers who are adver-
18 tising in ways that seem to be offensive to the
19 public. I think that the correlation between ad-
20 vertising and lower cost to the client, not with-
21 standing the recent FTC study, has not yet been
22 made. That is, I think, those areas where heavy
23 advertising is being done by lawyers do not show
24 appreciably lower fees, if they are in fact lower

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1 fees, and I don't think that case has been made
2 yet. Every time you see Chief Justice Burger com-
3 menting on the issue of advertising you see him
4 saying things, as he said very recently, that no
5 client should engage a lawyer, ever, who has ad-
6 vertised. I find it....

7 MR. DURANT: Do you always agree with the Chief Justice?

8 MR. GRECO: Well, I have to remember that it was the Chief
9 Justice's Court that gave us Bates and Osteen,
10 which permit advertising so

11 MR. DURANT: I don't think he wrote the opinion...

12 MR. GRECO: I don't think he wrote the opinion, and I don't
13 recall whether he dissented from it. Your question
14 was what's the organized Bar doing on advertising?
15 There are those lawyers who feel that advertising
16 done tastefully is appropriate and they are doing
17 it and the lawyers who don't think that it's some-
18 thing that a noble profession should engage in
19 don't do it, and I think at this point that's the
20 status.

21 MRS. BERNSTEIN: ...or noble cartel.

22 MR. GRECO: The other area that we did talk about was in terms
23 of trying to open up our profession so that more
24

1 people could be involved in the dispute/resolution
2 business. Is the Bar trying to do that so that
3 those who do want to serve the poor, but don't want
4 to have to spend three years in law school and
5 twenty-six, twenty-eight thousand dollars and all
6 the other things, but in fact want to be involved
7 in alternative dispute resolution mechanisms and
8 whatever; is the Massachusetts' Bar pursuing any
9 of that?

10 MR. GRECO:

11 That I can answer emphatically, yes. Because when
12 you and I talked in Cambridge last April, since
13 that time the Mass. Bar Association has sponsored
14 several all-day sessions in which lawyers have been
15 trained as mediators, so that they can act in a way
16 that avoids court room resolution of many kinds of
17 cases, in fact, that delivery of legal services
18 lawyers ought to be trying in that fashion. So tha
19 the answer to your question is, yes. The Mass. Bar
20 Association and the other Bar Associations around
21 our state are doing more ADR, but I think that where
22 you and I differed last April is that whether that
23 is really the answer, the whole answer. I don't
24 think that's the whole answer to limiting the

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1 federal funding for legal services.

2 MR. DURANT: No, I don't think it's the whole answer either. My
3 question is also whether or not you would be invol-
4 ving more than just lawyers, quote, in the dispute
5 resolution or are limiting the training only to
6 lawyers, not voluntary members, so to speak?

7 MR. GRECO: No, I think, if my memory serves, that the sessions
8 have been open to the public and I think that there
9 were non-lawyers that were affiliated with profes-
10 sionals who attended and got training in mediation.
11 And we have other ABA programs, by the way. I have
12 one that is in the works right now that I hope to
13 announce in the coming month from Massachusetts
14 which will again help the courts eliminate a lot of
15 backlog because we'll be settling a lot more of the
16 disputes out of the courts into more informal dis-
17 pute resolution techniques.

18 MR. DURANT: There was a study just done recently, I think it
19 was in the Pennsylvania Law Review that was done
20 by an economist out of Emory University, in which
21 he compared in a variety of ways this whole question
22 of advertising involving your big firms and other
23 smaller firms and even, he didn't use Joel Hyatt,
24

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1 what's the other major one....Jacobby and Meyers,
2 in terms of not only the question of low cost but
3 client satisfaction. In fact that, Jacobby and
4 Meyers, unlike it was an eighty person law firm
5 in Los Angeles, had delivered not only lower cost
6 but a higher quality of service. It seems to me
7 in the same way that many of our programs that the
8 staff orders and whatever, there's no question in
9 my mind that many cases are delivering services
10 at a cost that is less than, in some cases, than a
11 private firm could do it. But when you say, for
12 example, in terms of Pro Bono because of big firms
13 or whatever, the recent issue of Barrister Magazine
14 in an article by Margaret Carlson of the ABA, point-
15 ed out that in many, many cases, for many of those
16 lawyers out there that don't have the same advanta-
17 ges that you do, Pro Bono has proved not only to be
18 of tremendous value in terms of the moral commit-
19 ment, but in terms of simply, and in the very good
20 sense of this, developing a client base and devel-
21 oping a practice in a very successful way that al-
22 lows a greater increase in Pro Bono work. So,
23 before I would be quick to say that Pro Bono depend

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1 merely on ones looking at it solely in terms of the
2 moral obligation. I think the Margaret Carlson
3 article is very instructive and that the increase
4 of Pro Bono from so many of those lawyers that are
5 being produced and whatever that supposedly there
6 is no work, and as I mentioned in a speech, and I
7 have since heard from a gentleman in Atlanta, a
8 guy named Ernie Breeding, who has built a very
9 substantial practice in serving indigent, low income
10 clients. He is not alone as the Carlson report and
11 others suggest, so before I would jump on those
12 people I would.....

13 MR. GRECO: If you could get about five thousand of that gentle-
14 man to come to Massachusetts I'll help pay the
15 transportation and keep them working in our state.

16 MR. DURANT: O.K. Thank you. Mr. Wentzel.

17 MR. WENTZEL: You did say earlier, I believe, that you thought
18 a large percentage of the Bar did not recognize a
19 moral obligation to deliver these legal services to
20 the poor. Were you speaking of Massachusetts
21 only?

22 MR. GRECO: No, I don't know if those were my exact words,
23 President Wentzel. What I said was that no longer
24

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1 does the private Bar in my state consider it a de-
2 batable issue as to whether the poor should receive
3 legal services and that the federal government and
4 the state should fund it. It's now a moral commit-
5 ment.

6 MR. WENTZEL: But you also stated that there was a large percen-
7 tage or large portion of the Bar that did not recog-
8 nize individually these people and that there was
9 a moral obligation to deliver these services.

10 MR. GRECO: If I said that then I misspoke.

11 MR. WENTZEL: So everybody in the Bar believes there's a moral
12 obligation and duty?

13 MR. GRECO: That's a general statement. I know that in Massa-
14 chusetts, as in New Hampshire, there is an over-
15 whelming support on the part of the private Bar
16 for delivering services. Some lawyers do it them-
17 selves, some lawyers contribute funds so that it
18 can be done by others, and others have neither the
19 time nor the funds, but they support it. I don't
20 know too many people who would object to having
21 poor people get services in one way or another.

22 MR. DURANT: Mr. Greco, I very much appreciate your coming here
23 and I know that you've got other places you've got

24

1 to go and we've kept you longer longer than I
2 think you thought...but, as I enjoyed our meeting in
3 April, and I hope to see you again when I come back.

4 MR. GRECO: Thank you very much, I really appreciate being
5 given the chance to address you.

6 MR. DURANT: We are going to take a break for lunch and we will
7 return at two o'clock.

8 (BREAK)

9 MR. DURANT: Can we reconvene?

10 MR. WALLACE: Mr. Chairman?

11 MR. DURANT: Mr. Wallace.

12 MR. WALLACE: May I report to the board the results of my dis-
13 cussion with Mr. Smegal on the amendment he would
14 propose? And I'm going to ask Mr. Smegal to cor-
15 rect me on this. I think that we all agree that
16 language to Section 1614.1A on page one, Mr. Smegal,
17 and on page 2 in section 16.14.1D. What we would
18 do is to strike the bottom two lines "expenditure
19 required by subsection A of the section" and insert
20 the words "PLI requirement". On page 16 of the
21 regulations in section 16.6c6.8 at the bottom
22 of the page 16, number 6. After the word "for"
23 on line 3 of section 6, we would strike "12½
24

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1 percent of Corporation funds are PAI activities"
2 and we will insert "PAI requirements," and that is,
3 I think, the extent of the changes that need to be
4 made to conform the language with the amendments
5 that were previously made to 1A.

6 MR. SMEGAL: That certainly was my intent with those technical
7 amendements.

8 MR. WALLACE: That will require a motion. We can't do it by con-
9 sent because we are a committee.....I'll go ahead
10 and move Mr. Smegal's language and I'm sure he'll
11 second it.

