

LEGAL SERVICES CORPORATION
BOARD MEETING

APRIL 14, 1989
9:42 A.M. to 2:58 P.M.

PRESENT:

MICHAEL B. WALLACE
CLAVOE SWAFFORD
BASIL J. UDDO
J. BLAKELY HALL
LORAIN MILLER
HORTENCIA BENAVIDEZ
THOMAS SMEGAL
PEPE J. MENDEZ
ROBERT A. VALOIS
TERRANCE J. WEAR

ALSO PRESENT:

TIMOTHY SHEA, VICE PRESIDENT & GENERAL COUNSEL
SUZANNE GLASOW, ESQ.
DAVID RICHARDSON, CONTROLLER

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MOTIONS BY:

Mr. Wallace - 3

Ms. Glasow - 111

Mr. Wallace - 161

Mr. Wallace - 124, 125, 125

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MR. WALLACE: We've not quite gotten settled. As Professor Uddo is making his way to the front, let me call this meeting to order. This is the meeting of the Board of Directors of the Legal Services Corporation, called pursuant to notice in Federal Register.

As is our custom, we will begin the meeting with an invocation. We have with us today Reverend John Peterson, of the Alfred Street Baptist Street Church, here in Alexandria, who is going to offer the invocation this morning. Reverend Peterson, if you would come forward? There's a microphone right there.

REVEREND PETERSON: Let us pray. Eternal Father, as we come this morning at the beginning of a new day, and in a meeting where we consider again how to serve all of your children, we thank you for those who have come from afar. You have brought them safely. We thank you for the night of the rest, and we thank you for the opportunity to serve others.

Therefore, we pray that in the deliberations of this day that though would grant until all minds and to all persons here concerned, understanding of speech, the understanding of deliberations, and the understanding of your will.

Grant that as their minds reflect upon those whom

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they serve, that they, too, may realize that there are others that are concerned of their plight. Grant unto this Board of Directors, and grant unto the entire corporation your will, your benedictive spirit, and your mercy. Grant unto all of mankind thy peace in they precious name, we pray. Amen.

MR. WALLACE: Thank you, Reverend Peterson, we appreciate your being with this morning. Thank you so much.

Our first item is the approval of the agenda. There will be, as you see from the agenda, an Executive Session at lunch time. Does anybody know where that's going to be? Are we going to eat in here?

RESPONSE: Yes.

MR. WALLACE: Okay. So at lunch time, the Board will remain in here, and the public will be excused as we have an Executive Session.

MOTION

You all have the agenda as printed in the Board book, and the Chair will entertain a Motion to approve the agenda as printed in the Board book. Mr. Valois so moved. Is there a second?

MS. MILLER: Second.

MR. WALLACE: Ms. Miller has seconded. Are there any

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amendments or any discussion of the agenda? (No response.)
All right. Hearing none, we are prepared to vote. All in favor of the agenda as printed in the Board books, say aye.

RESPONSE: Aye.

MR. WALLACE: Opposed say no. (No response.)

The agenda is adopted.

The first item on the agenda is the approval of the Minutes of the last Board meeting of March 3rd, 1989, which I hope you will have all had an opportunity to review. The Chair will entertain a Motion to approve the Minutes as printed in the Board Book.

Is there such a Motion?

MS. BENAVIDEZ: I make that Motion.

MR. WALLACE: Ms. Benavidez moves to approve the Minutes as printed in the Board Book. Is there a second?

MR. HALL: Second.

MR. WALLACE: Mr. Hall seconds.

Is there any additions or corrections to the Minutes?
(No response.)

Hearing no additions and corrections, let's vote on the Minutes. All in favor of approving the Minutes as printed in the Board Book, say aye.

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RESPONSE: Aye.

MR. WALLACE: Opposed, no? (No response.) The ayes have it, and the Minutes are adopted it. Thank you, Madam Secretary.

The first item after the approval of the Minutes, is the report from the Operations and Regulations Committee. At this time, I will turn the floor over to the Chairman of that Committee, Mr. Valois, to give his Committee's report.

Mr. Valois?

MR. VALOIS: Thank you, Mr. Chairman.

We met yesterday and considered Parts 1610, 1611, and 1632. I believe it was the third session -- second or third session -- we've had on 1610 and 1611. The second.

As to them, we will make a report. There were some fairly substantial amendments as a result of comments and argument from the field as to the 1632 Redistricting. I would like to report that to you at this time.

MR. WALLACE: All right. Go ahead, Mr. Chairman.
Thank you.

MR. VALOIS: Our report is that the Committee passed it as printed in the Federal Register, but as Amended by addition of Section 1632.4 A, B, and C. I have the original,

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but I understand that the Corporation has typed the original. I am going to report what was passed in the Committee, and if the Board wants to amend it to include what's been done over night, that's okay with me, but most of us were here yesterday, and I don't need to read all of these precise words, but I will give you the original copy, I'd like to report that out first.

The Corporation has now presented a typed version with -- I have some technical changes, as they were authorized to do by the vote yesterday.

MR. WEAR: Mr. President? Mr. Chairman, rather.

MR. WALLACE: Mr. President, you are recognized.

MR. WEAR: Thank you, Mr. Chairman. In response to the direction of the Board to make technical and conforming changes to the exceptions which were adopted yesterday, the staff met last night and did that, and this redraft is just a technical change to improve the form in which the exceptions were to be presented.

They appear in capitals at the bottom of page one, the top of page two, of the handout that is before you now.

MR. WALLACE: Thank you, Mr. President. I will ask the Committee Chairman to review those, and unless he sees some difficulty with the technical corrections the staff has made,

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what I am going to do is suggest that we work from the staff copy, since that is what everybody else typed. I would ask unanimous consent of 1632.4 be substituted for the handwritten version that was passed yesterday, and that will be the text that we work from, unless there is an objection.

MR. VALOIS: If you give me 30 seconds, I'll be with you.

MR. WALLACE: You've got it.

MR. VALOIS: Yes. I have reviewed the typed version as against the handwritten version, and it accurately represents what the Committee did, and the changes are purely grammatical or technical.

MR. WALLACE: All right. Hearing no dissent, then, the Committee Report before us shall be as technically corrected by the typed version, which everybody has.

Mr. Chairman, please proceed.

MR. VALOIS: Well, we also reported out -- We do report out Part 1610 and 1611, precisely, the version that is found attached to the April 11, 1989 memorandum, which everybody has a copy of, from Timothy Shea to me.

That version itself contains a number of changes, compromises, and so forth from the original. Specifically, on

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page five, you will see those parts which are in all caps.

There was discussion yesterday, and it is my view as I told the public yesterday that, while we did not adopt a suggestion from the public about retroactivity that was presented to us. The President was going to work on a transition clause of some sort.

We do not report that you, because we are not agreed on it. The Committee voted to report out the 1610 and 11, which are in Mr. Shay's memorandum of April 11.

MR. WALLACE: It is my understanding that the President does have some proposed transition language which has been distributed to the members of the Board. Is that correct?

MR. WEAR: Mr. Chairman, that is correct. The transition language for Section 1610 and 1611, I believe, are before the members of the Board.

The transition language would authorize the use of private funds that are in hand with a particular LSC recipient or private funds that will be received pursuant to a contract that is in effect by the date of enactment of this Regulation, and will allow those funds to be used -- to be matched, rather, with the private money for the purposes for which they were given.

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In addition, the individual grantees must report within 90 days, the amount of the grant. It's term, the purpose of the grant, and the source from which the grant funds came.

In addition, the grantees will be required to segregate those grant funds, from the other funds in the possession of that recipient.

MR. WALLACE: Thank you, Mr. President.

Mr. Chairman, do you have -- before we start to work on these, do you have anything further to report?

MR. VALOIS: I do not.

MR. WALLACE: All right. Let us begin, then, with the Redistricting Regulation, which is Part 1632, Committee Report is before the Board, without necessity for Motion or Second. So that is where we are.

Let me recognize the General Counsel to come forward and give us a brief description of what this provision as amended is going to do.

MR. SHEA: Please bear with me a moment while I get my papers.

MR. WALLACE: General Counsel has a lot of papers this morning.

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Let me say, while he is getting his papers together, that we did get the rest of the comments that came in yesterday afternoon. I did read them last night and distributed them to such Board members as I could find last night. They were all -- which, I guess, was Mrs. Swafford is who I found last night, but they are before everyone this morning.

I can represent to the Committee that they are substantially similar to the comments. I can represent to the Board they are substantially similar to the comments that were before the Committee yesterday. I didn't see anything in them that I particularly regarded as new people who were convinced by the comments we had yesterday, one way or the other. You'll probably be convinced the same way this morning.

With that, Mr. General Counsel, let me recognize you to describe this Regulation to us.

MR. SHEA: Thank you, Mr. Chairman. Very briefly.

On March 14, a proposed rule was published that would prohibit involvement by LSC recipients in redistricting activity. The comment period posed yesterday, as you have indicated, we've -- first of all, we furnished copies of the comments received as of, I think, Wednesday, in a bound volume to Board members, and last night, we updated the comments.

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As I indicated yesterday, most of the comments were -- resisted the -- either the premise of rule, or the legal authority for the corporation to adopt the rule.

I think it's fair to say, though, that the commenters did not suggest that there were a lot of redistricting cases that our LSC recipients were undertaking. There were some indications that there were some -- at least, at the current time -- currently. But most of the resistance dealt with justification and the authority for the proposal.

The purpose of the rule is to advance the goal of the corporation and this Board, that the principal -- that the resources of LSC recipients should be devoted to basic day-to-day legal services.

Fundamentally, the proposal is based on a proposition that use of LSC recipient resources for this purpose is insufficient, and goes -- first of all, in many respects, non-poor people, in so far, who will represent, as a general proposition a small minority of communities -- of people in the communities across the country, number one.

Number two, alternative resources are available; that is, there are other organizations and attorneys who are associated with other organizations that litigate such cases.

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Third, that in the past, LSC recipient programs have, from time to time, abused the redistricting activity in such a way that they were attempting to use it for their own, perhaps parochial purposes; and, for that matter, political purposes.

Finally, that Redistricting itself risks undue political entanglement, in so far as, of course, partisan political parties, and, for that matter, let's say, local but maybe in non-partisan, but nevertheless, political interests, have large stakes in these kinds of disputes.

As for the matter of authority, I think the dispute -- and Alan Houseman made a strong presentation that the corporation lacks authority to grant -- to promulgate a regulation such as this.

I think there are two basic arguments that he urges. One, is that the corporation does not have authority to make legislative rules.

I surely think that the corporation must have authority to do that. I think we have in the past. In so far as we are an independent corporation and have all of the residual and sort of general authority that is available to corporations -- to sue, and be sued; to advance the purposes of policy of the LSC act; and the general fashion, it seems to me

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the corporation must have authority to promulgate legislative rules.

The second branch of this argument, however, was that -- and certainly to the extent that we do, there is no question it must be -- any of our rules must advance the purposes and policy of the LSC Act, and otherwise be consistent with the letter of the act.

Alan urged, I think, that this change is inconsistent with some portions of the prohibitions of the -- portions of the act that, on political activity, that permit advice and representation on -- and I'm searching for the -- 1007A6, that permits the -- first of all, generally prohibits activities -- any political activity by our recipient, but it permits advice and representation with respect to what I would style as access to polls' issues.

In that vein, we have undertaken a brief analysis of the legislative history. None of it addresses Redistricting, per se. There is some indication that litigation on the Voting Rights Act would be permissible.

There is no question that, under this Rule, that certain kinds of litigation under the Voting Rights Act, would be ruled out; but any other kind of litigation. That is,

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anything that doesn't seek or obtain relief of redistricting is otherwise permissible under this rule.

I am going to address it momentarily, but some of these amendments try to deal with that.

I think ultimately the objection on authority in this case -- in a large sense, was based on the argument that a prohibition does not necessarily advance a goal, and, in this case, of course, there is a prohibition on Redistricting litigation.

Generally, the -- and I surely think that a prohibition such as that, can advance the general goal that our programs expend their resources in a way that is more efficient; and, fundamentally, that is what -- more efficient and less prone to political entanglement. That's what this rule is about.

It likewise leaves programs entirely free to otherwise set their priorities. There is no question that the LSC Act permits the corporation to establish goals for our programs. To the extent, then, that this is a -- there is only one -- there is only, in at least a formal prohibition senses -- there is only one prohibition established, then our recipient programs are a fair amount of flexibility, beyond

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that, to fashion their goals in such a way as to meet the demands of their community.

There was concern voiced as well with respect to the feature of the rule that would govern private funds and the activities of employees.

First of all, as to private funds, our current Regulation 1620, which deals with priorities and programs, reaches the program as a whole. And, has been, as far as I know, construed to be -- construed in that fashion by the corporation for quite some time.

Likewise, the provision of the act we are dealing with deals with programs, generally.

Surely, to the extent then that this likewise governs LSC and private funds, this -- it doesn't constitute a departure from the tenor of Part 1620, which is -- in another words, it doesn't constitute new precedent that goes beyond the reach of our existing Reg on priorities in Part 1620.

There was concern voiced as well about the feature of the rule that would imposes a prohibition on Redistricting activities by recipient employees.

Maybe this is the time to talk very briefly about the exception relating to that.

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In the typed language that was furnished to you a few minutes ago -- Section 1632.4 provides for certain exceptions. As relevant, it provides that, "Nothing in this part shall prohibit activities -- Part -- activities undertaken by employees or recipients without the use of program race horses, including time, without identification with a recipient, and outside the context of advice and representation."

The purpose of this Amendment is to leave intact the opportunity for LSC recipient employees to exercise their own personal First Amendment rights to seek or obtain Redistricting if that's appropriate.

The three limitations -- first, basically, the limitation on program race horses and identification with a recipient rule out the prospect of a nexus with the program, and that is consistent with the LSC Act.

The provision dealing with outside the context of advice and representation, reflects the fact that our current -- under our statute and our regulations, there is already a prohibition on outside practice of law. So this simply implements that.

Therefore, recipient employees are available -- or will be available -- to exercise their personal First Amendment

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Rights under this regulation, with respect to any Redistricting that's of interest to them.

The other two exceptions -- first, Part A of 1632.4 -- explicitly states that, "Fundamentally, any other litigation under the Voting Rights Act that doesn't seek Redistricting as defined in this rule as a remedy, is otherwise permissible."

So if there are issues about access to polls, or any other kind of matters that arise, under the Voting Rights Act, those may be pursued.

Finally, Subpart B, of these exceptions, provides that "nothing in this part shall prohibit the expenditure -- public or tribal funds -- that are used in accordance with the purposes for which they were provided."

That, of course, reflects the language of Section 1010C of our Act, which permits public funds to be used for the purposes for which they are provided.

I think that is all I have by way of an affirmative presentation.

MR. WALLACE: All right.

MR. SHEA: Are there any questions I can answer?

MR. WALLACE: Yes. Before I open for questions, I

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have on 'thing the President has pointed out to me on page two, at the end of "B," "the difference between the conjunctive and the disjunctive." I presume that "and" should be an "are." "Nothing in this part shall prohibit any of these three things." Should we have an "are" there instead of an "and?"

MR. SHEA: Or.

MR. WALLACE: Or.

MR. SHEA: Well, I guess it should be. That's right.

MR. WALLACE: I'm sorry. I'm Mississippi. You'll have to bear with me.

All right. Let me ask unanimous consent to change "and" to "or." (No response.) Hearing no dissent, so ordered.

I have a little trouble with calling these "Exceptions." They seem to me to be more disclaimers, and maybe there's a better word for them, but I think the Committee agreed yesterday that these are not exceptions to otherwise applicable language of the Regulation.

This is an explanation that the language of the Regulation was never intended to cover this stuff. I'm a little uneasy calling it an exception, because there may be something we haven't thought of, where people will say, "Well, that must be real broad language up there, because they had to

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write all these Exceptions to it."

MR. SHEA: Perhaps the title may have deserved some changes, but, the introductory language says, "Nothing in this part shall prohibit," so that at least is -- it doesn't affect other parts -- as other parties are concerned.

MR. WALLACE: That's right. No, that's not my concern. I realize it's limited to this part anyway, as long as that is -- no, exceptions are fine, as long as it's clear on the record. You can make it clear in your Preamble that we don't think that four cars, anything else that, was there to begin with.

MR. VALOIS: I would propose the exceptions was not part of the Committee Report. Frankly, I didn't notice it until now. I don't think it adds anything, and I think it may undue what we are seeking to do, which is to clarify what this does not apply. I would propose we just strike "Exceptions."

MR. WALLACE: Does the law say you have to have a title for a Section?

MR. VALOIS: No.

MR. SHEA: I think we should have a title for it, but I think we can probably come up with some --

MR. WALLACE: Well, I propose "Disclaimers."

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MR. SHEA: Why don't we just call it "Permissible Activity?"

MR. WALLACE: Bull's eye.

MR. SHEA: That credit should go to Ms. Glasow.

MR. WALLACE: She asked for unanimous consent to call if "Permissible Activities." Hearing no -- All right. I hear some dissent.

MR. SMEGAL: It seems to me in the mode of this discussion, we might call it Exceptions ordained by Mr. Wallace, the Chairman.

MR. WALLACE: If you want to make me Pope, that'll suit me fine. It'll get us out of here earlier today.

MR. VALOIS: I don't know how Mr. Wallace gets credit for this, I was going to give credit to Mr. Houseman. Were it not for Mr. Houseman and his arguments, quite frankly, this may have escaped us. These are more assurances that we didn't intend to prohibit certain things that people -- a number of commentaries suggested we did intend to prohibit.

MR. SMEGAL: I consider that a friendly Amendment. Houseman Exceptions.

MR. WALLACE: Clarifications? (No response.)

MR. VALOIS: "Permissible Activity" is accurate.

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MR. WALLACE: Do we have an objection to "Permissible Activity" as the title of this Section? (No response.) I don't hear an objection, so that's what the title is.

All right. Having done those very technical things, let me open the floor for questions from Board members to the General Counsel.

MR. SMEGAL: I'm sorry. Are we at the point where Mr. Shea now gets to answer questions?

MR. WALLACE: That is what I'm opening the floor for.

MR. SMEGAL: I'm missed the que.

MR. WALLACE: All right. Do have some questions for the General Counsel's office?

MR. SMEGAL: Yes, I do.

MR. WALLACE: All right. You're recognized, Mr. Smegal.

MR. VALOIS: You can ask both of them.

MR. SMEGAL: Mr. Shea, I noted with interest in a few minutes, I guess, or maybe some longer period of time, depending on what happens, we are going to get Part 1610.