12 MR. SMEGAL: Second.

13 MR. DURANT: Any discussion?

14 MRS. BERNSTEIN: Yes, I've got a little discussion on those because
15 what we've really done here is not completely tec-
16 nical. The first page in which the definition
17 "expenditures" as a PAI requirement definition is
18 included in sentence which excludes funds received
19 through the Corporation as a one-time special grant,
20 shall not be considered in determining what the a-
21 mount of money the 12½ percent is going to be based
22 on. We never do otherwise determine what the 12½
23 percent is going to be based on. I'm afraid that
24

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1 that's going to cause us more problems when we get
2 back to something like what's on page 16, because
3 in 6.....

4 MR. SMEGAL: Maybe I can interrupt and suggest that we move what
5 we've done to 1A up in the prior sentence. We've
6 got "12½ percent of the recipients LSC annualized
7 basic field award, hereinafter referred to as
8 PAI requirement". Right there. And then delete it
9 from wherever we would have put it before.

10 MRS. BERNSTEIN: Well, let me just ask, this is obviously a need,
11 a suggestion, and I'm trying to think through what
12 kinds of awards that are made...the 12½ percent
13 annualized basic field award...the other types of
14 grants that would be made to recipients would be
15 one-time grants....

16 MR. WILLIAMS: Migrant grants.
(FRED)

17 MRS. BERNSTEIN: My intention would be that is we have migrant grants
18 that are continualized that become part of the man-
19 nualized funding, it's not just a basic field award,
20 it's also the migrant funds and so forth that all
21 are based in direct delivery that go to a basic
22 field recipient should be included in the 12½ per-
23 cent computation. And that what we're really doing
24 here.....

1 MR. HOUSEMAN: You got it in the next page. That does it.

2 MRS. BERSNTEIN: But, that doesn't do it when we include the amend-
3 ment that you and Mr. Smegal worked out.

4 MR. HOUSEMAN: I didn't work it out. I never saw it before. He
5 worked it out.

6 (LAUGHTER)

7 MRS. BERNSTEIN: My concern is that we very much confuse the issues
8 by adopting amendments, that we'd be better off
9 with the original amendment that we perhaps dis-
10 cussed on page 1 but leaving the others as they
11 stand so that there's no confusion regarding part
12 B.

13 MR. WALLACE: I think that if I may be heard that the original
14 criticism I undertood Mrs. Bernstein to be making
15 is well taken, but if we're going to define PAI re-
16 quirement, we ought to define it in second sentence
17 of 1A rather than the third sentence, because the
18 third sentence really is stating a exception from
19 the PAI requirement and defining the main require-
20 ment in such that it contains an exception is kind
21 of confusing. What I now hear her saying is...
22 maybe I don't understand what she's saying....but i
23 she wants is to expose 12½ percent requirement to
24

1 all funds received by our basic field recipients,
2 that's not something my committee has considered
3 and it's not something that we have recommended to
4 be done and I don't know the ramifications of it.
5 We do two things here: We mandate 12½ percent
6 basic field award, and then as to other funds...
7 and that is PAI requirement....that part should
8 say "required". In B we deal with other awards
9 that also go to the basic field recipients as well
10 as to other people. But we do not place a 12½
11 percent requirement on those funds. We simply say
12 that they "shall be used".....and maybe I'm com-
13 pletely misunderstanding what we did, but that
14 those funds "shall be used in a manner to involve
15 the private Bar as best you can", but we don't put
16 a requirement on that. That's what my committee,
17 I think, intended to do and I don't see how follow-
18 ing that up with definitial amendments that Mr.
19 Smegal has proposed.

20 MR. VALOIS: Just one observation. If what you all are trying
21 to do is to define PAI requirements, it seems to
22 me that any attempt to put it into a sentence where
23 that concept is modified language in that sentence
24

1 is going to cause some difficulty. I suggest that
2 you simply make a separate sentence which simply
3 says "PAI requirements means.." or that you try to
4 define it.

5 MR. SMEGAL: Well, what Mr. Wallace is saying what we're doing
6 here precisely it's a mere technical change. You
7 have got 12½ percent of recipients LSC annualized
8 basic field award and we're merely hanging a label
9 that is inconsistent with the rest of this particu-
10 lar section. The term is already in subsection C,
11 PAI requirement is already there. We are doing
12 nothing more than we've done in committee, we're
13 merely making the language consistent throughout
14 the section of that.

15 MR. VALOIS: But what you're doing is attempting to introduce
16 a shorthand method of making reference to PAI re-
17 quirements and each time you do it in a separate
18 place, it seems to me, you end up modifying that
19 sentence.

20 MR. SMEGAL: You understand it's already here. It's in here
21 already. I'm merely taking it out of C and moving
22 it up to A so that C has an antecedent basis. The
23 same thing with subsection B.

24

1 MRS. BERNSTEIN: Yes, but on 16, Tom, wouldn't you agree that the
2 sentence that we had and that we approved, we said
3 that the governing body has to decide for this
4 waiver that it is not economical for and efficient
5 for the recipient to expend its 12½ percent of
6 Corporation funds on PAI activities, not the PAI
7 requirement.

8 MR. WALLACE: That may be a change and if there's a change then
9 it's one I'm glad that Mr. Smegal brought to our
10 attention because I think that what we intended to
11 do when we drafted this section was simply to refer
12 to the 12½ percent requirement. Whatever the
13 Corporation funds the requirement refers to are
14 mentioned here, we were not trying to sneak in 12½
15 percent of other grants from the corporation to
16 which the required of subsection A does not apply.

17 MR. MENDEZ: May I interject for a minute? I would like to have
18 Mr. Wallace or Mr. Smegal go through their proposed
19 changed language so that we can more correctly fol-
20 low through. I've got my notes here but I'm not
21 sure that I've got them right.

22 MR. WALLACE: All right. Mr. Smegal may correct me, but I think
23 I understand his exception to what Mrs. Bernstein
24

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1 was saying about section A. So here is the way sec-
2 tion A will read. Beginning with the second sen-
3 tence that says "except as provided hereafter" which
4 is on page 1. "Except as provided hereafter, a
5 recipient of Legal Services Corporation Funding
6 shall devote an amount equal to 12½ percent of the
7 recipients' LSC annualized basic field award to the
8 involvement of private attorneys in such delivery
9 of legal services" and let me put a semi-colon here,
10 and say "this requirement is hereinafter sometimes
11 referred to as PAI requirement" period. All right.
12 And "funds received" and make no changes from what
13 you have on page 1, you have funds received all the
14 way... "Funds received from the Corporation as one
15 time special grants shall not be considered in de-
16 termining a recipient's PAI requirement" Period.
17 Because that's what you defined in the previous
18 sentence. Now does that suit you, Mr. Smegal?

19 MR. SMEGAL: You're tracking right with me, Mr. Wallace.

20 MR. WALLACE: All right, you're doing fine. Now get to the next
21 page, page 2. The last two lines of page 2, sub-
22 section d. Strike "expenditure required by sub-
23 section A of this section" and say "PAI requirement".
24

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- 1 MR. DURANT: Page 2, last line?
- 2 MR. WALLACE: Last two lines. Strike "expenditure required by
3 subsection A of this section" and add "PAI require-
4 ment". Page 16, you will see subparagraph 6 of
5 that page. Third line.
- 6 MR. DURANT: Wait a minute.....
- 7 MR. WALLACE: In the third line of subparagraph 6, after the word
8 "full" keep the word "full" and strike "12½ percent
9 of Corporation funds on PAI activities" and add
10 "PAI requirements".
- 11 MR. SMEGAL: That is exactly what I intended.
- 12 MR. WALLACE: Thought so.
- 13 MR. HOUSEMAN: To me it's a technical drafting change that im-
14 proves the reg.
- 15 MR. MENDEZ: Mr. Chairman, after having reviewed this, I'm pre-
16 pared to endorse the corrections.
- 17 MR. DURANT: Well, now let me just think from a motion stand-
18 point, where are we? Because LeaAnne had a.....
- 19 MRS. BERNSTEIN: I've also got another amendment if that passes.
20 That's not technical. I think we ought to vote on
21 that.
- 22 MR. DURANT: On the change that was just read?
23
24

- 1 MR. MENDEZ: Yes, we have to.
- 2 MR. WALLACE: We're going to have to vote on those.
- 3 MR. DURANT: Well, I understand that. Why don't you make your
4 motion then, Mr. Wallace?
- 5 MR. MENDEZ: Its already been moved and seconded.
- 6 MR. WALLACE: Let me ask for leave, and Mr. Smegal will agree,
7 I'm sure, to withdraw previous motions on this
8 subject and to move instead what I just read into
9 the record.
- 10 MR. DURANT: Any further discussion? All those in favor, say
11 aye.
- 12 (CHORUS OF AYES)
- 13 MR. DURANT: Opposed?
- 14 (ONE NO)
- 15 (ONE ABSTAINED)
- 16 MR. DURANT: Let the record reflect one no and one abstention.
17 Mrs. Bernstein?
- 18 MRS. BERNSTEIN: In B, of page 2. The committee was given an in-
19 credible out in voting and I had not read it this
20 way, but in "the recipients of Native American or
21 migrant funding shall provide opportunities for in-
22 volvement and delivery of legal services. It's
23 a "shall" and it's mandated unless they can show
24

1 to the Corporation that such involvement is not
2 feasible. That says to me that the 12½ percent is
3 what is required there but that there is a small
4 out available. That is why I posed the change and
5 I don't believe it was technical. I would ask that
6 in the recommendations that do not wish to go with
7 the 12½ percent, that in these areas we insert the
8 word "substantial" prior to "involvement" on the
9 second line of B, so that it would read "recipients
10 of Native American or migrant funding shall provide
11 opportunity for substantial involvement in the
12 delivery of legal services by the private Bar"
13 and then it would read the same for the rest of the
14 paragraph. And I think that that just goes back
15 to a little bit higher standards than saying that
16 its available to have some involvement. And since
17 "substantial" has been defined previously by this
18 Board and policy at 12½ percent, I would say what
19 would be my hope is that that would be what they
20 would be aiming for. And obviously in the first
21 paragraph you have exempted them from the mandatory
22 requirement that this will be a good change to see
23 whether or not a guideline approach works as well
24 as a mandatory requirement.

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1 MR. SMEGAL: May I ask a question, LeaAnne? Do you agree that
2 the term substantial as used here does not mean
3 necessarily 12½ percent?

4 MRS. BERNSTEIN: Substantial is defined by the Corporation's Board
5 in 1981 as 10 percent, so I would say that we could
6 stick with the previous policy, if that's what you
7 want to deal with in substantial, but I think I
8 asked for the insertion of the word substantial and
9 I just say that this would be a good opportunity for
10 us to see whether guidelines work as well as
11 minimums.

12 MR. SMEGAL: But, I'm trying to find out what you think it means
13 because.....

14 MRS. BERNSTEIN: I would think it means 12½ percent.

15 MR. SMEGAL: Then I think it doesn't mean that. I don't think
16 you have to use the term substantial or even have
17 any need for the paragraph if it means 12½ percent.

18 MRS. BERNSTEIN: Well, except that this is not required as part of
19 the PAI expenditure. It is required that this is the
20 part that you shall attempt to involve to this
21 extent. This is a guideline paragraph as opposed
22 to requirement.

23 MR. DURANT: You made the motion.....is there a second to the
24 motion?

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1 MR. WALLACE: I'll second it because I've got no problem with
2 it....but may I be heard, Mr. Chairman?

3 MR. DURANT: Please.

4 MR. WALLACE: I don't have any problem with the word substantial
5 although I probably would share Mr. Valois' inter-
6 pretation of that word. This subsection D is un-
7 changed from the subsection D that exists in our
8 present regulations. It has not been addressed by
9 the Committee, it has not been changed by the Com-
10 mittee and it was never my understanding that the
11 use of the word substantial applies to such a man-
12 date.

13 MRS. BERNSTEIN: I'm not mandating.

14 MR. WALLACE: And I certainly think 12½ percent funds is a fine
15 thing for them to try to do. I don't think the use
16 of the word substantial mandates it and so I have
17 no problem with the amendment offered by Mrs. Bern-
18 stein and I'm happy to support it under the circum-
19 stances that I've just explained.

20 MR. MENDEZ: I studied the Native American and migrant issue
21 extensively and my impression is that it is very
22 difficult because the distances involved and the
23

24

1 nature of the clients to obtain attorneys. We've
2 made a conscious decision early on about that
3 aspect and if they can get any compliance at all
4 or any attorneys to actively participate, that
5 satisfies me. If it comes to my attention next
6 year after we've enacted these things and we've
7 looked at them and we've reexamined them that that's
8 not being dealt with and they're not making an ef-
9 fort then I would be in favor of changing it.
10 Right now I really am not too inclined. I don't
11 want to have the legislative history to reflect
12 that this means 12½ percent.

13 MR. DURANT: Mrs. Bernstein has the floor please.

14 MRS. BERNSTEIN: Nothing that I've said indicates that I expect this
15 to be a mandate. It simply says that I am asking as
16 a guideline that they aim to the 12½ percent be-
17 cause I think that we should be asking for involve-
18 ment. As far as whether or not they use them, I
19 noticed that when we went to the Utah program,
20 that they contract all of their Indian services.
21 They go with private attorneys. And I would like
22 to see the information that you've garnered be-
23 cause the Federal Bar Association has a large Bar
24 that's serving Indians and I think that that Bar

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1 ought to be reached out to in terms of Pro Bono and
2 reduced fee service. All I'm saying is that let's
3 put our principles where our mouth is and ask for
4 some substantial involvement. It's a guideline,
5 it's not a minimum.

6 MRS. SWAFFORD: I think she's made a good point of that and it gives
7 me an opportunity. I think she's made a really good
8 point. There's been an awful lot of discussion of
9 whether we should mandate 12½ percent or whether
10 we should ask for it as a guideline and I think it's
11 an opportunity for us to see if the guideline
12 works and I don't think that it really significantly
13 changes it.

14 MRS. BERNSTEIN: It says that if they can demonstrate that it's
15 not feasible, then that's it.

16 MR. DURANT: Is this the guideline language, though, that was in
17 the 10 percent, or is this something.....

18 MR. VALOIS: I'm prepared to support LeaAnne's words so long as
19 I'm satisfied that it does not have some meaning
20 outside the ordinary meaning of substantial that I
21 would find in some quality dictionary. If she means
22 for it to mean something other than substantial,
23 then I want to know what it is

24

1 MR. DURANT: I think she means....at least it's my impression...
2 that mean 12½ percent.

3 MRS. BERNSTEIN: I mean a substantial involvement is more than a
4 diminimus involvement. That asking one attorney
5 to do something is not substantial. And 12½ percent
6 has been defined as substantial before. I would
7 say that as a guideline, since we're not dealing
8 with minimums, that it reasonable to apply the
9 same goal. We know that legislative history doesn't
10 control what's enacted. I did not insert 12½ per-
11 cent, I inserted substantial.

12 MR. DURANT: Any further discussion?

13 MR. WALLACE: Question, Mr. Chairman.

14 MR. DURANT: Mr. Wallace?

15 MR. WALLACE: Call the question.

16 MR. DURANT: Call the question, fine. I'm going to do this
17 on a roll call. Mr. Smegal?

18 MR. SMEGAL: No.

19 MR. DURANT: Mr. Uddo?

20 MR. UDDO: No.

21 MR. DURANT: Mr. Valois?

22 MR. VALOIS: No.

23 MR. DURANT: Mrs. Swafford?

24

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1 MRS. SWAFFORD: Yes.
2 MR. DURANT: Mr. Mendez?
3 MR. MENDEZ: No.
4 MR. DURANT: Durant, No.
5 Mrs. Bernstein?
6 MRS. BERNSTEIN: Yes.
7 MR. DURANT: Miss Miller?
8 MISS MILLER: No.
9 MR. DURANT: Miss Benavidez?
10 MISS BENAVIDEZ: Yes.
11 MR. DURANT: Mr. Wallace?
12 MR. WALLACE: Yes.
13 MR. DURANT: Mr. Eaglan?
14 MR. EAGLAN: I abstain.
15 MR. DURANT: The motion fails. On a vote of six to four.
16 MRS. BERNSTIEN: How did you vote on it?
17 MR. DURANT: I voted no. Are there any other amendments?
18 MRS. SWAFFORD: Let me make a motion to the effect that the word
19 substantial has no significant meaning. Can I put
20 that in the form of a motion?
21 MR. DURANT: It didn't pass. So it's not in there. What you're
22 saying is you want to put....
23 MR. VALOIS: She's making another motion to which substantial
24

1 has no extra meaning other than whatever is found.