I was interested to see if -- Suzanne just gave me a copy of it. I hadn't looked at it very carefully earlier, but I note that in the "Federal Register" the reference to 1610

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includes a Summary at the beginning. Part 1610 is proposed to be amended to conform to the rule, the changes made by the 1977 Amendments to the Legal Services Corporation Act of 1974.

Having looked at that, and seen the kind of Summary that is provided, at least with respect to 1610, I then look at 1632, and I read the entire Summary, and I see no reference to the Legal Services Corporation Act of 1974. I see no reference to 1977 Amendments. I see no reference to anything.

What I see is the Legal Services Corporation. Now I don't know who that is. Mr. Shea, is that a majority of this Board? Is that the staff? Who is that?

MR. SHEA: Well, first of all, there won't be anything -- only the Board adopts rules, so it's basically this draft rule that is proffered for the Board either to adopt or not to adopt.

MR. SMEGAL: So, properly, the Summary should read then, "A majority of the Board of the Legal Services Corporation has as its principle national goal, the provision of basic day-to-day Legal Services, to eligible poor individuals." Is that what it should read?

MR. SHEA: Well, actually, I think if the majority of the Board has such a goal, then it is the Corporation's goal.

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MR. SMEGAL: Okay. All right. Thank you. That's my first question.

My second question goes to what I consider to be the only operative of this very brief part, and it is Part 1632.3. Accepting for the moment the premise that you and I just discussed, that what this is, is whatever the majority decides, .3 starts out, "Neither the corporation nor any recipient shall be involved in or contribute, or make available, any funds, personnel, or equipment for use in."

In this particular instance, the blank is filled in with the following words. "Advocating or opposing any plan, proposal, or litigation intended to or having the effect of altering any redistricting at any government level."

I want you to focus on what I said, the fill in the blank part was. Because if I can persuade six members of this Board, Mr. Shea, that in that blank -- in that prohibition, we should have rather than or in addition to, or supplemental of, the following words: "Dissolutions of marriages with minor children," so that it reads -- not this section, but another section that I would propose reads: "Neither the corporation nor any recipient shall be involved in or contribute or make available any funds, personnel, equipment, for use in

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dissolutions of marriages with minor children."

Now if I can persuade six -- five other members of this Board to my religious views that there shouldn't be dissolution of marriages -- I mean, my Catholic view -- is that going to be, then, what the Preamble to this particular section says? "The Legal Services Corporation has as its principle national goal" that? Can I do that?

MR. SHEA: Well, that would surely create some other problems, I suppose.

MR. SMEGAL: Pardon me?

MR. SHEA: But I don't know what question you're asking me. If you were able to successfully amend the rule and persuade other Board members to do so, then I presume that would -- you know, that would be the tenor if the Board would pass it. That may create other problems, frankly.

You must understand that any other Amendment that had to be made to this, would have to be otherwise consistent with the purposes and the letter of the LSC Act.

So if the tenor of it were changed substantially, for instance, to deal with, let's say, dissolutions of marriage, we might have to give some more thought to whether there are any other provisions of the Act that bear on that?

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MR. SMEGAL: Yes. I appreciate that. Now let's look at your reasons for having this particular provision to be adopted by the majority of the Board. For the following reasons, the corporation has determined that, in this case, it says, "Redistricting Activities are not in accord with the corporation's goal."

If I get six people, or five people to agree with me, then I've got the same thing with respect to dissolutions, and I can substitute the word "dissolutions" for your first reason.

First, dissolutions are not peculiar to the interest of the poor. They are people who have money, middle income people, wealthy people. All have an interest in dissolutions. There's lots of divorces in this world, aren't there?

The first reason would fall or apply to my particular circumstance, also, wouldn't it?

MR. SHEA: No. I don't think so. If you have a --

MR. SMEGAL: Dissolutions are not --

MR. SHEA: -- If you are representing --

MR. SMEGAL: -- peculiar to the court. That's my question.

MR. SHEA: No. I would be -- If this is an individual case, the whole proposition here is that

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Redistricting affects communities; and, moreover, it is brought by on behalf of commonly either as class case or to affect the interest of some subclass of a community.

So a dissolution, by contrast, is as about as -- as far as I'm concerned -- as personal a matter as you are ever going to undertake.

MR. SMEGAL: But the family concept in this country is one of the things that is really basic to our society, isn't it, Mr. Shea?

MR. SHEA: Yes.

MR. SMEGAL: So dissolutions affect -- adversely affect -- that basic concept that we have, the family unit.

MR. SHEA: Well, I think we're talking -- I don't disagree with that. All I am saying is, in that case, your representation -- you wouldn't be dealing with the permissible parameters, I guess, of dissolutions across the Board. You would be representing one individual client.

MR. SMEGAL: I see. Thank you. I asked yesterday, in an exchange with Mr. Wallace during our Committee meeting, about the magnitude of this alleged problem we have here, and Mr. Wallace referred to 28,182 hours; and I suggested that maybe he divided the number of lawyers the Legal Services

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Corporation grantee pull into that, and I took 4,000, that came out to be six hours per lawyer.

Mr. Mendez pointed out correctly that, of course, all of the lawyers weren't involved in that; and, of course, it turns out that I had another in my computation also. I assumed it was one you were talking about, and it's clear now that I have a chance to read the report. It's seven years.

So let's do a little more math. Twenty-eight thousand divided by seven is 4,000 a year. Let's go to Mr. Mendez' correction and observation, and you have 34 programs that only assume that there is one lawyer in each of those programs that handles the sub-leases. These Redistricting cases you're talking about. Ten hours per lawyer in each of these programs on an annual basis.

MR. SHEA: I haven't done the numbers. I'll accept -- if you have done it, I'll accept your representation.

MR. SMEGAL: Well, they're simple numbers, Mr. Shea. We don't need a slide rule. Thank you.

MR. VALOIS: Mr. Chairman, Mr. Smegal's argument reminds me that, on the average, men in America are 5'11", and I am missing an inch and a half.

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MR. SMEGAL: There's also one Mr. Valois, everything else depends on you and I paying our taxes, too, but I don't know what that's got to do with it.

MR. VALOIS: I don't either.

MR. WALLACE: Are there any further questions for the General Counsel from any members of the Board? (No response.)

All right. Thank you. Don't go far. Questions may arise. Thank you for being with us.

I'll open the floor for public comment at this point. Mr. Houseman has asked to speak to this regulation on behalf of PAG and NLADA. As soon as the General Counsel makes him a little space up there, ask Mr. Houseman to please come on forward.

(Tape One, Side Two:)

MR. WALLACE: Mr. Houseman?

MR. HOUSEMAN: Thank you. As we begin this, let us be aware that this is the first time that LSC has ever imposed a substantive prohibition that is totally unsupported by any parallel restriction in the LSC Act.

In my view, it is also directly contrary to the intent of Congress to leave local priorities up to local programs, and to provide advice and representation on matters

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relating to voting rights.

In my view, Congress has left to itself the prerogative to decide which subject matter will be restricted, and otherwise, that decision rests with local programs.

It's also the first time that a restriction is coming from a Regulation and not a provision in the Act or a writer, with regard to private funds. So that as a general matter, this is a very significant precedent before addressing the merits, and I think as we think about the merits, we should be cognizant of the overall issue that this proposes.

Now I want to turn to the merits of this particular proposal. I am not going to go through everything I said yesterday, but several of you were not present here yesterday, and I think it's important that you hear at least the summary of our position, so that you can ask appropriate questions.

Let's be quite clear what this proposal will do. It will deny representation to eligible clients who seek to change racially-motivated gerrymandering of local election districts, or at large election districts, because these election systems dilute minority voting strength or discriminate against Hispanics, Blacks, or other minorities. This proposal will do that, as the comments make clear.

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Representation in Voting Rights cases involving Redistricting is a basic right under the Voting Rights Act. It is a basic legal right.

In fact, I don't understand how there could be a more basic right. The right to vote in an election, that does not discriminate against minorities.

As most of the comments point out, such voting is directly related to necessary efforts to assure other basic needs, such as transportation, housing, adequate schools, public assistance, and participation of citizens, in the social economic and political systems of this country.

Denying such representation deprives the poor of an opportunity to address some of the root causes of government unresponsiveness and indifference to their need.

This proposal would -- as I will explain in some detail later -- take away from poor people, the practical right to enforce the Voting Rights Act, which has extreme consequences on their basic Civil Rights as well as basic housing, transportation, et cetera; education provided by local government.

In addition, this proposal prohibits any efforts which seek to influence the timing or manner of taking a

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census. This language is not limited to the U.S. Census, but includes any census taken by State, Local Government, or private sources that may have some impact on either the services or the funds provided to poor people in a State or a Local community.

Under this proposal, Legal Services Programs could not provide representation to eligible clients, challenging the efforts of the U.S. Census to appropriately count Blacks or Hispanics in a particular community, even when the program and the clients are aware that there will be a severe undercount, and that undercount will directly affect the funds available to the eligible clients in that community, for housing, education, job training, and the like.

Nor could Legal Services programs provide representation or even comment upon State, Local, or Private census that we'll be doing, that affect the allocation of funds.

So that this proposal is not just limited to so-called Reapportionment or Redistricting. This proposal is aimed at the heart of the Voting Rights Act, and it attempts to deprive Legal Services of the right to engage in any representation or advocacy on any census, whether it's U.S.

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Census or other census.

My clients appreciate your efforts to clarify that this does not apply to public funds or to efforts of employees acting on their own time.

We think those are useful clarifications, and we support them. We note, however, that those clarifications do restrict some representational activities of employees on their own time that are now permitted under Part 1604. I don't see any justification for that in the proposed language.

The effort to limit these cases only to Voting Rights cases involving Redistricting, however, is totally unacceptable. This does not cure any of the problems addressed in the comments that are before you.

These comments and our opposition are addressed to Voting Rights cases brought under Section 2, the key section of the Voting Rights Act, which provides a private right of action to challenge the type of election system and racial gerrymandering, which has drawn boundary lines for legislative districts in a way that discriminates against minorities.

Yesterday, there was some discussion about how important this kind of voting rights litigation is. I am not a Voting Rights lawyer. I have never done a voting rights case.

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I do not profess to be an expert on this.

However, yesterday afternoon after this meeting, I talked to the head of the Voting Rights project at the Lawyers Committee for Civil Rights; the head of the Voting Rights project for the Legal Defense Fund; the ACLU, Southern Regional Director, Muldef, and the person who submitted a comment on behalf of the Legal Women Voters.

Based on those conversations, I am told that over 90 percent of the cases -- some used the figure, "95 percent of the cases," brought in court today, involved Redistricting, as defined by this proposed Regulation as modified by your Committee yesterday.

So that this so-called effort to restrict this only to Voting Rights cases, not involving Redistricting is, in fact, gutting the heart of the Voting Rights Act in Section 2, as we know it.

Moreover, I am told that most of the cases brought under Section 5 -- not cases -- most of the challenges or efforts brought under Section 5, which requires the Justice Department or the U.S. District Court in the District of Columbia to clear certain election procedures, that most of these involved in one way or another in Redistricting issues,

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and most of these would be restricted. That is, efforts to advocate on their behalf, to raise questions to the Justice Department on their behalf, would be restricted by this regulation.

My statement yesterday stands. Litigation on Redistricting and other representational activities under the Voting Rights Act is the heart of the Voting Rights Act, and that would be gutted, prohibited restricted by this.

Let's understand quite clearly what we are talking about, and that the proposed Amendment does not begin to cure the problem; and does not address the comments -- and there have been quite a few that you've received on this.

Now I want to talk briefly about -- assuming we understand the effect of this -- I want to talk briefly about the legal basis for your actions and the policy arguments for the proposed actions here.

I don't want to go over this in great depth. My comment discusses this at some length. Let me just say, to start, our principle view is at Section 1007A2C, which is the primary basis on which you rely for this proposal.

There is no question about that, that your interpretation of that is completely erroneous. I do not

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dispute the fact that under Section 1007A2C the corporation can set goals. But the legislative history absolutely, unequivocally, without any ambiguity, states that the reference to goals in Section 1002AC2 is not intended to detract from the rightful role of local programs to set priorities concerning the subject law matters to which scarce program resources are to be allocated.

That is in the House Report, that is in the Senate Report, that's in floor statements, and there is not a statement anywhere in the debate -- it's also in the Conference Report -- that suggest that reference to goals was to include subject law matter priorities, which is precisely what you are doing here. I think it's quite clear that this section doesn't apply.

Secondly, the Preamble to this regulation did not even mention a relevant section -- Section 1007A6. The legislative history to that section, which I also presented in our comment, states -- and if you look at page five of our comment, it stated -- if I can find the comment in this book -- I don't know where it is. I've got the wrong book. But on page five, it explicitly references advice and representation as to what individual rights might be with regard to

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registering a vote or otherwise participating in the electoral process.

Senator Bellman, in the colloquy, talked about the Voting Rights Act. I don't think there's any question that, in 1974, deliberated under Section 1007A6, that they explicitly authorized representation under the Voting Rights Act, including Redistricting, and that they meant to authorize such representation under the Voting Rights Act, including Redistricting.

Finally -- and this was a point I did not make yesterday, but I want to make it today; we made it in our comment, and I just want to highlight it. Section 1632.3B of the Proposal states as follows: "As used in this part, advocating or opposing any plan means any effort whether by request or otherwise to advise a legislative, judicial, or elective District."

Yet, Section 1007A5 of the Legal Services Corporation Act and rider on Legislative representation that restricts legislative representation, both of those explicitly permit Legal Services Programs to respond to requests from legislative bodies, from executive officials, or administrative bodies. There is a direct, and unequivocal, and unexplainable conflict

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between Section 1007A5, the Appropriation Rider, and this language in Section 1632.3B.

It seems to me, under those three provisions, you have no authority to do what you are trying to do at all, and you clearly have no authority to impose this restriction, which prevents responding to requests from legislative bodies, executive officials, or administrative agency officials.

I want to say one other thing. The premise of our argument has nothing to do -- the major thrust of our argument has nothing to do with another analysis which I made and I stand by, that you do not have the power to make legislative rules.

I think you cannot do this under the three provisions of the LSC Act that I just mentioned. Assuming you could under those provisions, I don't think you have the power to make legislative rules, unless that power is granted in the LSC Act.

If you look through the LSC Act -- and our comment focuses on this; there has been absolutely no response to this -- you will see two things.

One: Certain sections in the LSC Act are enumerated with regard to your power to make rules. This, in Voting Registration Redistricting -- sorry. Redistricting is not

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mentioned, of course.

Secondly, there is no general rule-making authority in the LSC Act. Obviously, you can interpret the LSC Act. Nobody suggests that. Obviously, you can make legislative rules, where you have specific rule-making authority, and that virtually all of the regs that you have so far, there is specific rule-making authority, or you are interpreting a provision of the Act.

If there is not a provision of the Act and you are not given general legislative rule-making authority, you do not have the authority under the LSC Act. I cannot find a section that gives you that authority, that is at all consistent with any of the Supreme Court cases, including the Morning case, which is cited.

In that case, there was specific rule-making authority given to the Federal Trade Commission to promulgate rules and regulations, implementing the act. That language does not exist in the LSC Act.

So it is clear to me -- it is not the heart of our analysis, but it's clear to me that you do not have the authority to make legislative rules, unless you are interpreting a provision of the Act, which you are not doing

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here, or unless you are carrying out a specific directive in the Act that requires you to make rules.

Finally, the Private Funds issue. This regulation continues to apply to private funds of recipients. It applies as well to private funds of sub-recipients. Without qualification, by the way.

Let me make clear what that means. "Without qualification," what it means is, if a sub-recipient -- for example, a Bar Association under PAI (gets private funds) it cannot use those funds to engage in any Redistricting activities whatsoever, even if it's asked by a legislative body to comment on some provision before the State Legislature or local legislature as the formal Bar.

I don't know if that happens very often, but that's what this prohibits, and they couldn't even comment on the Census issue.

Now is there any authority to do that? Well, they clearly don't have authority under 1010C; 1010C is limited to restrictions in the LSC Act itself. Tim Shea argues that Section 1007A2C authorizes this.

As I pointed out yesterday, 1007A2C is explicitly limited by the terms of the LSC Act to legal assistance to

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eligible clients under this title. It makes reference to that phrase twice.

It's quite clear to me that any reading of 1007A2C excludes your authority to regulate Private Funds. So with regard to Private Funds, I don't think you have that authority, either.

In short, under these provisions of the LSC Act, I don't think you have the legal authority to proceed. On that basis, I urge you to withdraw this.

Now the Policy arguments.

First of all, none of the Policy arguments apply to restrictions on the census. The taking of a census is not a political act, no matter who is defining it. Other resources are clearly not available, and any action taken by Legal Services involves eligible clients and would benefit exclusively eligible clients.

There is no private money available to challenge the census. There are no attorney fees provisions available. None of the arguments that have been put forth for this provision have any relationship whatsoever to the attempted restriction on the timing or manner of taking of census.

MR. UDDO: Let me ask you a question. Do the states

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themselves challenge the results of the census?

MR. HOUSEMAN: Some do.

MR. UDDO: If the State felt that they were going to lose federal funding because of a mistake in the way the census was taken, the State could challenge it?

MR. HOUSEMAN: The State could and has. What I am worried about here, primarily, are under counts in particular communities, which the State might not challenge, and under counts from other census activities, the State and Local Governments that may allocate resources in certain ways, which the State or the Government entity may not challenge. Those are covered by this restriction.

Finally, let's next turn -- Not finally. Let's next turn to the four or five rationale that have been put forth for the Redistricting restriction.

The comments demonstrate, in my view without contradiction, that Redistricting activities, of Legal Services are directly related to the interest of poor and serve primarily the interest to the poor.

Most of the cases involve almost exclusively classes that contain solely the poor, and that's what the comments say. To the degree that I have been able to check the cases involved

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-- it is cited in various places -- that's what they illustrate.

So the first argument, it seems to me, is without any basis; and, factually, without any basis.

Secondly, the comments demonstrate that alternative organizational resources are not available, to fill the gap that would be left, if you prohibit Legal Services from undertaking this representation; and the comments demonstrate that the Private Bar will not take these cases.

Every person from the Private Bar who has written in indicates they will not undertake cases either without working with local Legal Services Programs, or without a substantial retainer fee.

Poor people are obviously not going to provide a substantial retainer fee.

The priority argument is, in my view, irrelevant, but I want to address it. The third issue -- the third rationale that has been set forth is, that local programs don't make Redistricting cases priorities. That it is not a national priority, therefore, it's not very important.

This argument has been also put, "Well, we only got 30 or 40 comments." We got a few more yesterday, by the way.

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"Therefore, obviously, it's not very important because you could only get 30 or 40 people to comment on it."

I think that's irrelevant. But let's talk about the facts.

Two of the facts, with regard to priorities, I think -- and we got into this yesterday, but I have now had an opportunity to check it out -- I think the facts are otherwise.

First of all, you have two comments -- and you may have more, because I have not had a chance to read them today -- the Legal Aid Society of Central Texas, page 25 -- top paragraph: "This program includes among its high priority category cases, 'Government Services and Community Development problems,' which are explicitly described as involving 'complaints regarding lack of services to low income and minority areas of community, lack of representational governing bodies,' et cetera, et cetera."

They clearly have this as a priority. They don't label it "Redistricting," of course, but it's a priority.

Second comment -- the comment of Legal Services of Lower Cape Fear, page 51.

"Our local Board of Directors, the majority of whom are attorney from seven counties, chose to include, rather than

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exclude, Voting Rights in our Civil Rights priorities."

A number of other programs had the same thing. Legal Services in North Carolina. That's the program I mentioned yesterday, in addition to Lower Cape Fear --

MR. WALLACE: Isn't that where Lower Cape Fear is, or have I got my Capes confused.

MR. VALOIS: It's in the Eastern Shore.

MR. HOUSEMAN: East Carolina. Redistricting cases are included in a priority category called "Miscellaneous."

PISC, a Legal Services of Asheville. Voting Rights cases are included in a priority category called "Civil Rights." North State Legal Services. Voting Rights cases are included in a category called "Individual Rights." So my statement yesterday that, indeed, the Legal Services of North Carolina, has as one of its priorities, Redistricting cases stands.

By the way, the reason you may have gotten into this is because the CSR data that are used to report cases, don't include Redistricting. They include individual and Civil Rights.

When a program reports data to the CSR, it doesn't report a redistricting case, it reports it as an individual and

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Civil Rights case.

Secondly, most programs when they set priorities, use the CSR priorities for their statement, since there is no CSR priority, no CSR reference to redistricting, when a program sets priorities and includes redistricting, it's going to label them individual or Civil Rights.

For example, the other program I mentioned yesterday, TRLA. TRLA sets off priorities by offices, as is LS&C, in San Antonio, the top priority of Civil Rights, which includes Voting Rights. In six of the other 12 office, the second priority is Civil Rights, which includes Voting Rights.

In three of the other offices, it's the third priority. In one office, it's the fourth priority, and in two offices, it's the fifth priority. East Texas. Yesterday, I made a comment. Some of you looked at me a little aghast.

The fact that Redistricting was in reference, might also -- would not preclude it being a part of involvement with other substantive issues. I mentioned Health & Education.

East Texas. Their health priority -- add as a priority as health. Turns out, in Texas, that county hospitals operate elective districts, and that they have had to bring redistricting cases under Section 2 of the Voting Rights Act,

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under their health priority, because of the allocation of health benefits to citizens in their community. The same thing is true with education.

They have brought redistricting cases under their category of priority of education. I have checked a few other programs, and the results are similar.

So as to this argument that it's not within program priorities, that's just wrong as a matter of fact. I don't think it's that relevant, but it's wrong.

MR. WALLACE: You missed two more. CRLA, on page 148, Mississippi Legal Services Coalition, the last comment on 77.

MR. HOUSEMAN: Yes. I just got these this morning, so I didn't -- massive resources.

MR. WALLACE: I did read it.

MR. HOUSEMAN: You're better than I, but I didn't get them until 11:30.

Massive resources. Mr. Wallace, you argued yesterday that there have been massive resources devoted to this project. I think this is a red herring. The report suggested something like 28,000 hours was used. If you look carefully at this report, you will discover that it is over a period of five

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years, all programs within Legal Services.

This amounts to less than 10 hours per year, or .035 percent of the resources. Even programs like TRLA, which undertake this representation, report to me that they spend one to two percent, at most, of the resources on redistricting.

We are not talking about a significant massive amount of resources here.

In addition, we got into a debate yesterday -- tried to initiate -- Mr. Smegal initiated -- that had to do with whether the attorneys' fees covered were sufficient to cover the expenditures. All we did was look at some chart in the back of this 1985 report.

Well, I haven't had a chance to go back and call up all those programs and find out if they got attorneys' fees, but I can report to you that in addition to the numbers there, on the cases that were listed in that chart, TRLA has brought in over an additional \$100,000 of attorney's fees, Southern New Mexico Legal Services has brought in over an additional \$100,000; just to name two of the programs that are referenced in that 1985 report.

There is no doubt in my mind that programs have recovered costs in attorney's fees, that probably exceed the

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resources they have expended.

TRLA reported to me, in a phone conversation, that they guessed they recover about three times the amount of resources expended in attorney's fees, under Voting Rights Act cases.

Finally, we have the issue of whether work on a Voting Rights case is not political or is political. This seems to be one of the issues that is bothering a number of people.

Let me just start by saying that there is no proof or evidence in this record or the report to Senator Hatch or anywhere else that I know, that Legal Services has sought or supported one political philosophy over another in Voting Rights cases.

Representation in such cases cannot and does not seek any right to a particular political outcome.

You can label Voting Rights cases, redistricting case, reapportionment cases; you can label them political all you want. You can misquote the Supreme Court cases all you want -- which you did, as our comment pointed out, and a lot of others did, and you have.

You can allege that Legal Services wind up on one

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political side or the other, which, in fact, it didn't in any of these cases that you discussed.

I suppose -- as Mr. Wallace I am sure will do -- you can assert that redistricting is political; and you have and you will.

The fact that you assert it, does not prove the point. What Legal Services does is enforce the statutory rights provided under the Voting Rights Act, and the Constitutional Rights of eligible clients. Nothing more and nothing else.

Julius Chamber sent in a comment yesterday. I just want to read from it.

Julius Chamber is a distinguished Director of the Legal Defense Fund. Anybody who works in Civil Rights recognizes him as the premier Civil Rights lawyer in this country.

Julius Chamber says: "There can be no question that Voting Rights litigation is aimed at obtaining not 'political outcomes' as LSC now maintains, but, instead, at securing a representative legislative process, which is available to eligible poor and minority citizens, so that they may receive the basic services to which they are entitled."

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That, to me, is the best answer I could ever give to the issue of political entanglement. Frankly, in my view, if you vote for this proposal, you will be the ones engaging in politics because you will be denying poor people the right to enforce their fundamental basic rights under the Voting Rights Act.

There has been a long and hard struggle to win the --

MR. WALLACE: What page is that quote on? I am looking for it.

MR. HOUSEMAN: I don't know where it is in the book.

MR. WALLACE: 171? Thanks. I'll find it.

MR. HOUSEMAN: First page, 171, second paragraph.

MR. WALLACE: Oh, I got it. Thank you. I'm sorry to interrupt.

MR. HOUSEMAN: We are dealing here with a basic right. I don't care how you can possibly conclude we are not. We are dealing here with a right that people have fought and died to get.

I don't think this Board should be taking action which deprives the poor of those rights that we've won under long and hard struggles. I just don't understand this. We

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live in a democracy, we are voting free of discrimination. Essential -- Frankly, I think what you are doing here is denying poor people the right to exercise their most basic right, the right to vote.

Thank you.

MR. WALLACE: Thank you, Mr. Houseman. I've got one question before -- Well, I'll tell you what. I have a question for you. I'm sure the Board will. Before I start questions, let me ask, so I can get some sense of discussion how many other members of the public would like to comment on this?

I've got Martha Bergmark. Mr. Loines. And your name? Mary Burdick.

Alan, if you don't mind, and with the Board's approval, what I would like to do is, let's take all the public comment first, and I'll ask members of the Board to save your questions. It may be some of the other folks will answer questions we already have, so we don't backtrack over each other. After we've heard all the public comments, we will have questions for everybody. I thank you.

Ms. Bergmark, I saw your hand first, so why don't you come forward please?

MS. BERGMARK: Good morning. It's been a while since

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I've been before you, in an advocacy role. I've been at your meetings, as you know, but have not spoke to you for a while, and have decided to do so this morning, because it's a matter of very significant importance to me and to the clients that I had occasion to represent, in South Mississippi for many years.

Mike and I both grew up in Mississippi under conditions of racial apartheid, and as a white Mississippian, I was, to some degree, sheltered -- as probably was Mike -- from the harsh effects of those conditions. But those conditions were most graphically illustrated for me, I think, and most memorably so, in my early teens, when the main event on Sunday morning at Galloway Methodist Church was between Sunday School and church, we would all go out to the sidewalk and watch as integrated groups of people who wanted to worship in our church service were arrested and chased, and, in some cases, roughed by church ushers.

That happened in my early teens, and, I guess, for me was an early manifestation that something was seriously amiss. For me, the statement that's already been made that blood was lead and lives were lost in the effort to obtain voting rights is most graphically illustrated by a story that my friend, Betty Daymer (phonetic) had occasion to tell me.

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She lives in Hattisburg still. Has always lived in Hattisburg. She worked in my law office for a while, when I was in private practice. When she was a child, her home was fire bombed because of her father's activities in attempting to register blacks to vote in Forest County, Mississippi.

At first, they thought that no one had been hurt. The family was not hurt. Vernon Daymer, her father, got out, but it was discovered over the course of the day, that, although they thought a miracle had happened, and he was fine, that, in fact, his lungs had been incinerated, and he died a very long and painful death over the course of the day.

His death was -- vindicate -- was the first one to be vindicated -- Civil Rights death to be vindicated by a State Court conviction of his clan killers, later. Several years later.

But Betty Daymer lives and works today in Hattisburg, Mississippi. She is employed now by the Mississippi Employment Security Commission, and was one of the first blacks to be able to be employed in a State Agency like that one in Mississippi, and she still is employed there.

So, for me, those are some of the personal experiences that bring reality to a struggle that went on, and

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as recently chronicled in the book, "We Are Not Afraid." It came out last year, and is more focussed on Mississippi than is parting the waters. It tells the story of the killing of Cheney, Goodman, and Schwarner, in Neshoba County, but relates the struggle for voting rights in Mississippi in graphic -- in very compelling detail.

How does this relate to Legal Service's involvement with voting rights cases or redistricting cases? Southeast Mississippi Legal Services in Hattisburg, over the course of its almost 11-year history has only been involved in two voting rights cases, both of them involving redistricting, which confirms, in my view, the clear fact that most voting rights cases -- the vast majority of voting rights cases, at this point, do involve redistricting.

Those two cases resulted from individual clients with basis day-to-day, ordinary legal needs, who came into our offices to seek assistance in securing their rights to vote. Rights that were deprived because in local voting districts -- in one case, a County situation; in another a city situation -- issues like access to health care, the placement of the health department; the allocation of fire departments and street lights, and police service to communities -- rural communities

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that are predominately black -- were at stake. Predominately poor communities as well.

In one instance -- Jefferson Davis County, Mississippi, a county that the majority is black -- the districting was such that, in spite of the fact that the county was majority black the very poor black community -- the area of the county where blacks predominated was split in such a way that, while there was a slight majority black population, there was not of majority voting age population in those districts, and there had never been a black county official in that county since Reconstruction.

Similarly, in the city Laurel, Mississippi -- a city that is over 30 percent black -- there had never been a black-elected official. That is a city where probably the majority of the population is poor -- of the black population is poor.

I bring this to you because it's a personal experience. It certainly was not a case of political entanglement, for Southeast Mississippi Legal Services, to respond to the direct request of clients.

The proposal that you are considering now, if it is intended to address such problems, goes far to far in doing so, and would eliminate work that is clearly in the interest of

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protecting fundamental constitutional rights of poor citizens of Mississippi, that they are entitled to enforce, and have no other resources to enforce.

So I urge you to reject this proposal. Indeed, I implore you to reject this proposal.

You've had it under consideration only briefly. The additional volume of comments was only put on the table this morning. I, for one, have not had a chance to read that volume of comments.

I urge you to reconsider the action of the committee yesterday and to vote down this proposal.

Thank you.

MS. SWAFFORD: I have some questions.

MR. WALLACE: What I would like to do, as I said, is let's get all of the comments in, and then I will ask all of these folks to be available for questions, because some of the questions may answer themselves.

Mr. Loines, if you will come forward?

MR. LOINES: My name is Dwight Loines. I am President of the National Organization of Legal Services workers. I appear here today on behalf of that organization, and I also have authority to speak on behalf of the General

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Counsel's office of the United Automobile Workers of America.

We strongly oppose this proposed regulation. I have submitted written comments. I'm not quite sure if you have seen them. They have not been included, at least within the bound volume, but I submitted comments yesterday. At any rate, if you don't have them, I'll make them available.

I am not going to go over my comments, but there is one point I want to underscore; and that is this.

We are all quite familiar, of course, with the Voting Rights Act. We are all quite familiar with the long, painful history of race relations in this country and what it took to get this country where it passed the Voting Rights Act.

We are also very aware of the history of Legal Services in this country; and we are aware that the Legal Services Act and the various riders that have been passed over time have come out of a prolonged political process.

It's been argued here, and I agree, that you don't have the right and the authority to pass this particular regulation. But I would also strongly urge and argue that once the political process has spoken, and after this prolonged period of discussion and debate, and as you are aware, various efforts on the floor over time to amend the Act occurred; and

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in some cases I agree with what happened, in some cases I disagree with it.

The point is, Congress considered a lot of controversial issues. It spoke and defined Legal Services as the Act and the Amendments indicate. I believe that in your attempt to make a substantive change to what local programs can do, you are fundamentally attacking the Legal Services Act, and you are running in the face of the entire history of Legal Services.

You are also pitting the Legal Services Program against the Voting Rights Act in this country. I don't think Congress intended that, I don't think you want to do that. I think it's a dangerous step, and I frankly urge you to reject this proposed regulation in its entirety.

MR. WALLACE: Thank you, Mr. Loines. Mary Burdick?

MS. BURDICK: Good morning. I'm Mary Burdick, from the Western Center on Law and Poverty, in Los Angeles, and also the President of the National Organization of State Support Units.

First, I would like to address what may be a minor matter, but I know there's been a lot of discussion about how much time has been spent on redistricting, and have resources

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been wasted.

From my own experience, I can tell you that I don't think you should rely on the data about the number of hours spent on these issues without a thorough reworking of the sources that you used.

My own program is listed as having done some redistricting work on the State level. During the time of the last reapportionment process, we had LSC investigators in our office. We fully cooperated and gave them our time sheets.

I don't remember the exact number, because I wasn't expecting this to come up today, but we spent fewer than 15 hours on this about a decade ago.

We are listed in chart two, to what's being called the "Hatch Document" or memo, as having spent 140-some hours. Somebody dropped, I assume, a decimal point. In our case, the figures are -- I'm not too good at math -- but I think this is 1,000 percent. I don't think that this information on the hours spent is reliable.

I was puzzled yesterday by the discussion about the difference between ordinary legal problems and political legal issues.

Like Ms. Bergmark, I grew up in the South, during the

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'50s and the '60s, and, for some of us, we get a bit of a lump in our chest when we talk about these issues. I don't see the right to have your vote counted equally with other people, regardless of your race, or regardless of which side of the track you live on, as a political issue.

This is an issue that ought to transcend the Republican Party, and it ought to transcend the Democratic Party. What you are really talking about is a fundamental American legal right and not a political issue.

On the other hand, we are talking about ordinary legal rights. I find this phrase hard to understand. We seem to be talking about things like buying a car, and enforcing your child support rights; and it seems to me, we are going down the road here with the vote that you will be taking, of deciding as a matter of national legal policy, that poor people should consider it more important nationwide. But you are deciding they should consider it more important that they have a fair consumer contract when they buy a used car, then that they should have a right to have an equal vote.

I think you are making the wrong decision on that. I think you've got it backwards, but it really doesn't matter if you're right or I'm right, because Congress has decided that

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local communities with client input should make these decisions themselves.

I think you've heard from Ms. Bergmark the kind of decisions that were made, in the kind of community where she grew up; and I think you need to give clients who live in other parts of this country the right to make that decision themselves through their input in local party process.

Thank you.

MR. WALLACE: Thank you. Let me ask all four of you to come up. We can get one more chair, and we can address questions to you jointly.

(Tape Two, Side One:)

MS. BERGMARK: . . . black community which was North Jefferson Davis County, was shifted, and it was by settlement, ultimately. There was some litigation to begin with, but it was settled and agreed upon.

In the instance of the City of Laurel, the City of Laurel had been conducting elections under at large booting system and converted to an award or district system, such that the black population then had districts in which blacks could be elected and were elected for the first time since Reconstruction.

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MR. HALL: Are there any candidates that were running for offices in those districts involved in that litigation?

MS. BERGMARK: No, sir.

MR. HALL: Not in any form or fashion?

MS. BERGMARK: No, not in any form. The plaintiff in the Jefferson Davis County case was actually a client member of our Board, but, you know, didn't run, and the same is true in Laurel.

In fact, I did not know any of the -- I am pretty familiar with Laurel, Mississippi, but, as it turned out, didn't know any of the candidates that ran for election in this district.

MR. HALL: Were your lines were -- redrawn?

MS. BERGMARK: I beg your pardon?

MR. HALL: You lines were redrawn?

MS. BERGMARK: Yes. In the City of Laurel, lines had to be drawn. It was an at large election system, and it was converted to district. Again, by agreement and by settlement.

MR. HALL: Was there a different person elected to that particular position the next election because of the redrawing of the lines?

MS. BERGMARK: Yes. Seven -- There were seven

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districts created, and three of them had black candidates elected to City Council.

MR. WALLACE: In fact, Martha, if I may interject, they created new positions before your lawsuit. There was one mayor and two Commissioners, and now there is one mayor and seven City Councilman, so it's not just new people were elected. Brand new jobs were created as a result of this litigation.

MS. BERGMARK: Correct.

MR. UDDO: What was the racial composition of the City Council after that? Did it reflect the population?

MS. BERGMARK: It was three out of seven, and I think the black population of Laurel is between 30 and 40 percent, but it's pretty comparable.

This is a situation that continues. I've just talked with a friend in Hattisburg last weekend, in fact, and there's a rural community in Bars County, called Palmer's Crossing --

MR. WALLACE: They filed suit last week.

MS. BERGMARK: They did. Not with Legal Services' representation. It was in that instance, the availability of other resources.

But I think that really makes the case, though.

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These instances continue, and that was one in which Palmer's Crossing is a chronically-poor community. I mean, the poorest area, probably, in Forest County, and predominately black. There was an issue about annexation -- I'm not even -- Mike, you may --

MR. WALLACE: They have been annexed, and under the Voting Rights Act --

MS. BERGMARK: -- and the right to vote.