2 MRS. SWAFFORD: No precise meaning.

3 MR. VALOIS: No special meaning other than what is meant in the
4 Colliers Dictionary.

5 MRS. SWAFFORD: No special meaning.

6 MR. DURANT: The problem is...first of all we have to have a
7 motion in which we'd have to have an amendment in
8 which substantial is in some way or other either
9 defined because the objection was it's standing
10 alone wasn't clear. Mr. Valois?

11 MR. VALOIS: I would like to move the word substantial, paren,
12 as commonly defined, closed paren, be inserted in
13 line 2 of paren, little d, closed paren of page
14 2....

15 MRS. SWAFFORD: All right, I'll second that motion.

16 MR. WALLACE: I didn't hear the motion on this end.

17 MR. DURANT: The motion that is presently on the floor is to
18 insert the words substantial, paren, as commonly
19 defined, closed paren, in where the previous
20 amendment was supposed to be. My only question is,
21 where are we with that? Mr. Mendez?

22 MR. MENDEZ: I request the Chair rule this out of order because
23 these two individuals were on the losing side of
24

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1 of the previous motion and this is readdressing a
2 motion that was previously voted on.

3 MR. DURANT: The Chair will rule that the amendment is not out
4 of order.

5 MR. VALOIS: And secondly, I think it is a different amendment
6 from that previously advanced and the amendment
7 speaks for itself as to why it is different.

8 MR. DURANT: Do you want to call the question?

9 MR. UDDO: I call the question.

10 MR. DURANT: Let me do a roll call again. The amendment is to
11 insert the word "substantial, open paren, as common-
12 ly defined, closed paren, in paragraph B on page 2,
13 between the word "for" and "involvement". Mr. Uddo

14 MR. UDDO: No.

15 MR. DURANT: Mr. Smegal?

16 MR. SMEGAL: No.

17 MR. DURANT: Mr. Valois?

18 MR. VALOIS: Aye.

19 MR. DURANT: Mrs. Swafford?

20 MRS. SWAFFORD: Yes.

21 MR. DURANT: Mr. Mendez?

22 MR. MENDEZ: No.

23 MR. DURANT: Durant, No.

24

1 MR. DURANT: Mrs. Bernstein?

2 MRS. BERNSTEIN: Yes.

3 MR. DURANT: Miss Miller?

4 MISS MILLER: Yes.

5 MR. DURANT: Miss Benavidez?

6 MISS BENAVIDEZ: No.

7 MR. DURANT: Mr. Wallace?

8 MR. WALLACE: Yes.

9 MR. EAGLAN: Abstain.

10 MR. DURANT: It's a tie vote.

11 So it loses.

12 (LAUGHTER)

13

14 MR. MENDEZ: Mr. Chairman.

15 MR. DURANT: Mr. Mendez.

16 MR. MENDEZ: I move the main motion.

17 MR. DURANT: You mean call the question, because it's
18 already been moved. I think it's already
19 been moved and seconded. The question
20 has been called on the main motion which
21 is to adopt the regulation 1614 on private
22 attorney involvement. We'll do a roll
23 call vote. Mr. Uddo?

24

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1 MR. UDDO: Yes.

2 MR. DURANT: Mr. Smegal?

3 MR. SMEGAL: Yes.

4 MR. DURANT: Ms. Swafford...or Mr. Valois?

5 MR. VALOIS: Yes.

6 MR. DURANT: Mrs. Swafford?

7 MS. SWAFFORD: Yes.

8 MR. DURANT: Mr. Mendez?

9 MR. MENDEZ: Yes.

10 MR. DURANT: Durant, yes. Ms. Bernstein?

11 MS. BERNSTEIN: Yes.

12 MR. DURANT: Mrs. Miller?

13 MS. MILLER: I didn't understand that.

14 MS. BERNSTEIN: She didn't understand what you're doing
15 so she's not going to tell you.

16 MR. DURANT: I apologize. We are voting on this total
17 regulation. Not on any of the amendments.
18 The amendments have already been made
19 and now we're doing it on the regulation
20 as recommended by Mr. Wallace's committee
21 with the changes involving the PAI language
22 on the requirement. I apologize.

23 MS. MILLER: Yes. Yes. I didn't understand you.

24

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1 MR. DURANT: All right. That's my fault and I apologize.

2 Ms. Benavidez?

3 MS BENAVIDEZ: Yes.

4 MR. DURANT: Mr. Wallace?

5 MR. WALLACE Aye.

6 MR. DURANT: Mr. Eaglin?

7 MR. EAGLIN: No.

8 MR. DURANT: The motion passes.

9 MR. WALLACE: Mr. Chairman.

10 MR. DURANT: Mr. Wallace.

11 MR. WALLACE: My committee was scheduled to attempt
12 to present to the Board, our proposed
13 regulation on part 1630. We have not
14 completed work on part 1630. My committee
15 is scheduled to meet in Washington on
16 October 25th to complete work on part
17 1630 and we should have it available for
18 the board at its next meeting. That completes
19 the report of my committee, Mr. Chairman.

20 MR. DURANT: Thank you very much, Mr. Wallace. The
21 next item on the agenda is the report
22 from Mr. Mendez on the Audit Appropriations
23 Committee and I hope he will be direct.

24

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1 MR. MENDEZ: Mr. Chairman, the Audit Appropriations
2 Committee met yesterday and again this
3 morning. Yesterday, we had one motion
4 that was carried by the committee and
5 at this time, I will present a motion
6 to the Board. The motion is to authorize
7 the Legal Service Corporation staff to
8 continue to spend for management and
9 administration at the current level.

10 MR. DURANT: Is there a second to that motion, since
11 it's out of the Committee report?

12 MS. BERNSTEIN: Second.

13 MR. DURANT: Is there any discussion on the motion?
14 Hearing none, all those in favor, say
15 Aye.

16 Members: Aye.

17 MR. DURANT: Opposed.

18 MR. MENDEZ: Mr. Chairman.

19 MR. DURANT: Mr. Mendez.

20 MR. MENDEZ: This morning we had further discussion
21 and the Committee, on behalf of the Committee,
22 I move to announce as policy of the Legal
23 Service Corporation, effective as of January
24

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1 1, 1986, functional accounting.

2 MR. DURANT: Is that in the form of a motion?

3 MR. MENDEZ: Yes, it is.

4 MR. DURANT: Is there a second?

5 MS. BERNSTEIN: I second it.

6 MR. DURANT: Is there any discussion.

7 MR. ROCHE: Mr. Chairman.

8 MR. DURANT: Mr. Roche.

9 MR. ROCHE: Before you take your vote, I would be
10 grateful, if the recorder would note for
11 the record all the testimony which Gerry
12 Singesen provided to the Committee and incorporate
13 it in this particular record of this Board
14 meeting, if you will permit that and further
15 ask that this motion be amended, by the
16 Board to state also, as a matter of policy
17 that you will seek the funds necessary
18 to pay the cost of functional accounting.

19 MR. DURANT: Any other discussion or any other comments?
20 Hearing none, is there a call for the
21 question.

22 MS. BERNSTEIN: Call the question.

23 MR. DURANT: All those in favor of the motion, signify
24

1 by saying Aye?

2 Members: Aye.

3 MR. DURANT: Opposed.

4 (For Gerry Singesen's testimony, refer to Committee on Audit
5 And Appropriate, beginning at page 81)

6 MR. DURANT: Mr. Mendez.

7 MR. MENDEZ: Mr. Chairman, we've tabled the Audit and
8 Accounting Guide and there is a special
9 meeting of the Committee on October 25th,
10 to discuss the Audit and Accounting Guide
11 and hopefully, at our next meeting, I
12 will have something to report on that.

13 MR. DURANT: Anything else.

14 MR. MENDEZ: That is it.

15 MR. DURANT: The record will reflect the addition of
16 Mr...although I think it's already a part
17 of it, but the addition of Mr. Singesen's
18 testimony, given during the hearing.
19 Mr. Valois.

20 MR. VALOIS: Related to Terry's latest comment, I have
21 discussed with both Terry and with Basile
22 Uddo, the possibility that the money that
23 Basile and I have presently got charge

24

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1 of, with respect to performance criteria,
2 1.4, 1.6. I'm not sure which it is.
3 1.9. That that money might well be used
4 to offset or contribute to the offset
5 of the cost of the accounting shift and
6 I've consulted with Basile and we are
7 of the opinion that our work on the developing
8 performance criteria is going to be such
9 that it would make sense to use this money
10 for that purpose. I'm not going to make
11 that in the form of a motion but between
12 now and then I will seek favorable views
13 from other members of the Board on that
14 subject and perhaps next meeting, I will
15 have such a motion.