MR. WALLACE: -- you are entitled to pay taxes, but you are prohibited from voting by the Voting Rights Act until the Justice Department says, "Mother May I?" Justice Department hasn't said that yet, so they want to enjoin the whole election until they get the right to vote.

MS. BERGMARK: The right to vote.

MR. WALLACE: Yes.

MS. BERGMARK: And it's a fundamental right to vote. That's right.

MR. WALLACE: But, remember, it's the Voting Rights Act that's keeping them from voting, not anything the people at Hattisburg have done.

MS. BERGMARK: Well, but people are entitled to enforce their rights, and if there weren't the availability of

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other resources, Legal Services would be there, unless this regulation is passed, to try to enforce that right.

MR. HALL: Is that a redistricting case?

MS. BERGMARK: Yes.

MR. WALLACE: That probably would not be a redistricting case. It's a simple right to vote case. I mean, I don't know details of it.

MS. BERGMARK: Well, it's redistricting, because if they are -- they've given the right to vote --

MR. WALLACE: Then they're malapportioned like mad.

MS. BERGMARK: -- Correct. Exactly.

MR. WALLACE: On the face of it, it's a simple --

MS. BERGMARK: -- Your language is involved redistricting, and clearly such an instance, would involve redistricting.

MR. WALLACE: Ultimately, that's probably correct. Although neither of us has read the complaint, but, based on my knowledge of the facts, I think you are probably right.

MR. HOUSEMAN: Let me just say one thing, Mike, in response to a question. I have not looked at all of these cases that have been cited. I did talk to one program, which had quite a number of them. What I was told was that virtually

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all of the cases, they were representing individuals who are not themselves going to run for office or not -- were not acting on behalf of others who are going to run for office. But individuals who are eligible clients, who were seeking to eliminate discriminatory barriers to the effect of their vote, and were much more concerned about other things.

There were not political parties or political candidates involved. I think you will find that that is true in the vast majority of these cases, from what I have been able to tell. Now I haven't done a thorough analysis of them. I've just had a chance to talk to a few, but I think that's the case, and I think the record supports that.

MR. HALL: Well, Alan, you know, I think that the redistricting cases are good cases that are needed and are necessary. It just seems to me, though, that you can't help but get involved in political activity when you file a lawsuit to redistrict to give the minority more people, so that they can elect a minority candidate, which I think should be done and is good, but it just seems like one follows the other to me, and that's my problem with it.

MR. HOUSEMAN: Well, I don't know how to answer that any better than Julius Chamber. I think we are talking about

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fundamental rights and whether it has political impact. It may. A lot of things Legal Services does has a political impact. I don't think that's a reason, and I don't think that's political entanglement. I don't think that's a reason.

MR. HALL: You don't think that's political activity?

MR. HOUSEMAN: I don't think it's political activity. I don't think it's political entanglement, and I don't think it has a rationale for depriving poor people of their right to assert their fundamental rights under the Voting Rights Act.

MS. BERGMARK: In Palmer's Crossing, it's an issue of drainage ditches, and excess -- you know, police protection, and access to the Health Department which was put in North Forest County, with no public transportation to it, and no -- in an area where there are not really the patrons of the County Health Department. To the extent that those things are political, I mean, somebody is making the decision about where to put street lights and all, but at the same time, that is the opportunity of people to protect their interest in those services and their right to those services.

You know, intersects with enforcement of their voting rights. I think that was the story of the entire Mississippi Civil Rights Movements, so it is painful to me, personally, to

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see this proposal before you.

MR. HALL: It would seem to me that it's a blend in most times of enforcing the voting of your fundamental right to vote, and political activity; it just seems to me to be a blend that you can't have one without the other.

MS. BERGMARK: Well, then, the question is, what that leads you to in terms of this sort of a proposal. I would argue to you forcefully and vociferously that it is the opportunity to enforce the voting rights, a fundamental right, that is key to achieving all sorts of other rights, not to be precluded to poor people.

MR. HALL: Well, it shouldn't. But if it's a political activity by 1007A6, it would be.

MR. HOUSEMAN: No, no.

MS. BERGMARK: But it's not a political activity.

MR. HOUSEMAN: Unequivocally.

MS. BERGMARK: There's no -- Go ahead.

MR. HOUSEMAN: No, go ahead.

MR. HALL: But if it is a political activity, then the LSC recipients couldn't get involved in it. Tell me where I'm wrong then there.

MS. BERGMARK: The language specifically says that,

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apart from advice, and counsel, and representation of eligible clients, so it is -- in the statute it is specifically authorized, and I think that's one of Alan's key points, in terms of the legal authority, and I concede that.

MR. MENDEZ: I would like to Tim a question, if it's possible, Mr. Chairman?

MR. SMEGAL: Is he coming back up? I had had some questions for him also.

MR. WALLACE: All right. What I will -- Well, I think he can sit right where he is, and answer the question if Mr. Mendez wants to ask it now.

MR. MENDEZ: Can you tell me how and why 1604 is less restrictive than this provision?

MR. SHEA: Certainly. 1604 has a number of prohibitions on the outside practice of law. Alan's point, as I understand it, is that under 1604.5 -- I mean, the general proposition is that attorney's who are employed by LSC recipient programs cannot have an outside practice except for certain -- under certain and limited circumstances.

First of all, to conclude matters that they have had prior to their employment with the program.

Secondly, in order to take on certain charitable or

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family members -- charities or family members as planned, under 1604.5. There is a provision for uncompensated outside practice, and under there -- and Alan makes reference to the original -- it says that a "recipient may permit" -- may permit an attorney to engage in uncompensated outside practice, if 1604.3 is satisfied; that is, the general policy isn't offended, and the attorney is acting on behalf of a close friend or family member, or religious community, or a charitable group.

The point is, the attorney doesn't have any absolute right to represent religious community or charitable groups. He still has to ask, seek, and obtain permission of a program director or whoever the appointed person is in the program.

So there isn't any -- Attorneys don't have any absolute right for this uncompensated outside practice, even under 1604.5. In that sense, the extent of the rule -- this rule -- would preclude such outside practice, it is -- it may be a limitation on the discretion of the person in a program giving authority, but it doesn't take away some rights the employee has otherwise.

MR. MENDEZ: What would happen, though, if we amended it to specifically state that 1604 is one of the exceptions?

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What would happen to the rule?

MR. SHEA: Well, then, if that was the case, then the hypothetical that Alan had in mind -- that is, that some attorney may want to be involved in redistricting on behalf of our religious community or charitable group, he or she may seek and obtain permission for such uncompensated practice, and be able to pursue it if the program director, or whoever the person is giving permission, enforces it.

MR. WALLACE: So it would be up to the program and not to the lawyer?

MR. SHEA: Well, that is the term of it now, yes.

MS. BERGMARK: I would like to just respond to that briefly, if I could.

MS. SWAFFORD: When you asked the question about the exceptions and whether they took care of the problem, I didn't address myself to see, but I think that however you word "C", whether you make it restrictive or less restrictive, it doesn't take away from the fact that, as an exception or as a permissible activity, it does not in any way mitigate the effects of the regulation as a whole.

You are talking about an attorney who can say, "Well, on my private time, on the weekend, I am going to prosecute,

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you know, a Voting Rights case, without access to a secretarial assistance or a word processor, or a copy machine, as a practical matter."

You know, it's nice to create this exception, and in some way maybe protect the First Amendment right of the employee or of the attorney, but it doesn't in any way mitigate what you are taking away in this instance of the regulation, which is the opportunity of poor clients to vindicate rights under the Voting Rights Act, which they can't otherwise do.

So it's just -- it's fine to discuss the specific language of this exception, but I think it's important to recognize that it doesn't -- it really does not help much as far as the overall impact of the regulation.

MR. WALLACE: Mr. Mendez?

MR. MENDEZ: If I wanted to have some specific language to say that 1604 was to be complied with, could somebody give me some language?

MR. WALLACE: I will ask Ms. Glasow to pull out a yellow legal pad and try to draft up what you want. I think you do it with the proviso to tack onto the end, and when it's time to mark up this Committee Report, I'm sure she'll have something ready.

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MR. MENDEZ: All right. Thank you.

MR. WALLACE: Further questions for the witnesses?

MR. SMEGAL: I believe I have one. Thank you.

MR. WALLACE: Mr. Smegal? I'm sorry.

MR. SMEGAL: Assuming Mr. Shea now is included in that group.

MR. WALLACE: Yes, he is. He's back.

MR. SMEGAL: Mr. Shea, the publication in the Federal Register that occurred on March 14, with respect to 45 CFR 1632, apparently bore his signature on that date of March 9.

MR. SHEA: Yes.

MR. SMEGAL: The date isn't important. My question is, I've been handed a Fact Book this morning -- it's now April 14. I'm wondering if on March 9, you, in fact, had that Fact Book in your possession?

MR. SHEA: Yes. Yes.

MR. SMEGAL: On the first page of the Federal Register, I can't read the number because it is blurred. There is a reference, "See Legal Services Corporation, 1987/1988," Fact Book at page 46. Ironically, my Fact Book doesn't have a page 46. I have not been provided with one, which leads me to my question.

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MR. SHEA: How was I -- well, I was about to anticipate your question. I'm sorry.

MR. SMEGAL: No. Don't anticipate my question, please, because it is going to be entirely different than you just anticipated.

I gave an absurd extension of what I saw this Board doing here today if it passes this, with my dissolution involving minority children. I've looked through the book, and I can't find any data in here that helps me with the answer. Maybe you can give it to me.

If that absurd example I gave you of dissolution were contested rather than uncontested, would it require a Legal Service lawyer to spend more time on the contested dissolution than he would on an uncontested dissolution?

MR. SHEA: I assume it would.

MR. SMEGAL: The first page of your material referred to scare resources. I think we all agree we have a scarce resource.

So if, in fact, I accepted a friendly amendment to my absurd proposal, and I just prohibited Legal Service lawyers from handling contested dissolutions, would that, in effect, provide funding for representation of more people in

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uncontested dissolutions? Assuming now, accepting the stipulation of the concession you've made, that the uncontested dissolutions take less time?

MR. SHEA: If you are asking me if there was a limitation such that you couldn't -- the more complex cases couldn't be handled --

MR. SMEGAL: Right.

MR. SHEA: -- then I would assume if the same amount of time were allocated, more cases could be handled.

MR. SMEGAL: So, in effect, if we restricted complex cases, contested dissolutions, we would then provide more legal services, to more poor people, because we can handle more uncontested dissolutions?

MR. SHEA: Well, you could handle more cases. There might be an argument as to whether that was a more effective service.

MR. SMEGAL: All right. Now in this Fact Book, page 46, that I just received, hopefully, it'll end up and, you know, whatever distribution you are going to make of this, you'll have a page 46?

MR. SHEA: Well, I have to tell you, the pages were numbered between the time that I cited it, and the time that it

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has now appeared in, I guess, publishable form.

MR. SMEGAL: Well, this page doesn't appear on some other number, does it?

MR. SHEA: I believe it does. I hope it does. I sure hope it does.

MS. SWAFFORD: It's not in here.

MR. SMEGAL: No, it doesn't. It's not there. In any event, the data you refer to on that --

MR. SHEA: I have to tell you, that's news to me.

MR. SMEGAL: -- that aside, we don't have to hang up on that all. The first page of your publication in the Federal Register supports this redistricting prohibition because of the way priorities are being set from the data provided on page 46, which I have in my hand.

In fact, this is a compilation of the types of cases handled by LSC recipients in 1987, reveals that approximately 27 percent of the cases involved family matters; 41 percent involved housing; that is, 18 percent involved the income maintenance issues; and 12 percent were consumer-related cases. I see that on your sheet. In fact, there is one other category, "Miscellaneous, 8.7." The page is entitled, "Top Five Categories of Cases Handled."

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Well, I assume when I look at this, that I am now looking at 100 percent; it turns out, when I add these up, I come up to 86.4 percent. Therefore, I have the fourth leading category, 13.6 percent of the cases being handled or none of the above.

MR. SHEA: None of the above, I guess.

MR. SMEGAL: None of the above. Some of the -- they aren't miscellaneous. They're just "none of the above."

My point being, there are lots of things going on out there, among the programs -- lots of legal representation of poor people, all of which they are doing -- all of which have been done at a count to 13.6 plus 8.7, something over 22 percent. Almost a quarter of the activities of the Legal Service Corporation is other than family housing, income maintenance, and consumer, as listed in your Federal Register report.

What's to prevent this Board, now that we have decided redistricting isn't one of the cases that's a priority item -- what's to prevent this Board from saying, "Okay. All you can do, guys, is family, housing, income maintenance, and consumer; and the other 22.3 percent?"

Now redistricting, as we have already illustrated,

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may be less than one percent of one lawyer's time for a program, but let's take the other 21 percent of what's going on out there that we haven't been able to figure out, and let's put it all together, and say, "Not only redistricting, which is less than one percent, but the other, none of the above miscellaneous 21 percent, which you can't account for, as being family, housing, income maintenance, consumer.

Let's prohibit those to -- I mean, why can't I do that?

MR. SHEA: Well, if you are saying, does this constitute a precedent for the Board doing other -- deciding other kinds of things are --

MR. SMEGAL: Exactly.

MR. SHEA: -- what was an appropriate --

MR. SMEGAL: Yes.

MR. SHEA: -- in that sense, it doesn't do it, but it does arguably constitute a precedent that the Board may find that the other kinds of substantive law areas are, ineffective, insufficient, such as they don't advance the purposes and policy of the act.

MR. SMEGAL: I guess I would even go a little bit further than that. I think maybe we're saying the same thing.

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I think if we pass this, we have, in effect, said to everybody else -- the programs, Congress, the public, organized Bar -- there are no restrictions, no limitations on what this Board can do.

And I think we have several examples that, already this year, Congress passed a -- which specifically states that the Attorney General of the United States will implement that Act, yet we want to add and implement our own regulations.

This Board has a letter from me with respect to Mr. Wear's travel to California at the end of March, to involve himself in a "Public Agency's Use of Public Funds." The State Bar of California's IOLTA Commission.

So, so far this year, we're out there usurping the power of the Attorney General of the United States. Mr. Wear was out in California, trying to tell the State Bar of California how to conduct their business, and now we're going to tell the world that anything a majority of this Board wants to do is, in 1007., whatever it is. Is that right, Mr. Shea?

MR. SHEA: No. (Laughter.) I think, to the extent that the Board wants to consider some other goal, they have to carefully look at what -- you know, what it wants and the effect it would have, and the degree to which it comports with

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the letter and the spirit of the act.

MR. SMEGAL: This is another goal. So far, our goals are to tell the attorney what to do, just tell the State Bar of California what to do, and now we're going to tell everybody else what to do. That's a pretty lofty goal, Mr. Shea.

MR. WALLACE: Any further questions for these witnesses?

MR. HOUSEMAN: Mr. Wallace, I just have one statement, if I might.

MR. WALLACE: Go right ahead. Then I will recognize Mr. Loines. He's been trying to get a hand in.

MR. LOINES: I'll defer.

MR. WALLACE: Okay.

MR. HOUSEMAN: I just want to address something you said, Mr. Hall.

The Legal Services Act -- and if you look at pages 77 and 78, and 79 of my comment, you will see -- it's page four, five, and six of my comment, and it's -- in the book, it's 77 and 78 at issue.

You will see a discussion of the legislative history with regard to the section that we are talking about. You will see in that discussion that there is a distinction between

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legal advice and representation. Always. And what they meant in the statute by political activity. And, primarily, what they meant in the statute, was what Senator Javitz said is, "Political activity associated with political party or association, or a candidate for public or party office," and then it goes, "Except, of course, in the context of legal advice and representation."

Throughout the Act, throughout the legislative history, a distinction is drawn between advice and representation, context, enforcing rights, constituted from a statutory and political activity.

It is not perceived to be political activity to be engaged in enforcing rights and representation. The legislative history on this issue -- this issue -- is absolutely crystal clear. There is nothing that suggests otherwise.

We have had debates about the extent of what the term "political activity" outside of the context of legal advice and representation means, but we have never -- there's never been any disagreement that there's a distinction in this section of the act between political activity, and between advice and representation.

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What we're talking about in this case, what we're talking about fundamentally, is, advice and representation under the Voting Rights Act on behalf of the eligible clients.

So I think, as a statutory matter, this does not cross any statutory lines. Indeed, as a statutory matter, this provision, I think, excludes you from taking the action you are going to take.

MR. WALLACE: Mr. Loines?

MR. LOINES: Yes. There are at least a couple of factual assumptions that at least some people on the Board have made throughout this discussion. I'm wondering -- and as you deliberate and decide how you are going to vote, I would like you to really ask yourself how you've answered those assumptions.

One is that the cases that would be precluded by this regulation would be picked up by other agencies or attorneys. I don't think there's anything -- at least I haven't heard anything in the record which would support that. In fact, you have statements to the contrary on that. I would like you to ask yourselves, in your conscience, if that question -- if that factual issue has been answered.

The second one is, there has been an assumption made

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that very few very Civil Rights cases are redistricting cases and I think you need to ask yourself very fundamentally if that is -- if you concluded that if that is the case. Because if you pass this regulation and that is not the case, then I think you have made a serious error.

MR. WALLACE: Thank you all very much. Let me tell the Board the Chair's intentions and hopes, at least. We are scheduled to recess at 12:30 for our lunch and our Executive Session. It is my hope, now that we begin Board debate, that we will be able to vote on this issue before the recess.

We will recess, give us a chance to check out, and come back and hear the remainder of Mr. Valois' Committee Report on Part 1610 and 11, after that.

Let me open the Board debate by answering Ms. Miller's question, as I promised to do. I will say how, as one member of this Board, I respond to the matters that have been discussed by the witnesses this morning, and I am sure the rest of us will, too, as time goes on.

Let me begin by addressing the substantive authority of this Board to act, because I think that's the first issue before us, and if we don't resolve that issue correctly, then we've got nothing else to do here today.

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I believe that we are statutorily entitled to set goals, and that, having been statutorily entitled to set goals, it is -- we are fully authorized to use the notice and comment procedure, the Administrative Procedure Act, to set those goals and to enforce those goals.

I can't imagine that the statute can possibly mean anything else. Our predecessor have set substantive goals that they have enforced, and I don't see why requiring people to conduct impact and litigation is any less substantive than restricting particular types of substantive -- of impact litigation, in which they might engage.

I think we are doing exactly what the Carter-Mondale Board did, and I think we've got the same authority to do what they did. We are simply doing it out front, in the open, through the Administrative Procedure Act, the way I think people were meant to do business.

I do not believe that the Act restricts us from doing this. Having said that we were authorized to set goals, I do not believe that there is anything in the Act that keeps us from setting this particular goal.

We have -- Mr. Houseman has cited two sections on political activity; and on responding to requests from public

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officials, it is true that those sections permit our recipients to do that. But there is nothing in there that prohibits our recipients, by the Act itself, from conducting redistricting litigation or responding to requests about redistricting.

Absent other exercise of authority by this Board. All the statute does is say, "Here is a line that you cannot cross. By statute, you cannot cross this line." That's what the two sections that Mr. Houseman has cited on, say.

There's another section of the Act that says, "We may set goals." And our goals are not just to go up to the line and tiptoe and peer over it. Our goal is to stay away from that line altogether.

We have the authority to set goals which will keep our programs from doing things that they would otherwise have the statutory authority to do. So the statute absolutely prohibits some things, and gives us the authority, I think, to prove a goal-setting mechanism to prohibit other things.

I think we are fully authorized in doing that today, and, indeed, I think it's been done before.

Let's talk for a few minutes about the particular substantive restriction we are talking about.

There is nothing in this regulation that in any way

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infringes the right to vote, or to have your vote counted equally with others.

I've sat in the hearings on the Voting Rights Act and listened to Drue Days, who was the Carter-Mondale Assistant General for Civil Rights; and I've heard Senator Thurmond ask him, how many prosecutions in his four years of office he had brought for violations of the right to vote or to have the vote counted? The answer was "zero."

The reasons so many cases involve redistricting today is, because the heart of the Voting Rights Act, the right to vote and have your vote counted equally, has been solved. Indeed, it had been solved when Drue Days was in office, because he didn't prosecute anybody.

There are -- The right to vote and to have your vote counted is no longer at issue in Mississippi or anywhere else. What is at issue are these redistricting cases.

Now that's not the only thing that's at issue. There are plenty of cases that don't involve redistricting.

I must express some skepticism of the authorities cited by Mr. Houseman that say 90 or 95 percent involve redistricting. These are the same people who told the House and Senate that, as soon as this Bill was passed, 75 or 80

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percent of the covered jurisdictions would bail out of the Act. They missed by a factor of 75 or 80 percent. Nobody has bailed out from under the Act.

I am very skeptical, based on long experience of the statistics, that I hear from the particular witnesses that have been cited as authority today. But the Right to Vote is in no way threatened by this regulation. The only thing we are talking about is redistricting. That's all in the world we are talking about.

Most of those redistricting cases, contrary to Mr. Houseman's testimony today, and contrary to his statement in his comments at the top of page 75, have nothing to do with racially-motivated gerrymandering.

What the Act did in 1982 was to say, you no longer have to prove racially-motivated gerrymandering. Indeed, in the town in which I now live, but did not live at that time, the Federal Court twice found as a fact that there was no racially-motivated gerrymandering in the City of Jackson.

When the Act was present, the City had its form of government changed, and gerrymandering set up for the first time, despite the fact there was no racial motivation, and despite the fact that those findings of fact had been upheld on

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appeal by the Fifth Circuit.

All we are talking about here is not intentional racial discrimination, we are talking about systems of election that may or may not benefit particular classes of candidates, really.

Let's look at some of the questions about other resources.

The primary resource for enforcement of Voting Rights Act is the United States Department of Justice. That's what the Act says. Justice Department has a Civil Rights Division and a Voting Rights Section that brings these cases. They are brought all over the country.

Every year, they come up to the Hill, they have an Appropriation, and Congress appropriates millions of dollars for the Civil Rights Division and the Voting Rights Section.

That is the primary instrument of the Federal Government for enforcing the Voting Rights Act. This is not -- the Legal Services Corporation is not the primary instrument of the United States Government. Those resources are paid for by taxpayers through the Justice Department, where the taxpayers, through the process of election, have some say over how they are spent. That's the way the system is supposed to work.

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I seem to recall that the Justice Department's conduct was an issue in the last Presidential Election, and people don't like how they are handling Voting Rights' cases, it can be an issue in the next Presidential Election. That's where the government intends for these cases, primarily, to be brought.

But there are plenty of private lawyers who bring these cases all the time, in Mississippi, for sure; and from what I see from the comments and other places as well. So I think there are plenty of other resources out there. I think we have the authority to do this.

I do not think that this is going to adversely impact very many of our programs. I went through the list of programs who say this is a priority with them. I have been through these. There are six programs in four states that I find in the comments; three in Texas -- CRLA, LSNC, and the Mississippi Legal Services Coalition. That's six out of 380-something. I don't think that this is a major concern for most of our programs.

I think if we did, I think we would have heard from them. The fact is, to a large extent, we haven't. So I think we have the authority. I think there are other resources

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available. I think our programs have not regarded this as one of their priorities, except in a few areas where it, I think, has been a major priority, and I think our studies show that substantial resources have been spent by those few programs.

Finally, let me say a couple of things about what I take to be the major thrust of the comments. Which is, that these cases are good for poor people. By bringing these elections, good things happen to poor people, when fire protection, police protection, drain it, and all the rest.

(Tape Two, Side Two:)

I am first to admit that the Voting Rights Act has improved the responsiveness of elected officials to black concerns in Mississippi and everywhere else.

When blacks were allowed to vote in Mississippi for the first time -- and I, like Martha, remember when you had to be able to interpret the bonded indebtedness section of the State Constitution in order to get the right to vote in Mississippi, if you were black.

Once that was swept away and blacks began to vote in large quantities in Mississippi, Local Governments and State Governments changed fairly substantially. Those changes, I think, and those improvements in public services, I think were

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largely in place by 1982, when the Act was changed to permit the kind of redistricting cases that are primarily being brought these days.

You may argue that these redistricting cases have made life better, but it's really -- I don't know how you would prove that proposition. Whether it's access to the ballot itself or access to the change of Local Government -- the structure of Local Governments. I don't know how you would prove it, but I will tell you, in my opinion, it's the access to the ballot itself, and has less and less to do with the structure of local governments.

I will just tell you what I see in Mississippi, based on my experience. I will tell you that there are people that I know and that Martha knows -- and I will tell her later whose liberal bona fides are not in doubt -- that really don't have any dispute with me on this. That at large form of governments, in fact, can improve responsiveness to blacks and poor voters, because every single elective member must be responsive to every single voter.

What we have now in Jackson and in many other cities in the South is a system of segregative election districts, where you have white elected officials who are responsible only

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to white voters, and black-elected officials who are responsive only to black voters.

If the blacks happen to be a majority, they win, but they would have won in at large system, too. If they're in a minority, maybe they win, maybe they don't. It's all a question of who gets elected and how cooperative the white majority and their elected representatives want to be.

My own view is, that's a polarizing system. In some places, I support it. In places that aren't particularly polarized, and you will find my views on that in the record of the House Hearing on the Voting Rights Act Extension, if you care to look.

In other places, I think it has been very, very counterproductive. That's a matter of opinion.

What you can't argue about, it seems to me, is this. That the primary beneficiaries of these cases are the candidates themselves. Whether they are the parties to the case or whether they are in league with the parties to the case.

I find it interesting that our last comment comes from Louis Armstrong, of the Mississippi Legal Services Coalition, who is one of the elected democratic city councilmen

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in Jackson, as a result of one of these lawsuits. Although it's not one that his organization was involved in, as far as I know. Those folks are the primary beneficiaries.

The secondary beneficiary -- They get the jobs.

The secondary beneficiaries are the people who get jobs from them. The folks who go on their staffs. The folks who get hired for the County and City work crews that otherwise wouldn't get jobs. Andrew Jackson understood that very well.

Most of those people -- candidates and civil servants -- are not poor. The tertiary beneficiaries, if that, are the folks that elect them and may or may not get better social services out of them. Some of them are going to be poor and some of them are not going to be poor.

That, to my way of thinking, is a pretty deluded and diluted, and roundabout use of funds, especially when the taxpayers have designated another federal instrumentality as the prime and forcer of this act. Not us.

So I think we have the authority. I think it's a good idea, and I think the end to Legal Services' support of this litigation is not going to have a particularly adverse affect on anybody as long as people have the right to vote, and they do.

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I think we need to put the money other places into child support; into divorces; dissolutions, or whatever you want to call them. Ordinary, day-to-day basic needs of poor people.

That's my response, Mrs. Miller, to what I have heard today. That's why I voted for the Regulation yesterday, and that's why I intend to support the Committee Report.

MRS. MILLER: Thank you.

MR. WALLACE: Other members of the Board who care to address the question? Mr. Smegal?

MR. SMEGAL: Well, I'd like to -- Mr. Wallace, I find myself at a substantial disadvantage. Mr. Houseman gives us the benefit of paper. He comes in and testifies at the table, and I have now had to sit here and listen to you testify.

I haven't had a chance to see your paper, and I haven't had a chance to question you. I really resent the way you handled that particular matter. You are here as an advocate. You've been involved in the Voter Rights Act since the day in Congress with Quint Lot. And you have, in effect, made a presentation in opposition to Mr. Houseman and others who have presented. I don't have your paper here, Mr. Wallace. I am very resentful of that.

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MR. WALLACE: Ask me any question you like, Mr. Smegal.

MR. SMEGAL: Let's start off with a couple. How many of these Voter Rights' cases are we talking about? You said there was just a small number, Mr. Wallace.

MR. WALLACE: I don't think I said that.

MR. SMEGAL: Did you quote how many there were? Did I miss that?

MR. WALLACE: I don't think I quoted how many any of them were. I said that was --

MR. SMEGAL: Well, how many do you think there are?

MR. WALLACE: I said I was skeptical of the statistics that I heard from the witness's cited.

MR. SMEGAL: Well --

MR. WALLACE: I will tell you, if you would like to know, because they are in the comments, if you will give me just a second.

According to the Southern Office of the ACOU, look at page 144, of your comments, they give you a year-by-year breakdown of Voting Rights' suits filed in Federal Court during the 1980s.

Not all of them are redistricting. They don't tell

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you how many of them are. Some of them are, some of them aren't. This regulation doesn't have any effect on the ones that aren't.

MR. SMEGAL: Mr. Wallace, I just want a number. I just want to focus on a number. Can you give me a number? If you pick your number, I'll accept whatever it is. You just give me a number, because I've got some questions with respect to that number.

MR. WALLACE: Open the book, Mr. Houseman -- Mr. Smegal. It's on page 144.

MR. SMEGAL: I don't have the book in front of me. I don't care to open it. Is it 100? Is it 50?

MR. WALLACE: You were given a copy, and I don't intend to go get you another.

MR. SMEGAL: One of your points in the presentation you just made to us -- the testimony you've just given -- you said there aren't very many of these cases, and they don't affect very many programs, and that's the justification for our "goal", our "prohibition" of these cases.

Did I hear you correctly?

MR. WALLACE: I said, from what I gather --

MR. SMEGAL: I've got a witness here -- Mr. Mendez --

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and I just want the witness to answer.

MR. MENDEZ: I just want to put one thing on the record. Just a second here. Now I don't mind us having disagreements, but when I'm in court, and somebody is abusing a witness like you are just doing it, in a tone of voice that you just did, I put on the record, that, because when you read the Call's record, you don't hear that abuse. You don't see that, and, as a member of this Board, I find it very objectionable. Tom, I don't mind the Cross Examination. I don't mind any of that. But do it in a civilized manner.

MR. SMEGAL: Mr. Mendez, I've spent five years on this Board with you and several of your compatriots, and if there's one thing that I haven't learned, it's the patience to deal with you.

Mr. Wallace is a big boy, he can handle himself very well. He's never had any trouble responding to me, and he doesn't need your help.

MR. MENDEZ: Let the record reflect that I think your tone of voice is inappropriate.

MR. SMEGAL: Well, whatever it is, Mr. Mendez, I am addressing my comments to the witness, Mr. Wallace.

MR. WALLACE: You are addressing your comments to the

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Chair.

MR. SMEGAL: Well, I suggest to you, Mr. Wallace, that you shouldn't be the Chair when you make a statement like you just made. Maybe you should be a witness like everybody else as it comes before us.

MR. WALLACE: All right. Your suggestion --

MR. SMEGAL: My point is --

MR. WALLACE: -- is noted. What's your question?

MR. SMEGAL: My question is, one of the arguments you've just advanced, why this prohibition should go in effect, why we should have this goal, is, there are so few cases; there are so few of our programs involved in this, we didn't get any responses, is what you told me yesterday -- 25 responses.

Mr. Wallace, how many Class Actions do our programs file? Is it a similar number to the redistricting cases?

MR. WALLACE: Mr. -- as I think I told the House Judiciary Committee, last month, I remember that Mr. Wear had collected those numbers. I don't have them with me, but there is a substantial number of Class Actions that have been filed in the thousands. I don't know how many thousands.

MR. SMEGAL: I'm talking about on a yearly basis.

MR. WALLACE: I think they're pending in the course

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of a year. I think those are pending cases, not filings in a year. So I don't think I can give it to you on a yearly basis.

MR. SMEGAL: How about suits against governmental agencies? How many of those are there?

MR. WALLACE: Don't know the answer to that. I see people over there looking in the Fact Book.

MR. SMEGAL: Well, my point, Mr. Wallace, is, your testimony a few minutes focussed on the fact that there are a finite number of these cases, all of our programs aren't involved in it; it isn't a priority of all those programs, therefore, we should prohibit those programs that focus some of their resources.

I might add it's a resource less than the amount of time -- on page 55 of our Fact Book -- a law school clinic spends on a family law matter, which is 19 hours. We should prohibit those activities because (1) They're not practiced by our programs in any priority level.

How do we stop here? Why are we next not going after Class Actions, because only several of our programs do that? Or, for that matter, those that sue government agencies?

Is that our next step? Are we on a roll here, Mr. Wallace?

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MR. WALLACE: I haven't got any next step. Any time you want to propose a regulation, we will print it, we will consider it.

MR. SMEGAL: I just want to know what you are coming up with next. I've read your article in the -- I can't think of the name of the magazine.

MS. MILLER: May I ask another question, Mr. Wallace.

MR. WALLACE: Well, Mr. Smegal's got the floor, Ms. Miller. I will recognize you.

MR. SMEGAL: I do understand from that article, Mr. Wallace, what you thought this program should be doing. I thought I understood it, and I just want to know where we are going next, what is going to be on the agenda for the next Board meeting. What am I going to read in the Federal Register next?

MR. WALLACE: Don't know. What would you like to put on the agenda for the next Board meeting? I'm not --

MR. SMEGAL: Certainly not the kinds of things we have on here today.

MR. WALLACE: Mr. Smegal, let me say this. We've been on the Board for five years. I have always told you as Chairman of the Regulations Committee, and I will tell you as

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Chairman of the Board, as I told you when we were both before the Committee of the American Bar Association out in Denver some time ago, that anything you want to put on the agenda, you let me know. We'll put it on the agenda. We'll talk about anything you want to.

The issue over which you were so exercised before the American Bar Association, you never asked to put on the agenda, and that's why it hasn't been on the agenda.

Now this regulation is what's before us today. I do think it is a significant precedent. I don't disagree with your argument on that. I do believe that this is the first time, by regulation, we've attempted to set goals. Although our predecessors set goals without going through the public and open process under the Administrative Procedure Act that we are doing here.

I think it's a substantial precedent, and if that's your point, then I fully agree with you. What we are doing here today is very important.

Ms. Miller, you had something you wanted to say?

MS. MILLER: I just wanted to ask one question.

Maybe it's not important to you, but it is to me.

MR. WALLACE: Yes, ma'am?

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MS. MILLER: Do you see changing this hurting any poor people? Not just black people, but poor people? Do you see hurt -- making this change hurting them at all? Can you honestly say it's not hurting the poor?

MR. WALLACE: I can't tell you that it won't hurt anybody. I can tell you that I think it will help substantial numbers of people. I think that the benefit of these cases to poor people is questionable, at best. I think it diverts resources from suits that would otherwise be brought. Child support cases, consumer credit cases.

I think there are people out there who have real, immediate, concrete legal needs, who are not getting those needs met, because we are putting resources into speculative lawsuits whose benefits are highly questionable. It is possible.

Any time you say we are going to spend the money here instead of over here, that somebody over here might get hurt. I won't deny somebody might get hurt. But I think a lot more people over here are going to be helped, because the funds are going to be available.

For the basic, day-to-day concrete needs that poor people have to have met, that's why I'm for it, Ms. Miller. I

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don't have perfect knowledge, but that's the basis of my support.

MS. MILLER: You answered me, thank you.

MR. WALLACE: Thank you, Ms. Miller. Further debate from members of the Board?

MS. BENAVIDEZ: I have something to ask you, Mr. Wallace?

MR. WALLACE: Yes, Ms. Benavidez?

MS. BENAVIDEZ: We've had some people here giving their comments. We got some in the mail. We got them -- anyway, what do they tell you -- what do they feel -- what is the reason of getting comments if we are not going to pay attention to what they say or what they mean?

MR. WALLACE: We do. At least I will tell you this. That I do pay attention to them. I paid attention to the 500-some odd comments on our last regulation that Mr. Smegal referred to the other day.

We pay attention to the comments. We make changes. The attorneys' fee regulation that we passed at our last Board meeting was substantially amended.

As a result of the comments, it was passed by a vote of 8 to 1. So people who write comments to us have them read,

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and we make changes as a result of those comments.

The Committee has made changes in this regulation as a result of the comments, largely of a clarifying nature. So that is why we have them, and that is why we read them. But getting the comments does not mean that we are going to agree with 100 percent of what they say.

MS. BENAVIDEZ: No. But, you know, most of the time it seems like your goal or your purpose is made -- you know, made clear, so it seems like this is just a waste of time.

MR. WALLACE: I've told you why I don't think it's a waste of time, Ms. Benavidez. But that's -- I know nothing else I can say on that.

Is there further debate on the subject? All right.
The Committee -- Yes?

MR. VALOIS: I don't particularly want to debate. I did hear quite a bit of his yesterday, and been fairly quiet today, because I did, and I, like you, have read most of the comments, if not all. But I do thank you for bringing to us your testimony, as Mr. Smegal calls it. I think it's very helpful. I appreciate your analysis. I know that you have studied this area.

I know you have practiced in this area, and I don't

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take any exception to your giving us the benefit of your knowledge of this subject.

MR. WALLACE: Mr. Valois, I appreciate that. Let me say one another thing. I debated whether or not to say it, but it may be of historical interest to somebody, somewhere down the line.

The fact is, that I did not initiate this regulation. It's something that various members of the Board, including my predecessor as Chairmen, have discussed for some time.