16 MR. DURANT:

17 Mr. Valois, I also discussed the idea
18 with Mr. Roche prior to our break for
19 lunch. I think it is a good idea to see
20 if we can't, in fact, allocate the money
21 that might otherwise have been strictly
22 on a performance criteria that it be used
23 for the cost that might be involved in
24 terms of the changing to the functional

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1 accounting. I certainly would look favorably
2 upon something like that. If the, depending
3 on how your committee acts, but...

4 MR. VALOIS: I don't know how much the accounting shift
5 will take and if it takes Three Hundred
6 Thousand Dollars, I certainly don't want
7 to be on record as saying we can spend
8 1.9 on it, so with that caveat, I...

9 MR. DURANT: Okay. Mr. Sable.

10 MR. SABLE: I was not present when that 1.9 million
11 was allocated, but my understanding is
12 it was allocated to the basic field programs.
13 I assume the functional accounting requirement
14 applies to all grantees and therefore
15 I would ask that when you make a consideration
16 of funds to make the transfer, to functional
17 accounting, you take into account all
18 grantees and not just basic field.

19 MR. MENDEZ: Mr. Chairman.

20 MR. DURANT: Mr. Mendez?

21 MR. MENDEZ: I've taken into account what Bob has said
22 and...

23 MR. DURANT: Which Bob?
24

1 MR. MENDEZ: Bob Valois and Mr. Sable both. And, at
2 our next meeting, general meeting, we
3 will attempt to start addressing that
4 issue.

5 MR. SABLE: Thank you.

6 MR. MENDEZ: I'm not sure that we'll do that on the
7 October 25th meeting, but at one of our next
8 meetings we'll do that.

9 MR. DURANT: Terry, that's why we didn't make it part
10 of the motion. The next item, I have
11 been asked by Mr. Joseph Williams to address
12 the Board on the Reginald Eber (ph) Smith
13 Program. I talked ever so briefly with
14 Mr. Williams last night but he has prepared
15 a subsequent memorandum, which I think
16 has been delivered to the entire Board.
17 Is that correct?

18 MR. WILLIAMS No, sir, I have additional copies. With
19 your permission, I'll give them to the Board
20 members.

21 MR. DURANT: I would like you to pass them out if you
22 would.

23 MR. WILLIAMS: And also to record, to make a part of
24

1 the record...

2 MR. DURANT: Mr. Williams.

3 MR. WILLIAMS: I'd like to thank you, Mr. Chair, for
4 giving me this opportunity to address
5 the Board. My name is Joseph William.
6 I am a first year Reggie. I have been
7 employed with Legal Services Corporation,
8 since 1978. I went to law school, starting
9 in 1982. Graduated from the American
10 University Law School, 1984. Sat for
11 the Maryland Bar in February, sworn in
12 June 26. I applied for Reggie Program
13 because I believe in the principles and
14 purposes that the Reggie Program was founded
15 upon. It was founded in 1967 under...it
16 was financed under the Office of Economic
17 Opportunity. It was founded on the basis
18 of Mr. Smith's commitment and vision that
19 it was necessary to tackle the problems
20 of the poor by becoming involved in the
21 community. It was through his vision
22 that he realized that the current problems
23 of the poor are systemic and the only
24

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1 effective way of tackling those problems
2 and addressing those needs is to become
3 involved in the community. The Reggie
4 Program has stood for community service,
5 community economic development, pro se
6 activities and frankly, I am at a loss
7 right now to determine how the Board could
8 support the Corporation's position to
9 defund the program. I have looked through
10 the minutes for the past year and the
11 only indication that I had, is from a
12 copy of the report that was done by the
13 Corporation and submitted to you on June
14 28th, 1985. In that report, the Corporation
15 is purported to have done a comprehensive
16 analysis, cost benefit analysis and I
17 examined the report and determined that
18 it wasn't an analysis of the costs, so
19 much as the benefits of the program.
20 It did not consider the intangible benefits,
21 the cost of monies that were saved the
22 Corporation, through the Reggie Program
23 by educating the community to go to court,
24

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1 represent their own interests, to build
2 economic development programs within the
3 community. The Reginald Heber Smith Program
4 is an institution. It's been around longer
5 than Legal Services Corporation itself.
6 There's commitment to get involved in
7 the community, commitment to hire and
8 retain minority attorneys, as well as
9 women to their purpose and I would like
10 to request the Board to enlighten me as
11 to how you arrived at your decisions to
12 defund the Reggie Program.

13 MR. DURANT: Mr. Mendez.

14 MR. MENDEZ: Mr. Chairman, I don't have any questions
15 of this witness.

16 MR. DURANT: Oh, I thought you said to me last night...I'm
17 sorry.

18 MR. MENDEZ: No, I don't. I really don't. I've read
19 all of the information they've tendered
20 to us and I just have nothing at this
21 time for this man.

22 MR. DURANT: Mr. Williams, I think it was the feeling
23 of the Board, essentially, two, three

24

1 overall reasons in terms of our decision,
2 regarding the Reggie Program as it was
3 then presently constituted, essentially
4 that they were, as I think was evident in the
5 testimony that was provided to the Senate,
6 a number of problems regarding the ad-
7 ministration of the program. Second that
8 the, in terms of recruitment, in the data
9 that the subcommittees and this committee
10 reviewed indicated that the local programs
11 were, in some ways, in the best position
12 to be doing the recruiting and that we
13 should begin an active law school clinic
14 and law school recruitment program in
15 order to involve as many new young attorneys
16 as possible in the Legal Services Program.
17 I, myself, am beginning to, in working
18 with Mr. Wentzel and other members of
19 the Board to develop a program of recruitment
20 that would be, I think important in terms
21 of achieving Mr. Smith's goals, in terms
22 of involvement in the Legal Services Program
23 for law students to be actively involved,
24

1 but I think in some and we discussed this
2 issue a number of times over the last
3 year, and I think that the minutes and
4 the transcripts of those different meetings
5 and because, frankly, it came up almost
6 from our first meeting in December and
7 not just at one meeting in Detroit in
8 June, that dealt with that.

9 MR. WILLIAMS: I understand, Mr. Chairman. I also understand
10 that as the Board of Directors, you are
11 charged with the responsibility of directing
12 the management of Legal Services Corporation
13 and to effectively do that, you must rely
14 on information that management gives to
15 you to make a decision. What I am saying
16 is that the report that was done by LSC
17 is not only misleading, it is inaccurate.
18 There are allegations in the report concerning
19 the law student clinical project. I think
20 the project would be a benefit to delivery
21 of legal services. However, I don't think
22 it would be wise to terminate a program
23 without having another program in existence.

24

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1 Going through the members, there are promises
2 about the law school clinical program,
3 but nothing concrete, nothing you could
4 point at and say, this will work. What
5 I'm asking the Committee, the Board to
6 do now, is just to commit some funds to
7 establish a task force, look into all
8 these questions, an objective task force
9 and not rely on just information supplied
10 by the corporation. The task force can
11 consist of all interested parties in the
12 community to study and to search for what
13 is the truth because I believe that, right
14 now, the truth has not been presented
15 to you in its entirety and, like you say,
16 you were confronted with the problems
17 when you first started ten years in December.
18 Some studies were done, Willie Cook
19 presented a study. The corporation did
20 an in-house study, via telephone. Mr.
21 Mendez in a previous meeting, wanted some
22 statistical information on the number
23 of minority attorneys or Reggie attorneys

24

1 who had been recruited and retained after
2 the fellowship program. The corporation
3 alleges that information was not available.
4 I submit to you that if he had attempted
5 to locate information, the regs are on
6 file with the local programs and information
7 would be available if they, in fact, tried
8 to get information. Also, a study was
9 done about five years ago that showed
10 the number of attorneys who are currently
11 employed with Legal Services Program.
12 There's no mention in the report by the
13 corporation, in its report. I don't understand
14 how you can look for the truth and not
15 come up with all the facts.

16 MS. BERNSTEIN: Are you talking about the Robertson study?
17 I didn't mean to interrupt you. Is that
18 the study you're talking about?

19 MR. WILLIAMS: I don't know. Personally, I don't know.
20 I was just told that a study was done
21 about five years ago.

22 MS. BERNSTEIN: That's the only one I know that was done
23 about five years.

24

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1 MR. WILLIAMS: Well, it may, in case, be, in fact, the
2 same one. I am...