By the way, I might ask the Secretary to see if she can start trying to get the absent members on the telephone, because I anticipate that we may vote on this in the not too distant future.

I think this was an issue that my predecessor had raised with me some years ago. Despite my views on the act, which are widely, I will say -- they are widely represented. Whether they are distorted or not, I'll let other people judge, based on what I have said today.

I was quite skeptical of our authority to do anything. I was skeptical of our authority to impose substantive restrictions. I never moved this forward. This regulation emerged from the staff, with an opinion from the

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General Counsel, we do have the authority to make substantive restrictions.

I've seen that opinion. I've looked at the Act. I agree with that opinion. That's why the Regulation is before us today, not on any initiative of my own, but I fully agree with what it's in it. I think we have the authority to pass it. I think we should pass it. That's how we got here.

Yes, ma'am? Five minutes?

MR. SMEGAL: Mr. Wallace, can I ask just one further question? You just referred to an opinion. Is this the one dated April 12, that I was handed yesterday from Tim Shea to Bob Valois?

MR. WALLACE: I don't know if there's an opinion -- oh, that --

MR. SMEGAL: You must mentioned --

MR. WALLACE: -- No. It's in the Summary. It's in the Federal Register. I mean, the basis for our action is right out there for the whole world to see. I don't think there's a separate opinion letter, in the opinions of the General -- They're all telling me there isn't.

The basis of the action is right there, in the Federal Register, where anybody can look it up.

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MR. SMEGAL: So the opinion you are referring to is, you went to Federal Register and read this, after it was published?

MR. WALLACE: I made the -- The staff consulted me before this was sent to the Federal Register. I didn't get it. I was not at all shocked to discover that. What I am telling the Board is that, if there was any implication intended that I had initiated this regulation by a previous discussion about attendance, that is not, in fact, the case.

MR. SMEGAL: So the opinion you just referred to a few minutes ago, is a draft of what I asked Mr. Shea about, that's dated March 9? Is that right? You saw it some time before March 9?

MR. WALLACE: I saw the draft of the regulation some time before it went out. Yes, sir. I did. I'm sure the Chairman of the Committee saw it as well.

MR. SMEGAL: Mr. Shea, you still have that draft?

MR. SHEA: I don't know. I still might.

MR. SMEGAL: I realize it's about six weeks later. I would like to have had the benefit of seeing that when Mr. Wallace saw it, but I can't go back and do that, so I would like to see it now. At some point, at your convenience. I

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don't mean now, physically right now. If you can go back and pull that draft, I'd like to see what Mr. Wallace saw before March 9.

MR. SHEA: I can search for it.

MR. WALLACE: Do you need five minutes to get them on the phone? Let's take a five minute break, and we'll come back here as soon as the other members are available, and vote. Then we'll have our break.

While she's getting them on the phone, anybody who hasn't packed, may want to do that.

(Off the record.)

MR. WALLACE: Could the Board members sit down, please? I am going to reconvene the meeting while people are getting settled.

On the record, I want to tell the two absent members who are now hooked up by telephone, pursuant to our bylaws, where we stand in the order of business.

Let's just get on the record. Mr. Eglund, are you on the line?

MR. EGLUND: I am.

MR. WALLACE: Mr. Durant, are you on the line?

MR. DURANT: I am.

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MR. WALLACE: All right. We have completed hearing the witnesses. We have completed Board Debate on the Redistricting Regulation 1932, which was -- 1632, excuse me -- which was sent to both of you in the mail.

There were some additions to that made at the Committee level, by way of clarification of what was prohibited under the scope of redistricting and what was not prohibited.

Everything in what you have is the same, but we have added 1632.4 permissible activities. I will read it to you so you can hear it:

"Nothing in this part shall prohibit: (A) Any litigation brought by a recipient of the Legal Services Corporation under the Voting Rights Act of 1965 as amended, 42 USC 1971 et seq, provided such litigation does not involve redistricting.

(B) The expenditure of public or tribal funds that are used in accordance with the purposes for which they were provided, are: (C) Activities undertaken by employees of recipients without the use of program resources, including time and without identification with the recipient, and outside the context of advice and representation."

Let me explain. That completes the Committee Report

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as it's on the table. The thing you got in the mail plus what I just read.

Let me explain to you as neutrally as I can the purpose of each of the additions.

Addition A, on the Voting Rights Act, is to make clear that the only type of Voting Rights Act litigation which is prohibited, is litigation involving redistricting. There are other suits that can and have been brought under the act involving, for instance, the right to vote itself; the location of polling places, things like that. All of those will be permitted notwithstanding this regulation.

Second, about expenditure of public or tribal funds. That's just the usual exception that we don't have the authority to control public funds that come from some other government.

(C) Primarily to insure that we do not infringe upon the First Amendment Rights of any of our recipients' employees. They can be involved in redistricting matters as long as they do it on their own time, without the use of program resources.

I think Mr. Mendez is going to have an amendment that will permit them to represent certain organizations without being compensated as an Amendment to "C," at least he indicated

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he would.

So that will broaden the permissible activity for our employees, to some degree. But that is where we are now. Having brought the two absent members up to date, that's the Committee Report before the Board, and the floor is open for amendments to be offered by any members. Mr. Mendez, you have the floor.

MR. MENDEZ: Mr. Chairman, I have an amendment, and I would ask counsel to read the proposed language. I have had an opportunity to discuss it with him, but I didn't have an opportunity to write it down.

MR. WALLACE: All right. I will ask counsel to come forward to the microphone. Ms. Glasow, would you read Mr. Mendez's proposed amendment? This is an amendment, as I understand it, to 1632.4C, on employee activities. Go ahead.

MS. GLASOW: Actually, we would suggest that we make a separate --

MR. EGLUND: You are going to have to speak louder.

MR. WALLACE: You'd probably better come over here, and lean over the speaker, because they can't hear you.

MS. GLASOW: We would suggest that we make an amendment by adding a paragraph D, and have, "Or activities

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otherwise permitted by 45 CFR, Part 1604.

MR. WALLACE: All right. Part 1604 discusses outside practice of law without compensation? Is that correct?

MR. MENDEZ: You have to answer out loud.

MR. GLASOW: That is correct.

MR. WALLACE: All right. That is Mr. Mendez's proposed amendment. Is there a Second?

MR. VALOIS: I'll second it.

MR. WALLACE: Mr. Valois has Seconded Mr. Mendez's proposed amendment. Is there any debate from the Board?
(No response.) All right. If there is no debate, we will vote on Mr. Mendez's proposal to add 1632.4V, permitting our employees to conduct activities otherwise permitted by Part 1604 of our regulations. We will move the "R" down to "C."

All right. That's fine.

Mrs. Miller, how do you vote?

MS. MILLER: No.

MR. WALLACE: Ms. Miller votes no. Ms. Benavidez?

MS. BENAVIDEZ: No.

MR. WALLACE: Mr. Smegal?

MR. SMEGAL: No.

MR. WALLACE: Mr. Mendez?

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MR. MENDEZ: Aye.

MR. WALLACE: Mr. Valois?

MR. VALOIS: Aye.

MR. WALLACE: Chair votes aye. Ms. Swafford?

MS. SWAFFORD: Aye.

MR. WALLACE: Ms. Swafford votes aye.

Mr. Uddo?

MR. UDDO: Aye.

MR. WALLACE: Mr. Uddo votes aye.

Mr. Hall?

MR. HALL? Yes.

MR. WALLACE: Mr. Hall votes aye. Mr. Eglund?

MR. EGLUND: Yes.

MR. WALLACE: Mr. Eglund votes aye. Mr. Durant?

MR. DURANT: Yes.

MR. WALLACE: Mr. Durant votes aye. The amendment is adopted by a vote of 8 to 3. Mr. Smegal, you did vote "no"? Is that correct?

MR. SMEGAL: Yes. That's correct.

MR. WALLACE: All right. I thought I understood that.

Are there any further proposed amendments to the

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Committee Report? (No response.) All right. Hearing none, the question occurs on the Committee Report as amended, on Part 1632 of the Regulations.

MR. WALLACE: Mrs. Miller, how do you vote?

MS. MILLER: No.

MR. WALLACE: Ms. Miller votes no. Ms. Benavidez?

MS. BENAVIDEZ: No.

MR. WALLACE: Mr. Smegal?

MR. SMEGAL: No.

MR. WALLACE: Mr. Mendez?

MR. MENDEZ: Aye.

MR. WALLACE: Mr. Valois?

MR. VALOIS: Aye.

MR. WALLACE: Chair votes aye. Ms. Swafford?

MS. SWAFFORD: Aye.

MR. WALLACE: Mr. Uddo?

MR. UDDO: Aye.

MR. WALLACE: Mr. Hall?

MR. HALL? Aye.

MR. WALLACE: Mr. Eglund?

MR. EGLUND: No. I do not support this change.

MR. WALLACE: Mr. Eglund votes no. Mr. Durant?

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MR. DURANT: Aye.

MR. WALLACE: Mr. Durant votes aye. The regulation is adopted by a vote of 7 to 4.

That completes the consideration of Part 1632. As the Chair previously announced, we do intend to recess for our Executive Session. We've schedule it for 12:30, and it is now 12:33. At this point, the Board stands in recess.

If you gentlemen would stay on the line a second, I'll pick it up how to get you later, if we can. With that, the Board stands in recess. We will schedule to resume at 1:30, after the Executive Session for the other Regulation that is on the agenda today.

Thank you. The sooner we can all get out and get set up, the sooner we can all get back to business.

The Executive Session will be in this room, so we need to move out the general public as fast as we can. We'll get done with our business, and get you all back in here.

Thank you.

(Off the record.)

MR. WALLACE: I am told we've got a quorum here. Let's resume, as I am looking for my papers. The meeting is called to order. We are now prepared to consider the second

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report of the Operations and Regulations Committee on Part 1610 and 1611 of the Regulations. I would ordinarily begin with the General Counsel, but -- is Suzanne going to take care of this, and is she around?

MR. SHEA: You better ask me to start.

MR. WALLACE: All right.

MR. SHEA: She'll be here shortly.

MR. WALLACE: You better get started. I know you are off to the pro bono conference in a little while, but would you begin by generally explaining to the Board what it is that Part 1610 and 1611 will do?

MR. SHEA: Sure. I have furnished to the Board the memorandum, dated April 11, 1989, dealing with some -- generally, the background of this change.

To begin with, 1610 of the LSC Regulations, implements Section 1010C of the LSC Act. As you know, of course, 1010C is a provision of the Act that governs private funds in the hands of LSC recipients.

Section 1610.1, there is a definition that is currently a definition of the provisions of the Act, that are identified as "purposes prohibited by the Act for corporation regulations." Which, for purposes of 1010C, is a term of art.

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Those are the things, then, constrain LSC recipients' use of private funds.

Maybe I should say by way of background, there are a number of provisions in the LSC Act that say, "LSC funds may not be used for a certain purpose." LSC recipients may not do certain things.

What 1010C says is, all those things that are prohibited as to LSC funds, are prohibited as to private funds."

The amendments to Section 1610 do a couple of things. There are some technical changes that will reflect the fact that some provisions of the LSC Act were deleted and renumbered, when the Act was amended in 1977. I might add, the regulation under 1610 that we now have ante dates of 1977 changes. So those technical changes are made.

Principle -- some substantive -- there are some matters that are added as prohibitive purposes.

One, is broad general legal research. The other is Class Actions; and that is a procedural matter. The LSC Act requires that before a program can pick up class action certain procedural determinations have to be made by the program. This would simply require that before programs were to do that, even

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under particular class action private funds, they must make the same kinds of procedural determinations.

This will still permit Class Actions to be brought. Even if the changes are adopted by this Board, it will merely require that the procedure be observed.

The last changes, and the one that perhaps has generated more attention than the others is, the identification of the eligibility requirements of the LSC Act as a prohibition, so that LSC recipients would have to apply the LSC financial eligibility guidelines, even with respect to private funds in their hands.

Now I might also observe, of course, this regulation does not address public funds entirely. It does not address public funds.

There are also changes to Section 1611. Those are essentially conforming changes, because 1611 at this point, provides that recipients may serve ineligible clients with private funds.

I will take a moment, and before I defer to Suzanne Glasow, if I can, to explain an exhibit that you have, which is the memorandum that you have from Rob Elgin (phonetic). It sets out a --

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(Tape Three, Side One:)

MR. SHEA: . . . I think is a good proxy for special purpose sorts of grants. The last page of that is Form H6B, which is a styled, "Use of Non-LSC Funds." There, in the funding applications, the applicants were called on to identify, in fact, the first line of the matrix, under activity, "Provision of legal assistance to persons not income-eligible under LSC income and/or asset guidelines."

So the application asked them to identify what other grants they had that would be available for ineligible people.

With that in mind, if you could turn your attention to Table 2, and, in particular, the caption for it, which is at the top right. I have to tell you, I have an older version of it, and I'm not so sure -- oh, no. I guess that's right. I guess I don't. I guess I have the latest version of it.

This table aggregates all of the funds available for use as reported by our recipients, available for use, number one, for ineligible clients. Which, I might add, is entirely permissible under the current regulations.

Any grants that were indicated as being available for broad general research, which is Purpose Code, I believe, 6; and anything that was available for "other" purposes.

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If I could direct your attention to the last page of Table Two.

It indicates that the funds available for all of these, which include any of these purposes, are \$12.9 million, approximately. I might add, of course, we show the recipients' names in what is column A, as the total of any grants that include any one of these three purposes.

That is, ineligible clients, (inaudible) research, and or the other.

Under Column B, the source of the fund is identified.

Under Column C, there is an entry for the appropriate purpose code.

MS. SWAFFORD: Excuse me just a minute, Tim. Are you on Table Two?

MR. SHEA: Yes.

MS. SWAFFORD: At page six?

MR. WALLACE: As far as I can tell, nobody's got page six.

MR. SHEA: Well, I am, too. I seem to be missing that, too. Some of the copies seem to have those omitted.

MR. WALLACE: Okay. Some of us have it. I've got it now.

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MR. SHEA: I'm sorry.

MR. WALLACE: That's okay. Go ahead.

MR. SHEA: Under Column C, the purpose code, which is what was driving the search, is identified.

The next column's provide various aggregations based on the purpose code. For instance, for any grant that was identified, is making funds available for legal assistance to ineligible clients, those are all aggregated under Column D, and that is, as you will see, was approximately \$3.6 million.

So the funding applications indicate that there were grants on the order of \$3.6 million of private funds, which, in one fashion or another, were available for the provision of legal assistance to ineligible clients.

Column E reflects that there were \$265,000 in grants of private funds that were available exclusively for the purpose of research and/or analysis of public policy issues. I would treat that, really, as a proxy for broad general research.

Column F indicates that \$1.7 million was made available for the so-called "Other" activities. And the "Other," if you will look at the "Purpose" columns, conclude a lot of highly-specialized and sort of one of a kind things.

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There are grants for library materials, building funds, amnesty activities, and the like. Royalties, whatever.

Column six aggregates all of the grants that include broad general research. So the \$6 million -- \$6.5 million, really, of private funds that were made available for a number of purposes, but include a purpose of broad general research.

I would suggest or infer that, to the extent that those grants would not be threatened by this, to the extent that there was a change in this regulation prohibiting broad general research with private funds, that the sums in this column would not be threatened, in so far as the grants include other purposes, which are not otherwise affected by this rule -- by the proposed rule.

Certainly, the same is for Column 7. In fact, it is quite clear that a lot of these matters identified as "Other," are not otherwise affected by this rule -- grants for amnesty aliens, for building funds, for libraries, and things like that.

I think that's really all I have to say about that. These data simply give you a feel for the size of the pool of funds that are available for ineligible clients, broad general research and sort of special purpose sorts of private grants.

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With that, if you don't mind, I think I'll excuse myself.

MR. WALLACE: Okay. I realize you are on your way. Have a safe trip. Thank you.

Mr. Chairman of the Committee, you have heard the General Counsel's report. Is there anything you would like to add to what the General Counsel has told us?

MR. VALOIS: Not on the subject matter but on the regulation itself, yes.

MR. WALLACE: All right. Why don't you go ahead and talk about the regulation itself for just a few minutes before we --

MR. VALOIS: Well, what I have to add is the issue we need to decide of retroactivity or a transition, or whatever. General Counsel, excuse me. The President, again, I think drafted something which was not discussed in Committee, other than the proposition that has now been distributed.

Let me read it. It's relatively short. It's at 1610.6, would be added.

"For the period of one year after the effective date of this rule, the restrictions from the use of funds to engage in broad, general legal or policy research, class actions, or

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the representation of financially ineligible clients shall not apply to funds received for these purposes prior to the effective date of this rule or to the agreements for the receipt of these funds to be used for such purpose that were entered into prior to the effective date of this rule.

"Provided that for each granted affected by such recipients, I identified the amount, the term, the purpose, and the source of the grant within 90 days of the effective date of this rule, and double, I specifically segregate the funds from such grants."

The 1611.6 transition language --

MS. GLASOW: That should be .10. Six already has a designation. 1610.

MR. VALOIS: For the effective date of one year after this rule, the restrictive use of funds to engage in the representation of financially ineligible clients shall not apply to funds received for this purpose.

Prior to the effective date of this rule, or to agreements for the receipt of funds, to be used for such purpose that were entered into prior to the effective date of this rule.

These two specific additions were not discussed in

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the Committee.

MR. WALLACE: All right. They are not presently part of your report?

MR. VALOIS: They are not.

MR. WALLACE: As I understood your report, the report is as attached to Mr. Shay's memorandum of April 11, 1989, which we all have. Is that correct?

MR. VALOIS: That is correct.

MR. WALLACE: That is what was reported out of Committee.

All right. I have a question -- a couple of questions for Ms. Glasow, who is representing the General Counsel's office here, right now. They are on page three, of Part 1610. 1610. Part B.

It is my understanding that the intent of this is to make clear, even though some program may have a lower eligibility level, that they may use private funds to represent people to the maximum eligibility level of 125 percent. Is that correct?

MS. GLASOW: That is correct.

MR. WALLACE: All of the other substantive restrictions to which those funds are -- to which would

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ordinarily attach to those funds, attach here as well? Is that correct?

MS. GLASOW: That's correct.

MR. WALLACE: I may have some clarifying language to propose, because as it reads now, it just says, "If they're up to 125 percent, you can use funds." I'm afraid that may be understood to override everything else in the regulation. I may be acting out of an abundance of caution.

On "D" -- and I do not know if you can help me with it -- but I am concerned that the Committee report provides for the use of private funds for mediation services to ineligible clients when such services are other consistent with the purposes of the act and regulations.

My concern is, whether it's consistent with the terms of the Act and Regulation. It is my understanding that Legal Services' funds cannot be used for ineligible clients in mediation. Is that correct? That is correct, is it not?

MS. GLASOW: That is correct.

MR. WALLACE: Okay. I don't see -- I mean, if our position is -- and certainly my position is, as I've represented at the Congress and everybody else -- that the private funds ought to be treated like Legal Services' funds, I

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don't understand how we can permit them to be used for mediation. As much as I like mediation, as is everybody likes mediation, it looks to me like is inconsistent with the terms of the Act and Regulations. If I am missing something, I'd be happy to be educated. Is there some reason private funds can be used here, whereas LSC funds couldn't be used here?

MS. GLASOW: It was really meant to be just an exception for private funds, because we are changing the rule as to private funds, in 1610, for ineligible clients.

It was meant to pursue the corporation's policy to encourage mediation services. Sometimes it may be difficult to determine, or a grant may be given to train for mediation services, or to provide mediation services. It, once again, prohibits the use of a means test.

For instance, it may be just meant for mediation problems concerning farmers, where no means test, in terms of eligibility. Farmers who are losing their farms. They have the asset of the farm, therefore, they are not eligible under our standards, but what they are trying to save is the farm. In that case, because the grant wouldn't allow for a means test, and because it really was a policy decision, that, in this case, for mediation services to help farmers save their

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farms, in that kind of a case, we would make an exception.

But it's not illogical --

MR. WALLACE: Yes.

MS. GLASOW: -- therefore, it's simply a policy exception.

MR. WALLACE: It's not illogical, and I'm not sure it's illegal either. I mean, I will invite any public commenters to tell me where I am wrong, but my inclination is that, as much as I would like to help farmers save their farms, if they are not eligible clients, our programs don't have any business in that procedure.

But, you know, the day goes on, if somebody could tell me why this is okay, I'd be delighted to listen to it.

Anybody else have questions for the General Counsel? (No response.) All right. Thank you. Don't go far. Go ahead and sit down, because I imagine we'll have some questions as time goes on.

Mr. Houseman has asked to speak, and while he is coming forward, let me go ahead and take a show of hands now. Is there any other public comment on this regulation? Anybody else want to speak to this subject? (No response.)

All right. Mr. Houseman? As soon as you get set.

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MR. HOUSEMAN: Okay. I am going to refer to these. I think probably you've all seen them before, but out of an abundance of caution. Some of them you may not have seen. Some of it's the same.

This regulation has three -- four provisions that I want to address. Some of that is not at all addressed by the proposed staff changes on eligibility.

What I would like to do is, first, address the issues that aren't addressed by the proposed staff changes, and then address the issues that are addressed by the proposed staff changes.

MR. WALLACE: Okay.

MR. HOUSEMAN: Which relates to financially ineligible clients, if you don't mind.

MR. WALLACE: Go right ahead.

MR. HOUSEMAN: Overall -- and I am not going to repeat everything that I said at the Committee, I am just going to summarize a couple of points.

Overall, the impact of this regulation will be to reduce the private funds that are available to programs; and there is no question about that.

The primary reason for that is because many grantors

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will not give private funds to undertake activities that are limited to the representation of limited clients.

For example, a number of major foundations -- and I am a recipient of funds from a number of major foundations -- prohibit me from engaging in litigation with their funds of any kind, so that if I say to them -- and there are some sport centers and some local programs that get funds from the same foundations that I do; more local programs, by the way, than sport centers.

If I say to them that I want to use these funds for the representation of eligible clients, and I can't use them for anything else, they won't give me the funds.

That's the simple and short of it. There are comments in the record that say that, and there is no doubt in my mind about that.

One consequence of this -- and I can't predict the magnitude of it, but we can talk about the figures in a second -- is that this will reduce private funds available to programs. That will result in some programs in laying off staff, closing offices, and maybe more importantly, reducing the eligible clients that are currently being served.

Now why is that? Well, that is because you use

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private funds to help an overhead, to help other activities, to support staff -- also, part-time, at least, or most of their time work on representation of eligible clients; without that private funding base, you don't have enough funds to keep the entity going at the same level, and you have to cut somewhere.

There is no question in my mind the impact of this regulation is going to reduce private funds available to programs, and reduce private funds that would also otherwise be available for representation of eligible clients.

So that, I think, we should just be clear on the impact that this will have. This isn't some guesswork on my part. The comments support this, and I can go on and on, and I will be glad to answer any questions about it, but there is no question about that.

So your purpose, which is your assertion that this would limit funds and target them for eligible clients will not happen under this regulation, predominately. What will happen is, there will be fewer private funds available.

I think that's inconsistent with where you, as a Board, have been, and I think that's inconsistent with where you as a Board ought to be. I think you ought to be encouraging the use of private funds; encouraging programs to

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obtain those funds, and even if some of those funds can only be used for activities that you are now trying to prohibit, programs ought to be able to use those funds for those activities.

In fact, as the data indicates, private funds for the representation of financially-ineligible clients are a significant number.

I think it was \$3.6 million. The Elgin memo, which I am trying to find, is correct. Private funds for engaging in a range of other activities, depending on which activities you are talking about, brings us up to -- overall, it's \$12 million.

Some of those funds, obviously, would be permitted under your regulation, but some of them would not be.

Clearly, we don't know from this description and from the forms on the A6A forms, we do not know enough information to determine the scope of the impact of this. I am not suggesting we know enough information. We can only guess at it, in a sense.

Maybe all of the money here for research would be restricted, although it is not so clear to me, because there is no definition of research given in the 6A forms that everybody

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that put down research there, would be restricted under this regulation.

Clearly, a number of the funds and multipurpose funding, which includes research, would be restricted. I don't know how much. The total amount there is 6.4 million. I don't know how much of that would be restricted, but some.

Clearly, some of the other columns, "Other," for example, would include some activities that would be restricted under this new regulation.

We are not talking about a minimum. We are talking about substantial sums of money. According, to the comments, and according to my own experience -- and there is nothing that suggests otherwise in this record -- there is no doubt that much of those funds could not be diverted towards the representation of eligible clients.

So we are talking about a net loss in funding. I want to start there.

We have focused almost the entire discussion in Committee, and probably here today, on the eligibility issue -- financial and eligible issue. I will come back to that.

I want to focus a bit on a couple of other issues.

First, is the broad, general policy research issue.

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I want to say two things about that.

The first is, understand the statute; that is, a legal argument.

The second is, to understand any impact of this.

The statutory analysis I am about to go through, very briefly, of course, applies to other things as well.

Page three of my original comment contains the statutory language of 1010C. Contrary to what Tim Shea said a few minutes ago, 1010C only restricts private funds provided for the provision of Legal Assistance; and only restricts private funds for any purpose prohibited by this title.

So the two questions one must ask under 1010C are,

Are the funds provided for the provision of Legal Assistance? And are they use for a purpose prohibited by this title, that is, by the LSC Act?

When we look, then, at the question of whether broad general legal policy research is included within a prohibition, I would say to you three things.

First of all, 1006A3, which is the section of the Act that includes this, is not a prohibition on grantees. It is a restriction on what research LSC can do by grant or contract. It does not prohibit recipients from doing anything.

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Secondly, nothing in the LSC Act prohibits Legal Services Program from doing research in anticipation of representation when we don't have a specific client or other forms of research.

Finally, 1006A3 is not a section in the Act, which is in the Sections of the Act 1006B and 10007 A and B, which indicate restrictions, or prohibitions.

In fact, 1006A3 is not a prohibition, as that term is used -- as I think it's used in 1010C, and as I think the legislative history supports.

There was never any reference in the discussion of 1010C that research would be a prohibited purpose. It is not, and I think, as a statutory matter, it is not included within the framework of what a prohibited purpose is.

With regard to the issue of whether, assuming for the sake of argument it was possible for you to make a judgment to include it, and whether you should it, I would make a couple of points.

First, often, the kind of broad, general, legal, or policy research that is undertaken by recipients, ultimately relates down the line to representation to activities that are going to benefit the representation of eligible clients.

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One comment, for example, talked about being funded by a foundation, to undertake a case study of drug-infested subsidized housing. The case study would like at what remedies were effective? What rights the owners needed to be protected? What rights of tenants to due process, et cetera, needed to be protected?

On the basis of that study, the program would prepare a legal memorandum, which would talk about both the legal issues and the remedies that were necessary to effectively deal with drug-infested subsidized housing, or public housing projects.

That legal memorandum would then be sent out to all legal services programs to aid in their representation of tenants and public housing.

That seems to me there is a direct correlation between that broad, general legal research, and the representation that would come as a result of that research.

Similar examples can be given, and are given, over and over again in the comments.

For example, a program received grants to look at the abuse of elderly disabled in nursing homes. They did a research study of the abuse of elderly and disabled in nursing

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homes. On the basis of that study, they were able to develop practical strategies to aid the elderly and disabled in nursing homes.

Then they were able to do effective representation of the elderly and disabled in nursing homes on the basis of that study.

Another example talked about a study of domestic violence, and the problems of police, and the prosecutorial discretion; the problems of domestic violence shelters, and on the basis of that study, they were able to educate the police and prosecutorial authorities, as to what should and should not be done; and they were able to develop more effective legal strategies on behalf of eligible clients to use.

So I think as a policy matter, assuming you don't accept the legal analysis, which I think is relatively strong, that you should not prohibit broad, general, legal, or policy research, because not only will it dry up funds that already exist, but it will deprive both local and other programs, of an ability to undertake studies that will ultimately lead to more effective representation on behalf of eligible clients.

We would -- and I urge you to -- to strike that section from the staff proposal.

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The next issue, other than financial eligibility -- I won't take much time on -- is Class Actions. It's not a big issue for us. As a technical matter, however, let me clear.

Class Actions, in the Act, are not a prohibition. There is no way you can read the Class Action section as being a prohibition.

It says Class Actions can be brought as long as you follow certain policies. That cannot be characterized as a prohibition. And, yet, you are characterizing it as a prohibition.

It is not a prohibitive purpose to bring Class Actions. I don't see how in the world any legal argument could be used that makes any sense at all to justify that.

Finally, there are two -- there is a point that needs to be made with regard to the presumption, and there's a small point that needs to be made with regard to the Preamble. This deals with the final section -- I'll come back, as I said.

This deals with the final section of the regulation, on County. Your staff -- I presume your staff -- as proposed, that there be a presumption that all funds received by recipient or sub-recipient are LSC or private funds, received for the provisional legal assistance, absent a clear and

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convincing demonstration by the recipient to the contrary.

As I pointed out in the Committee Hearing, I don't see any need for that statement in light of the accounting provisions of 1630 in the Audit and Accounting Guide. What this appears to be doing is, giving LSC, in a sort of maybe backhanded way, of addressing funds -- like (inaudible) and others, that now are characterized by donors, et cetera.

By putting the burden on programs to somehow, and a fairly tough burden, to somehow show that they are public funds. We don't oppose -- and I want to make it clear -- we don't have any problem with programs showing that the funds they receive are public, or that they are private. I don't have any problem with that.

I don't have any problem showing an accounting for those funds, in accordance with General Accounting practices, as required by 1630, by the OMB circulars, which 1630 incorporates. There is no problem with that whatsoever.

This presumption could be used as a vehicle to give the corporation's staff to claim that what are clear public funds are not because somebody cannot make a convincing case, in some way that they are not.

I would urge you to strike it. I don't think it's

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necessary. I do not think it does any particular good, but it is not -- and I think it will only confuse matters in an accounting sense.

Finally, the Preamble discusses at some length something that is not in the regulation, but discusses what the term means -- the statutory term for the provision of legal assistance.

In the materials that I handed you, our original PAG DNLA position, we proposed that you define this term consistent with the Act, and not leave it up to Preamble language or to staff interpretations. Our proposal was that "provision of legal assistance," refers to legal advice and representation, provided by recipients to clients.

This would incorporate any type of legal advice, any type of representation provided by recipients to clients.

What this means is, that if a program got funds to provide legal advice and representation to clients, that those funds were given for the provision of legal assistance. That's all it means.

MR. WALLACE: Would you be satisfied with that same definition for purposes of 1006A1, where it says, "We give grants for the purpose of providing legal assistance?"

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MR. HOUSEMAN: Yes.

MR. WALLACE: Okay.

MR. HOUSEMAN: Consistent, yes.

MR. WALLACE: Go ahead.

MR. HOUSEMAN: I think the statutory reference is consistent throughout.

Finally, let's turn to the ineligible client issue. There are two proposals that we have in front of you, and I need to explain them briefly, which relate to this question.

Let me start with transition, and then come back to the other one, because I think we may spend a little more time on the transition thing.

In response to arguments that I made orally yesterday, the staff has drafted a transition proposal that is in front of you.

My language may be slightly different because I was working on a draft that was sent me at about 7:00 or 7:30 last night, and I think it's changed from then; but the points I need to make are clear.

We appreciate and acknowledge that you have tried to meet our concern. I have one technical matter that I hope is not controversial to propose; and two substantive matters, one

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of which I know will be controversial, that I would like you to consider.

Two, the staff language. You can look at my form or theirs, but mine tracks what I am going to propose, can be just fit into their form.

The technical matter is the addition of the term contract or donation, after the term "grant," everywhere it appears.

That is merely to clarify that some private funds are given by donation or contracts, not by grants. We can either define "grant" to include contract or donation; or we can do this, which I think is simpler. There is nothing going on here, other than -- in my view, there's nothing going on here, other than a technical addition to clear up what I think you mean earlier.

"Shall not apply to funds received prior to the effective date," that language -- this just clarifies that this means, whether it's a grant, contract, or donation of private funds, because some programs get private funds by contract. Some people get donation, et cetera. I don't think it does anything else. I may have missed something. I am not trying to do anything else. This is purely technical.

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That's first. The two more substantive proposals are, that this transition proposal is limited to a period of one year, after the effective date of the rule.

We talked about this a little bit last night. We went around and round on it.

At one point, a proposal was floated that it be one year plus the ability of the President to waive it for longer than that. That is not in your proposal before the Board now. The problem with one-year limitations, particularly without a waiver, is that some programs may have entered into grants, contracts, already; or by the time of the effective date.

But I am worried about those that have entered into already, that run longer than a year; and may have the same problems in transition that I addressed yesterday. I think there's a number of ways of trying to get at this, but to limit it solely to one year without any provision for waiver, I think is a mistake.

We would prefer that it not be limited to one year. The grants and contracts that I am aware of run from -- anywhere from a year to 18 months. I don't know of any beyond two years. I am not saying there isn't any beyond two years. I just don't know of any. So I'm worried that in some

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circumstances, we may be creating some problems for programs that have entered into obligations with private funds that will take them -- that will be very difficult to get out from under, and they didn't anticipate by the time this regulation was published; and I would prefer that there not be this one-year restriction, or at least that there be some waiver provision, for programs that face a serious problem. That's one substantive proposal.

The other substantive proposal designed, I'm sure, Mr. Wallace, to drive you a little batty, because it's an accounting proposal.

MR. WALLACE: I've been very even-tempered all day.

MR. HOUSEMAN: Only in an accounting sense. Is one of these accounting proposals that we always go round and round on.

I understand, I think, the theory behind your proposal, that you must specifically segregate the funds from such contracts. I do not think that accounting language -- and both of us suffer from not being accountants. Maybe we're fortunate. I don't think --

MR. WALLACE: This weekend, I'd like to be an accountant.

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MR. HOUSEMAN: Right. In any case, I am not clear what this language means.

MR. VALOIS: Just keep two sets of books. Put them on two separate pages. Keep one separately. Deposit them in separate accounts.

MR. HOUSEMAN: I don't think that's what it means, and if that's what you mean by it, we may not have a problem. What I propose, instead, was to utilize language taken from the OBM circulars, which requires that any funds be allocated consistently and uniformly, and in accordance with Generally Accepted Accounting Principles. That language is found in 1630. It is the key language in all of the OMB circulars.

Every single one of them that deals with accounting issues. You will not find it as OMB circulars, any language about segregation of funds. It just doesn't appear.

MR. WALLACE: What I am going to ask is that, when -- because I think we are having a technical conversation that I don't pretend to understand -- we will take a recess to get other people on the phone. It may last about ten minutes, and I would like you to get with our staff that understands this, and then our staff can tell us whether this is technical, whether it's not technical, because we could spend the next

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half hour, and I wouldn't know the answer to it.

MR. HOUSEMAN: I don't have any disagreement. Let me make it quite clear, with the notion that if you get private funds that are going to be used during this transition for activities would be otherwise restricted, but you have to have an accounting system in place from the get go -- uniformly applied, from the get go -- that allocates those funds, and only charges to those funds, activities that are chargeable and doesn't charge to those funds -- or LSC funds, activities that can't be charged to those funds. We don't disagree on the purpose of this.

MR. WALLACE: Let me put the staff on notice right now. We've got to run this language by the audit people. We don't have the people here who can conduct this discussion. Let's get somebody on the phone and figure it out, because I don't think the Board can resolve what Generally Accepted Accounting Principles are and what it segregated. I agree with Bob. I know what we intend to do.

MR. WEAR: The segregation of funds comes up in the securities and future trading areas. The purpose of this provision is just to keep the funds separate, and then charge those costs to them, Alan. I'm not that familiar with the GAO

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Accounting Provision.

MR. HOUSEMAN: OMB.

MR. WEAR: Okay. OMB. Beg your pardon. OMB.

MR. WALLACE: I see Mr. Elgin heading for the phone, I hope. So let's have this discussion later, because I think, whether we want to do it or not, I think we know what it is we are talking about, and let's get the language.

MR. HOUSEMAN: Okay. Finally, the other proposal that I handed to you, which we talked about yesterday, I wanted to raise again today. We're almost done.

MR. WALLACE: Okay.

MR. HOUSEMAN: This is on the representation of financial ineligible clients. However you technically do it -- you can repeat all of this in both sections or you can do what we proposed.

The key to this is, on page two of that proposal, two changes. Page two and three. 1611.4B, as proposed by the staff, would permit private funds to be used for a match for Older American's Act and Development Disability Funds.

Our proposal would be that we make this generic. That if there are matching fund requirements from any Federal, State, or Local Governmental agency, that private funds can be

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used to meet that match.

That is all that is. There is nothing else to it.
There is no --

MR. WALLACE: I understand that.

MR. HOUSEMAN: -- that would be the alternative, I've labelled below, I'm sure nobody supports, so I'll drop it.

Now let's go to the heart of it.

MR. WALLACE: I ask you to go heart of it fast, because we are about to lose our quorum in a minute.