3 MS. BERNSTEIN: So we were giving that study.

4 MR. WILLIAMS: Okay. I am a young lawyer, impressionable.
5 I see the laws being...laws, your regulations
6 are required to be followed. I was taught
7 that. When you come before a tribunal,
8 you should make all the facts clear, bring
9 up all the information so the tribunal
10 can make an informed decision. During
11 my six years of paralegal, before I went
12 to law school, I worked with abused and
13 neglected children. There was always
14 the issue of informed consent. Right
15 now I don't think the Board was given
16 all of the relevant information and had
17 the opportunity to address the information.
18 I propose that instead of destroying a
19 program, because of administrative costs
20 that a method be made to study ways to
21 cut down administrative costs prior to
22 terminating the program. Once the program
23 is terminated, and if a study is later

24

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1 done to recognize a need for it, those
2 costs for starting up, will again be ad-
3 ministrative costs.

4 MR. DURANT: Mr. William, I can't help you. Are you
5 located in Washington?

6 MR. WILLIAMS: I'm located in Baltimore.

7 MR. DURANT: Mr. Wentzel, would you be willing, before
8 our next meeting, to sit down with Mr.
9 Williams and to review his particular
10 numbers, attached to his memo.

11 MR. WENTZEL: I'd be delighted.

12 MR. DURANT: Would you do that?

13 MR. WENTZEL: Yes.

14 MR. WILLIAMS: To what end would that be? If we sit
15 down and talk and my numbers ain't (sic)
16 correct or his numbers ain't (sic) correct,
17 what would be accomplished?

18 MR. DURANT: Well, I think it's, in part, as you say,
19 a search of the truth.

20 MR. WILLIAMS: Well, I think the best way to do it is
21 to get an independent body to do that.
22 There are \$500,000 left over from the
23 Reggie Program from last year. A portion

24

1 of those monies could be allocated to
2 the establishment of a task force to look
3 into this problem.

4 MR. DURANT: Those dollars are not still available,
5 are they? Haven't those dollars...

6 MR. MENDEZ: Well, now Clark, we have a very competent
7 staff and until I see something that indicates
8 that they have done something inappropriate,
9 I'm willing to listen to what they've
10 said. You've just told the staff to meet
11 with this gentleman and review it and
12 if this staff, once it comes through and
13 once he meets with the staff and he comes
14 back with the issues, then we may be...I'd
15 be willing to go forward with this, but
16 until the staff is proved wrong, and has
17 a chance to respond to his allegations,
18 I don't think we should do anything more.

19 MR. DURANT: I am simply providing the opportunity
20 for Mr. Williams to meet with the staff
21 and to review those items.

22 MS. BERNSTEIN: And I think it would helpful for you,
23 too, because I think that there may be

24

1 some misinformation that you've been given,
2 because you didn't know the name of the
3 report. I have studied it. The Board
4 has not gone without specific information,
5 even if not every piece of information
6 has been discussed in the minutes and
7 the transcript.

8 MR. WILLIAMS: Excuse me. I just want to put out one
9 bit of information that was in the June
10 28th report. The Board stated that the
11 number of minority attorneys and the Reggie
12 Program, within Legal Service Corporation
13 itself, was well beyond the number of
14 minorities represented in the general
15 population. The Board was operating under
16 the assumption that the entire U.S. population
17 is the eligible client community, which
18 is, in fact, not the case. I don't know
19 why those statistics were put in that
20 report unless it was put in there with
21 the purpose of misguiding you or giving
22 you the impression that everything was
23 fine.
24

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1 MR. DURANT: I think, Mr. Williams, what I'm saying
2 is that if there is misinformation on
3 either side or other different reports
4 or whatever, I think the best beginning
5 is to, Mr. Wentzel has offered his good
6 offices to meet with you or to direct
7 the appropriate staff person to meet with
8 you to determine if there is error.

9 MR. MENDEZ: I also would invite Mr. Wentzel to give
10 him the portion of my attachments to my
11 testimony to the Senate concerning this
12 issue.

13 MR. SMEGAL: May I just add a further request. Mr.
14 Williams has written us and after these
15 discussions with Wentzel and the staff,
16 I assume he'll get the courtesy of a written
17 response and could the Board be copied,
18 to keep us up to date. So we'll know
19 about it then.

20 MR. WILLIAMS: Okay, could a couple other persons sit
21 along with myself?

22 MR. MENDEZ: I have no objection to that.

23 MR. WILLIAMS: Okay, great.

24

1 MR. DURANT: Thank you very much, Mr. Williams. One
2 of the items that was on our agenda that
3 I overlooked was to offer a motion or;
4 a resolution really, on the work that
5 Mr. Uddo has been doing regarding the
6 standards for the providers of civil legal
7 services. Let me read a proposed resolution
8 for the Board's consideration. 'Whereas
9 attorneys representing indigent clients
10 should be held to the same high standards
11 of professional conduct, as attorneys
12 representing any client and, whereas,
13 as the various states are currently deliberating
14 on the model rules of professional conduct
15 proposed by the American Bar Association
16 and any deficiencies of those rules with
17 respect to serving indigent clients, should
18 be addressed there and whereas the proposed
19 standards for providers of civil legal
20 services to the poor define too narrowly
21 how a private legal aid program may be
22 organized and operated and therefore may
23 discourage badly needed supplemental private

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1 attorney efforts and whereas the proposed
2 standards may undermine the traditional
3 commitment of the lawyer and his or her
4 individual client in deference to a vaguely
5 defined, in the standards, client community
6 and whereas the proposed standards may
7 adversely affect the corporation's capacity
8 to fulfill it's statutory responsibility
9 to monitor and enforce compliance with
10 federal statutes, therefore, the Legal
11 Services Corporation and Board of Directors
12 urges the ABA Standing Committee on Legal
13 Aid and Indigent Defendants to reconsider
14 its proposed standards for providers of
15 civil legal services to the poor in their
16 present form for the reasons stated above
17 and those presented by Basile Uddo, to
18 the Standing Committee on September 27th,
19 1985. The Board urges the Standing Committee
20 to give further careful and independent
21 study to whether the professional responsibility
22 of those who deliver legal services to
23 indigent clients is not adequately addressed

24

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1 in the ABA Model Rules of Professional
2 Conduct.' Is there a second?

3 MR. MENDEZ: Second.

4 MR. DURANT: Any discussion or comment? Mr. Smegal.

5 MR. SMEGAL: I'm going to vote for that resolution.
6 I think, though, we're a little bit embarrassed,
7 Mr. Durant, I think our predecessors had
8 an opportunity early on to put some input
9 and they didn't do it and we, unfortunately
10 are now caught in the dilemma of having
11 to come in at the last minute and try
12 to put forth our thoughts as Mr. Uddo
13 did in Chicago and what we're asking for
14 is some more time in which we can make
15 a constructive contribution to the process..

16 MR. DURANT: Exactly.

17 MR. SMEGAL: ...of ABA standard and development.

18 MR. DURANT: And it's my understanding that, from Mr.
19 Uddo, that Mr. Lyons and Jack Curtin and
20 others have offered that kind of opportunity
21 and Mr. Uddo and the Corporation will
22 be working with them. Any other discussion
23 or comment? All those in favor, signify

24

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1 by saying Aye.

2 Members: Aye.

3 MR. DURANT: Opposed.

4 MR. EAGLIN: I abstain, Mr. Chairman.

5 MR. DURANT: Lastly, I promised last night that Carolyn
6 Saunders, who is here from Delaware County
7 in Pennsylvania, if she would like, to
8 address the Board, to do so now. Ms.
9 Saunders.

10 MS. SAUNDERS: Thank you for inviting me. I'm going
11 to do something very terrible but I'm
12 going to also ask the executive director
13 of Legal Service for Delaware County to
14 come up with me.

15 MR. DURANT: Would you identify yourself for the record.

16 MS. TORREGROSSA: My name is Ann Torregrossa. I'm the executive
17 director of Delaware County Legal Assistance,
18 located in Chester, Pennsylvania.

19 MR. DURANT: Nice to see you here.

20 MS. TORREGROSSA: Thank you.

21 MR. DURANT: Ms. Saunders.

22 MS. SAUNDERS: This is my first time ever coming to a
23 Legal Services Corporation Board meeting

24

1 and I was reappointed to the Board as
2 of last year so I haven't sat on the
3 Board for quite a year. I was, when I
4 first had the opportunity to come to this
5 meeting, I was a little reluctant, but
6 I'm very glad that I'm here today. I
7 do have some problem and, in reading your
8 article about maximizing justice for the
9 poor, I think I even have a question to
10 say, you know, how does the Board intend
11 to do that? And one of the problems that
12 I seem to, seems to be clear to me is
13 that when you're talking about maximizing
14 services for the poor and what the poor
15 has been designated in the past, is that we
16 don't have enough input, when it comes
17 down to our everyday lives and we have
18 all the time in the world to sit down
19 and think about what our problems are
20 in our communities and how we can best
21 address them. By doing that, we're extremely
22 active on the legal services boards and
23 other boards in our community that render
24

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1 services for the low-income persons in
2 our area. One of the suggestions that
3 I would really like to make for this Board
4 today, is that, well, before I got..let
5 me tell you how I arrive at what I'm
6 going to suggest. I had asked our attorney
7 that I saw...I wanted to know how many
8 members were on this Board and I thought
9 that it was eleven and I asked how many
10 client Board members and they told me
11 two and I was wondering if a third of
12 our board was supposed to be made of client
13 representatives, you know, why not this
14 board. Then I wanted to know who was
15 the person who made the decision for the
16 third of the client's board, not any reflection
17 to any of you, but it came from this very
18 board and I think that an example should
19 be that that...

20 MS. BERNSTEIN: It came from the Congress.

21 MS. SAUNDERS: I'm aware of how the Board was chosen
22 and I would like to make a suggestion
23 that, in order for you to get true client
24

1 representation, you know, to work along
2 with your Board that maybe an advisory
3 council of clients and maybe persons who
4 are directors of the persons who are delivering
5 the services for legal services should
6 come together and make suggestions to
7 this Board about how to best maximize
8 justice for the poor. Now, when I sat
9 here, I heard of private attorneys' involvement
10 and I think that a very crucial thing
11 should be addressed to this Board, is
12 also client involvement and the best way
13 to get client involvement would appear,
14 to have an advisory committee. Also,
15 that the Legal Services Corporation for
16 the benefit of the clients, we don't know
17 what number that should entail but that
18 the Legal Services Board should pay for
19 the transportation to allow the clients
20 to sit in to subcommittee meetings and
21 also make recommendations to the Board.
22 The other thing that I heard was, and
23 I think it was from Mrs. Fineburg, Finestein.
24

1 MS. BERNSTEIN: Bernstein.

2 MS. SAUNDERS: Bernstein. Was that we're dealing with
3 changing times and I think that that has
4 been very, very important to our community
5 because we know that the times are changing
6 and we also know that the emphasis that
7 were placed on poor folk in the '60s has
8 changed also and a lot of cut-back in
9 services and that some of the major things
10 that we were hoping to be done in our
11 community were not done. What we're trying
12 to do at this point, with our community
13 groups is to try to savvy and use as much
14 of the programs that are left in order
15 to make an impact in our community and
16 this would entail a complete community
17 involvement. When we look at our legal
18 services attorney, it's very very important,
19 not all the time, to go into court, but
20 for them to just be in meetings with
21 us, to advise us legally, of what our
22 rights are and to really teach us and
23 educate us on what we can do to have money
24

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1 put back into the program to help us with
2 some of the activities that we have been
3 able to accomplish in the last year or
4 so. One of the things that we accomplished,
5 and I was telling Mr. Durant, was that
6 we were able to give job training to persons
7 in the building trades. By doing this,
8 we were able to acquire eight properties,
9 abandoned properties in the city of Chester.
10 Eight out of maybe a thousand abandoned
11 properties and a lot of homeless people
12 and to serve these persons by rehabilitating
13 the house and hoping that we can get them
14 into the housing for a cheaper price.
15 We have asked many times, you know, that
16 or legal services attorney, especially
17 our director, you know, sit into meetings
18 with us to allow us the opportunity to
19 find out what legal recussions (sic) do
20 we have or what legal remedies do we have
21 in order to accomplish some of the tasks
22 that we are hoping to undertake. We have,
23 and I'm quite sure I'm going to get a
24

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1 question, about how many staff attorneys
2 are in our program and I can give you
3 ten or eleven. Also how many lawyers
4 are on our pro bono panel, which is 25%
5 of 800 lawyers that we have in our Bar
6 Association which is about 200 lawyers
7 who do participate. The other problem
8 that I did face was the support centers,
9 you know, and how or making judgment on
10 which one is better than the other. I
11 kind of feel that, and what has happened
12 in the past, is a lot of times services,
13 you know, that are given to poor folk,
14 that somebody is asking us, which one
15 do you choose? And I think it's very,
16 very hard to decide which one we choose
17 and sometimes you put them on the offensive
18 where they're starting to bite at each
19 other trying to prove that they're better
20 than the other. There should be some
21 kind of ways or means that money should
22 be able to be divided equally to allow
23 these centers to continue because there's

24

1 no such thing as not enough, too many
2 services for the poor. I think that we
3 have the problem of not enough services
4 that are given to the poor and I heard
5 the pleas coming from the Bar Association
6 which I thought I thought was magnificent,
7 you know, asking that you really go back
8 and ask for more money into the Legal
9 Services Program, to help persons that
10 are low income. I think the support that
11 has been given through the pro bono lawyers
12 is tremendous, but there's just so much
13 more to be reached and that poor folk,
14 it's happening all over the place, you
15 know, because of unemployment, that's
16 forcing persons to either lose housing
17 or whatever. I hope, today, that you
18 will consider client involvement, because
19 I kind of feel that this is going to be
20 very detrimental and if we learn how to
21 work together, it's going to be very,
22 very meaningful. I believe that the expertise
23 that can come from the client community
24

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1 and also from the directors of these programs,
2 to be very, very instrumental in helping
3 through Legal Services and also maximizing
4 justice for the poor. Thank you.

5 MR. DURANT: Thank you, Ms. Saunders. Are there any...Ann
6 do you have anything?

7 MS. TORREGROSSA: No.

8 MR. DURANT: Are there any questions from the Board?

9 MS. SWAFFORD: I have a question, Mr. Chairman. A couple
10 quick questions. Ms. Saunders, we're
11 glad you came to the meeting.

12 MS. SAUNDERS: Thank you.

13 MS. SWAFFORD: It's not often that we see a client
14 representative and it's good to have you.
15 How often does your board meet?

16 MS. SAUNDERS: Once a month.

17 MS. SWAFFORD: Once a month.

18 MS. SAUNDERS: Yes.

19 MS. SWAFFORD: Let me ask you another question about
20 your board meetings. How does your board
21 set priorities for the type of services?
22 I know you can't do them all. I know
23 you can't do everything that's requested

24

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1 of you, so how do you set your priorities?

2 MS. SAUNDERS: It's been done by the clients, who's sat
3 on the board. I think it was done in
4 1983. I wasn't a part of that involvement
5 in 1983. There will be another priority
6 setting this year and I will be involved
7 in that. I think it's going to be very,
8 very difficult because I'm not too sure
9 if I can answer the question, which comes
10 first, the chicken or the egg? But when
11 it comes down to priority setting, I think
12 we would have a very difficult time trying
13 to decide which ones are the most important
14 issues, you know, for poor folk.

15 MR. MENDEZ: What are the priorities, presently?

16 MS. SAUNDERS: At this time, we've got housing, welfare,
17 children and youth services, which we
18 have asked Legal Services to become active
19 in consumer health. Ann, am I missing
20 any?

21 MS. TORREGROSSA: That's about it.

22 MS. SAUNDERS: Okay.

23 MR. MENDEZ: In your opinion, which is the...in your
24

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1 area, which is the greatest need?

2 MS. SAUNDERS: If you ask me that, I would have to go
3 right back to the same response, that
4 I don't know which comes first, the chicken
5 or the egg and I think one of the questions
6 was asked of me last night, and I was
7 saying that the housing issue is a very
8 important problem. The educational issue
9 is very important and also jobs.

10 MR. MENDEZ: How long have you been on the job?

11 MS. SAUNDERS: I was on the board for about four years
12 in the early '70s and I was just recently
13 appointed to the board again, about six
14 months ago.

15 MR. MENDEZ: Six months ago.

16 MS. SAUNDERS: Yes.

17 MR. MENDEZ: Can you tell me what kind of training
18 they provided for you?

19 MS. SAUNDERS: Most of the training that was provided
20 for me was the early '70s and then we've
21 had classes where we were taught, you
22 know, just what the rules and regulations
23
24

1 were of legal services, what we're supposed
2 to do. What we would like to see more
3 of. What kind of things that are open,
4 you know, for the community.

5 MR. MENDEZ: In the last six months, though, have they
6 given you any of this type of training?

7 MS. SAUNDERS: Yes. Yes.

8 MR. MENDEZ: Is this what you were talking about now?

9 MS. SAUNDERS: I think, yes, the ideal thing. Some of
10 the things that they were training us
11 in, I've already been trained in in the
12 early '70s.

13 MR. MENDEZ: For example.

14 MS. SAUNDERS: One of the, I guess it was the priority
15 setting, which was some of the questions
16 that I might have, is just they set priorities
17 and who was the person who did it and
18 basically just questions that I can answer
19 for you now. The other is, the Legal
20 Services Corporation, you know, how that's
21 funnelled down. What attorneys do what
22 things that are in legal services, the
23 laws that govern the kind of work that

24

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1 they do.

2 MR. MENDEZ: Did they have this meeting with all of
3 the clients together or...

4 MS. SAUNDERS: Yes.

5 MR. MENDEZ: ...separately? How long did it take and
6 how useful was it?

7 MS. SAUNDERS: We were the ones who set up the time period
8 for it. We set it up for Monday afternoon
9 and it usually ran from about three to
10 five-thirty.

11 MR. MENDEZ: How many of these meetings, in the last
12 six months, have you attended, like that?

13 MS. SAUNDERS: About four. And we are going to do a
14 complete client training. We have asked
15 that some of the money that has been left
16 in our, I guess, clients' account, be
17 done for client training and we're hoping
18 to do three or four sessions.

19 MS. TORREGROSSA: Additional sessions. Ms. Saunders and
20 I sit...Ms. Saunders sits on the Medical
21 Assistance Advisory Board for Pennsylvania,
22 and I think that's a nice analogy to the
23 thing that she's talking about here.

24

1 As you know medical assistance requires
2 that every state have an advisory board
3 to advise the board on policy issues and
4 there is a consumer sub-committee of the
5 Medical Assistance Advisory Board, which
6 makes recommendations to the Welfare Department
7 as to what policies should be adopted
8 for medical assistance in the State of
9 Pennsylvania and this happens in every
10 state in the United States. I think it's
11 in part through Ms. Saunders' participation
12 on this body that she's seen and I think
13 that every Welfare Department has seen
14 in Pennsylvania, the importance of including
15 the people for whom the program is intended,
16 in getting their recommendations for policy
17 setting. There is a very active consumer
18 sub-committee. It reviews all regulations
19 in advance. It gives its input. Sometimes
20 it's accepted. Sometimes it's not, but
21 it makes for a better process and I think
22 that's what's being suggested here.

23 MR. MENDEZ: How often does that take place.

24

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1 MS. SWAFFORD: I have one more question to ask of you.
2 You know we were talking about client
3 training and this is an area that really
4 interests me. Do you do it just for the
5 clients or why are clients singled out
6 on the board. Why don't all board members
7 need training? It seems to me that this
8 Board needs training and it seems to me
9 that on a local board, that clients are no
10 different from anybody else.

11 MS. SAUNDERS: I agree.

12 MS. SWAFFORD: In other words, I think it can be a lot
13 more interesting to have a training for
14 your entire board.

15 MS. TORREGROSSA: The new board members, new attorney board
16 members that were appointed by the Bar,
17 are asked to be included in the client
18 board training because they wanted some
19 of the same background information. I
20 think there's been some reluctance of
21 some clients, although not Ms. Saunders,
22 certainly, to speak up at meetings when
23 the balance of the rest of the board is
24

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1 made up of professionals with law degrees
2 who are used to often participating in
3 boards and so I think it was to provide
4 an informational gap that may or may not
5 exist.

6 MS. SWAFFORD: Okay, now who do you speak to if there's
7 nobody there but clients? You can't speak
8 to each other.

9 MR. DURANT: I had mentioned to Ms. Saunders last night,
10 I would love to personally come out to
11 Delaware County, whenever you have the
12 training sessions. It also could be at
13 the same time that you have the committees
14 involving the Welfare Department or whatever.
15 I'd like to see how those work and so
16 if you'd let me know when those are, I'll
17 come out.

18 MS. SAUNDERS: Fine.

19 MR. DURANT: As long as it fits in my schedule.

20 MS. SAUNDERS: I'd like to add that before Ms. Torregrossa
21 came to our agency, that the previous
22 board of legal services, the community
23 group insisted that we have client training

24

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1 to...that we had training, period, community
2 training in what legal services was about,
3 its corporation, who its higher ups were
4 and, at some point in time, we used that
5 to get rid of our director, so we just
6 wanted you to know that, you know, some
7 people in the community are very much
8 involved with what and how this whole
9 program is set up and what's it to do
10 for the poor person.

11 MR. DURANT: Thank you both very much for coming.

12 MS. MILLER: I have one question. What type of client
13 environment were you speaking about with
14 this Board?

15 MS. SAUNDERS: I think it would be similar to the one
16 that we're doing with the MAAC Committee,
17 which is the Medical Assistance Advisory
18 Committee in Harrisburg. What we do,
19 I sat as a board member of the MAAC.
20 The board members sat with client committees,
21 just people made up of client input (sic) get
22 some client input, you know from our sub-
23 committee. I was trying to think of the

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1 word sub-committee. We have a sub-committee
2 made up of clients and also our attorneys,
3 which basically tell us, you know, what
4 laws are applicable and which ones, you
5 know, are not so great. Make a recommendation
6 to the MAAC Committee, which renders the
7 Medical Assistance Program. We also break
8 into other sub-committees, you know, using
9 some of the clients, who sit on our board,
10 into, you know, other committees, you
11 know, that sit on the MAAC Committee.
12 What we would like to suggest is that
13 the sub-committee meet with the client,
14 members of this board and that we hold
15 meetings and hear what's going to happen
16 with the Legal Services Committee and
17 it doesn't really have to be just with
18 the client committee. It can also be
19 with any board member who wishes to sit
20 down with us but we would be given the
21 chance, you know, to sit down with you
22 and to discuss maybe some of the things
23 that are meaningful to us and also some
24

1 of the things that, you know, that this board
2 feels there's a need to be addressed,
3 you know, by the client community and
4 I think that we're probably in a position
5 to say, you know, what might work. One
6 of the for-instances, the documentation
7 that was talked about yesterday, that
8 these legal services attorneys need to
9 get to you and I was like, Oh, my God,
10 you're not going to take up more time
11 of our staff, you know, because that time
12 that you're talking about is time, you
13 know, that even the director, at some
14 point, is needed in the community to really
15 address the needs of the people and we
16 were very much concerned with that, you
17 know, and we were also concerned with
18 whether or not you're going to get, you
19 know, extra funding to allow, if you want
20 this kind of time done, to allow them
21 the staff that they need to gather that
22 information or data for you because we
23 just can't see, you know, just taking
24

1 up more of the attorneys' time because
2 we have less attorneys; we have less paralegals,
3 you know, everything is cut in half and
4 they're working at a minimum at this point
5 and sometimes our director doesn't leave
6 that program until nine o'clock at night
7 and that's a problem.

8 MS. TORREGROSSA: The way it would work in an equivalent
9 situation to the MAAC model that Ms. Saunders
10 is speaking of, is that the board members
11 that sit here would chair an advisory
12 committee meeting, made up of client
13 representatives chosen in some representative
14 fashion, people who actually use the legal
15 services. They would meet ahead of this
16 board and give their input on any proposed
17 matters that are coming before this board.
18 In the MAAC situation, other board members
19 would often come to the Client Advisory
20 Sub-committee if they wanted to hear directly,
21 other client input. The chairperson,
22
23
24

1 then of the Client Advisory Sub-committee
2 would come back and then would vote however
3 he or she felt was appropriate but with
4 some broad-based representation and input
5 from the field.

6 MR. DURANT: Any other questions? Thank you both very
7 much.

8 MS. SAUNDERS: Thank you.

9 MR. DURANT: Nothing else on the agenda.

10 MR. UDDO: Move to adjourn.

11 (Seconded)

12 MR. DURANT: Mr. Gross.

13 MR. GROSS: The facilities that helped your Committee
14 the most are really in the person of Doris
15 Levesque, here, who worked evenings with
16 your staff.

17 MR. DURANT: We would like to offer you our applause
18 and our thank you. There's a motion to adjourn
19 on the table. Is there a second?

20 (Seconded)

21 MR. DURANT: Any discussion? All those in favor, signify
22 by standing up.

23 (Meeting convened.)

24