MR. HOUSEMAN: Okay. The heart of it is this. A number of people have raised issues that, today, Legal Services represents victims of domestic violence. Family farmers threatened with loss of their farms. Homeless people, and other groups, particularly the elderly and disabled, where either a means test is very difficult to apply or aberrant to those groups, and there has been a number of comments to the record about the need to use private funds to represent, for example, victims of domestic violence, where you might not be able, they may not fit, the technical eligibility guideline of LSC, then deals with assets and other things. It isn't mandated. That particular part of it is directly mandated by Congress. It's your interpretation of maximum income levels.

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Yet, they can't do that. We have proposed a provision which specified certain, clear groups -- homeless people, victims of domestic violence, family farmers, and the statutory groups listed under 1007H and 1007A2C -- A2C, elderly and disabled; and the 1007H groups were the groups specified by Congress as in need of special access and special legal problems. They are the major group, and that is the only reason I picked them, was, people with limited English-speaking ability, many programs get money today from private foundations to represent immigrants.

You can use private funds to represent immigrants. Some of those immigrants may be just a bit above our eligibility guidelines, may not be financially eligible.

This provision would permit the representation of ineligible clients who fit just these narrow categories. That's what this proposal is. So that is the other proposal on the financial eligibility issue that we would make.

MR. WALLACE: Thank you, Mr. Houseman. I want to say one thing to you, and then we will try to get it moving, because when Mrs. Swafford goes to catch her 3:15 plane, this meeting's over, by law.

(Tape Three, Side Two:)

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MR. WALLACE: . . . Your definition on the purpose of legal assistance I find intriguing but not very helpful. I would like you -- you know, as I said to Mr. Smegal early today, I will try to put anything on the agenda he would like to have.

If you think we need a definition of that provision for purposes of 1010C and for 1006, I would like to see one, and I would like to see the Board consider it, but I think it's got to go into more detail than this, because our programs do a lot of things that don't look like representation in the way of publications, community education, PAG dues.

That is where a lot of the money goes, and I don't want to resolve that today, but if you think we need a definition, I will commit to you that I will ask my Committee Chairman to work on it; and I will ask the Board to work on it, because I think there are some hard issues on what's representation and what isn't.

If you all think we need that regulation, I would be happy to entertain your proposal, and ask the staff to work with you, and we can see if the Board can look on it. It's not in the regulation that is before the Board today, as --

MR. HOUSEMAN: No. It was in my original proposal

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unannounced. What led to it was a Preamble which tried to define those terms, and I would be comfortable if the Preamble struck the definition from that whole discussion in the final Preamble. That would solve my immediate problems.

MR. WALLACE: Yes. The Board doesn't draft a Preamble, but I don't have any difficulty with you. There's no definition of the term in the regulation, and the Preamble may be helpful, but it's not much more than a legislative history. In my book, you don't have to worry about that, but I'll work with you on a regulation on it, and we'll try to fix it.

All right. Thank you very much, Mr. Houseman. There were no other requests for public comment.

I am going to ask the secretary to try to get our other two Board members on the phone right now. Let's all six of us sit here, and we can engage in general debate, if there is any, while we are looking up other folks on the phone.

My own inclination, as I said, when we get to it, I am probably going to move to strike this Subsection D, about use of private funds and mediation. It don't think we've got that authority as nice an idea as it is.

My other inclination is probably to move to adopt some broader exception for matching funds. I know that the

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President has been working on some language, because when I went to Congress last month, I generally thought private funds were mentioned; public funds were something I would support, and I didn't put any ifs, ands, or buts on it.

That is a Motion that I will intend to make. I've already told you I will have some clarifying language to Part B.

Then we have the transition language, which I am asking the staff to check on right now, so we know about General Accepted Accounting Principles.

Does anybody else anticipate offering any other amendments, and we can talk about them right now?

MS. SWAFFORD: Didn't you ask the secretary to get the people on the phone?

MR. WALLACE: Yes. Would you try to get them on the phone?

Do we have anything else we anticipate to come before us? (No response.)

All right. Let's take a break while she gets them on the phone, because nobody go anywhere, because as soon as they are on the phone, we need to talk.

(Off the record.)

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MR. WALLACE: We are still in session. Let me tell you two things we are going to propose while we are trying to get people on the phone.

On page four, your memorandum -- of your memorandum, you will see -- well, maybe it's not four as a memorandum. Where is it? 1611. I apologize. 1611. Page four of 1611, the President suggests that we strike Subsection C, and move some language up to "D."

We will strike at the end of "D" the terms under the Act, and add "supported with corporation or private funds." So "D" will read: "Unless authorized by Section 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance supported with corporation or private funds."

Then "E" will be stricken altogether.

That is, I think, basically, a combination of "D" and "E" into one section. I don't see any substantive change there. If somebody does, you all can tell me before we get there.

The language we've worked out on transition, if you will hand it to me, Mr. President -- or did you hand it to me? No. You have it over here.

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We will -- just a second. (Pause.) Okay.

In 1610.6, we will add the language "Grant contract or donation," as suggested by Mr. Houseman. As for specifically segregating the funds from such grants, that's the language we will use. Since we agree on what it means, we will work together to spell it out in the Preamble. That will be staff work.

Same thing on 1611. -- there is no change to 16511.10. Okay.

MR. HOUSEMAN: Mr. Wallace, can I interact with the staff on that?

MR. WALLACE: At this point?

MR. HOUSEMAN: No, no, no. When we get to it.

MR. WALLACE: Yes. Certainly.

MR. WEAR: On the Preamble. That's correct.

MR. WALLACE: I am just telling the Board that's not going to be a Board problem, it's going to be a staff problem.

All right. We will begin with Section 1610, and I am going to start -- I'll just start -- well, I'll tell you what.

1610 is on the floor. I anticipate that the things we've just talked about will be adopted unanimously, and our colleagues -- some of them will be adopted unanimously, and our

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colleagues on the other end of the line that we are trying to get will not be upset at us for proceeding, before we lose our quorum.

So let's start with the transition language. I will ask, dealing with Part 1610, unanimous consent, to add 1610.6, as printed in the handout that we have, including the language after grant, the words, "contract or donation."

That's, "For the period of one year after the effective date of this rule, the restrictions on the use of funds to engage in broad, general, legal policy research Class Actions of the representations of financially ineligible clients shall not apply to funds received for these purposes prior to the effective date of this rule, which is agreement for the receipt of funds to be used for such purposes that were entered into the effective date of this rule, provided that for each grant, contract, or donation affected by such restrictions, recipients:

"(1) Identify the amount, determine the purpose and the source of the grant within 90 days of the effective date of this rule; and,

"(2) Specifically segregate the funds from such grants."

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All right.

PARTICIPANT: You need to add that language in I and II.

MR. WALLACE: Right. In I and II, add "contract or donations," and in two, add "contracts or donations," in the plural.

All right. That ought to show up on the tape.

I've asked unanimous to adopt the transition provision, is there any dissent? (No response.) Hearing no dissent, so ordered.

Let me go to the transition provision of 1611.10, which I will read into the record. We all have a copy of this.

"For the period of one year after the effective date of this rule, the restriction on the use of funds to engage in the representation of financially ineligible clients shall not apply to funds received for this purpose prior to the effective date of this rule, or to agreements to the receipt of funds to be used for this purpose, that were entered into prior to the effective date of this rule."

"Grant" doesn't come in there, so there's no change to be made. I will again ask unanimous consent to adopt that amendment to the Committee Report as Part 1611. (No response.)

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Hearing no dissent, that's done.

I will go now to 1611.3, which I previously read into the record. It's on page four of part eleven. We will delete Subsection E, and Subsection B will now read as follows:

"Unless authorized by Section 1611.4, no person whose income exceeds the maximum annual income level established by a recipient, shall be eligible for legal assistance, supported with corporation or private funds."

That's essentially a merger of Parts "D" and "E," without any change of substance.

I will ask unanimous consent to make that change. (No response.) Hearing no dissent, so ordered.

All right. Let's go to Part 1610.3B. I've said I was going to provide a clarifying change, which I think the corporation President has. We will add at the end:

"Private funds may be used to provide legal assistance to clients if the client's annual income level does not exceed the maximum eligibility, 125 percent of poverty, in Appendix A of this part."

Well, we need to put "change."

"Private funds may be used to provide legal assistance authorized in the Act" -- "legal assistance to

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clients in the Act or regulations if the client's annual income level does not exceed the maximum eligibility level 125 percent of poverty, set out in Appendix of this part."

MS. GLASOW: It can't be this part, because it's Part 1610, it has to be Part 1611.

MR. HOUSEMAN: You have to make that change in the next one. This one's okay now, Mike.

MR. WALLACE: Wait a minute. I'm looking at "B." Who wrote in Appendix A of this part?

MR. WEAR: I did.

MR. WALLACE: Is that supposed to be right?

MS. GLASOW: No. Because this is Part 1610, Appendix is in 1611, so it should be set out in Appendix A of 1611.

MR. WALLACE: An Appendix A of Part 1611. All right. I'm going to read it:

"B" -- "Private funds may be used to provide legal assistance to clients authorized in the Act or Regulations, if the client's annual income level does not exceed the maximum eligibility level, 125 percent of poverty, set out in Appendix A, of Part 1611."

All on Board, I ask unanimous consent that that amendment be adopted. (No response.) Hearing no dissent, so

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ordered.

Mr. Houseman, I am going to propose a broadening of matching funds. I don't know whether you have seen the language that the President worked out, but I am going to read it.

"Private funds may be used to provide legal assistance to an ineligible client, when the private funds are used as matching funds, for a grant of public funds made under Title 3B of the Older American's Act, Section 142, of Title I, of the Developmental Disabilities Assistance and Bill of Rights Act" -- time out. Somebody go get Ms. Swafford a cab.

MS. SWAFFORD: No. That's okay.

MR. WALLACE: Okay.

". . . or under any other statutory scheme, requiring matching funds, except that the amount of private funds used in a given transaction may not exceed the grant of public funds in that transaction."

That says, any time you've got public matching funds, you can use private funds up to a 50-50 match. We're not going to let them send in \$10 and leverage a million dollars.

MR. HOUSEMAN: Just try that last phrase again.

MR. WALLACE: I'll read it again.

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MR. HOUSEMAN: Just the last phrase.

MR. WALLACE: Okay.

"Or under any other statutory scheme requiring matching funds, except that the amount of private funds used in a given transaction, may not exceed the grant of public funds in that transaction."

I think that's consistent with the commitment that I made the House Judiciary Committee.

I am going to ask unanimous consent that that language be adopted. (No response.) Hearing no dissent, so ordered.

The next thing I move is not going to be unanimous consent. Anybody have any idea where that phone call is?

(Phone call comes in.)

MR. WALLACE: Gentlemen, I'm not going to be able to read this word for word because Ms. Swafford is about to go to her plane, and we will lose our quorum.

MR. DURANT: What's that?

MR. WALLACE: I say, I am not going to be able to read these Regulations word for word. We are basically down to the final passage neck of the woods. We've made some changes by unanimous consent.

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Let me describe for you briefly. If you will look at the memo from Tim Shea that you received with Part 1610 and Part 1611, that is what the Committee Reported out. We have adopted, by unanimous consent, a transition rule giving everybody one year, basically, before this goes into place; grants and contracts they have now, they can live out with for a year. That's been adopted to both Regulations by unanimous consent.

We have also adopted a few technical changes, one of which is the matching funds situation. We've made it clear that you may use private funds for any public statutory scheme, not just the ones previously listed in the draft you got from Tim. I am going to make a Motion to strike, which may very well fail, and then we will be ready to vote on final passage. But that is where we are on this matter. May not even get a Second on my Motion to strike, so we may nothing to do but go to final passage.

MOTION

I am going to move to strike from Part 1610 -- on page five, of Part 1610 -- I'm sorry. It's 1611, excuse me. No. It is in 1610.

MS. GLASOW: It's in both of them.

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MR. WALLACE: It's in both of them?

MS. GLASOW: Right.

MR. WALLACE: It's in both of them.

MS. GLASOW: Right.

MR. WALLACE: I'm sorry.

It is in Part --

MS. GLASOW: 1610 3D.

MR. WALLACE: -- It is in 1610 3 --

MS. GLASOW: "D."

MR. WALLACE: -- and it is in Part 1610.11. But this is the exception we have created. I am going to move to strike it from both parts. As I say, I don't know whether I will get a Second.

This is the language:

"Private funds may be used for the provision of mediation services to ineligible clients when such services are otherwise consistent with the purposes of the Act and Regulations. Mediation services shall include the training of personnel to provide such services."

I move to strike that language from both parts before the Board.

MR. VALOIS: Second.

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MR. WALLACE: Mr. Valois has seconded. Let me speak briefly in favor of my amendment.

I think mediation is a great thing, but I have taken the position that 1010C tell us we cannot use private funds for anything we cannot use LSC funds for. I don't think we can use LSC funds for mediation, for ineligible clients; and, therefore, I don't think we can use it for private funds for that purpose.

So that's my only purpose. Anybody who wants to speak in opposition to that is now recognized.

MR. VALOIS: I am speaking in support of it. I think it's consistent with what we are trying to accomplish with this Regulation; and, quite frankly, given the haste with which we are having to consider this matter, I am perfectly willing to be convinced to the contrary at some other time, and revisit it. But I am going to vote to strike it.

MR. WALLACE: Any further debate on the Motion to strike? (No response.)

All right. On the Motion to Strike, Mrs. Miller, how do you vote?

MS. MILLER: No.

MR. WALLACE: Ms. Benavidez?

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MS. BENAVIDEZ: No.

MR. WALLACE: Mr. Valois?

MR. VALOIS: Aye.

MR. WALLACE: Chair votes aye. Ms. Swafford?

MS. SWAFFORD: Aye.

MR. WALLACE: Mr. Hall?

MR. HALL? Yes.

MR. WALLACE: Mr. Hall votes aye. Mr. Eglund?

MR. EGLUND: No.

MR. WALLACE: Mr. Durant?

MR. DURANT: Aye.

MR. WALLACE: All right. The Motion to Strike passes by a vote of 5 to 3. And, like the Chairman of the Committee, I will express by willingness to be convinced, if somebody can give me a good, legal argument another day.

MR. DURANT: So will I.

MR. WALLACE: I have no doubt you will, Mr. Durant, knowing your support for mediation.

MS. SWAFFORD: So will I, for mediation.

MR. WALLACE: And Ms. Swafford. I think we are all for the substance. It's our legal authority that we are concerned about.

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All right. Any other amendments to either Part 1610 or Part 1611? (No response.)

Let me first call for a vote on Part 1610, as amended.

Mrs. Miller, how do you vote?

MS. MILLER: No.

MR. WALLACE: Ms. Benavidez?

MS. BENAVIDEZ: No.

MR. WALLACE: Mr. Valois?

MR. VALOIS: Aye.

MR. WALLACE: Chair votes aye. Ms. Swafford?

MS. SWAFFORD: Aye.

MR. WALLACE: Mr. Hall?

MR. HALL? Aye.

MR. WALLACE: Mr. Eglund?

MR. EGLUND: No.

MR. WALLACE: Mr. Durant?

MR. DURANT: Aye.

MR. WALLACE: It is adopted by a vote of 5 to 3.

Let us go to Part 1611, as amended.

Mrs. Miller, how do you vote?

MS. MILLER: No.

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MR. WALLACE: Ms. Benavidez?

MS. BENAVIDEZ: No.

MR. WALLACE: Mr. Valois?

MR. VALOIS: Aye.

MR. WALLACE: Chair votes aye. Ms. Swafford?

MS. SWAFFORD: Aye.

MR. WALLACE: Mr. Hall?

MR. HALL? Aye.

MR. WALLACE: Mr. Eglund?

MR. EGLUND: No.

MR. WALLACE: Mr. Durant?

MR. DURANT: Aye.

MR. WALLACE: It is adopted by a vote of 5 to 3.

That completed the report of the Operations and Regulations Committee, and we've just lost our quorum. Thank you both, gentlemen. Appreciate your being with us. If I figure out how to hang up the phone, you all are excused. Thank you.

We also have on the agenda, and since votes will be taken, I hope nobody will pull my hand on this, but we have a report from the Plant Task Force on the Agenda. The Chairman of that Task Force caught a plane a little while ago. I will

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ask either of the members of the Task Force who are still here if they would be kind enough to report to the Board, generally, what we heard this morning, before the Task Force, and then we will bring the meeting to a close.

Either one of you like to tell us?

MS. MILLER: We had testimony from Ms. Santez to do just what we were about to do, and that was, to have a mini-conference; and hearing from Mr. Wear this morning, we will have that, I guess, before the next Board meeting, which will be in May. So we will have that.

We are going to have this mini-conference, and we will continue to meet around the country so that all regions can be involved and show their concerns. But what we don't want is what we had this morning again. We really don't want that. We had it at the last meeting.

Ms. Santos, I don't know if you heard about it.

MR. WALLACE: Yes.

MS. MILLER: She wasn't there, I know, but I don't know if she heard about it, but this is something I would like for us to discuss as a Board. It's embarrassing, like, inviting someone to your home and insulting them. That's the way it sounded.

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MR. WALLACE: Well, and we did discuss it. As you know, I wasn't there when whatever was said was said, and I have since talked with Mrs. Swafford, and she assures me -- and I believe her -- that she intended no offense, and I do know that sometimes you say things that don't come out, or are not interpreted the way they are meant.

I am in no position to comment on it, except as to what Ms. Swafford told me. I agree with you. We must be careful. We don't always know what we say is going to be received; and we do not intend, and should not intend, to give offense to anybody that we invite to appear before us.

MS. MILLER: Thank you for that. That's what we mean.

MR. WALLACE: Okay. Now we do hope to have that client conference before the next Board meeting. We have discussed the tentative schedule.

We do not know when the next Board meeting will be, but Mr. Hall, who is Chairman of the Provisions Committee, has tentatively scheduled a meeting of his Committee for May 25 and May 26, to talk about ideas for competition in the delivery of Legal Services; the staff intends to publicly disseminate a proposal several weeks before that.

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We hope anybody else who has ideas about competition will be prepared to come to that Committee meeting.

The Client Task Force will also meet at that time. We don't know where that will be, but we hope it will be in one of the regions that we have not previously been in, consistent with the resolution adopted by the Board.

As I say, it will be 25 and 26 of May. We do not presently have a Board meeting scheduled for that time, because neither Committee anticipates making a recommendation to the Board for action at that time. If something comes up that requires a Board meeting, we may have one. If we do, it will be the 25th and 26th of May.

Anything further from any of the members still present? Ms. Miller?

MS. MILLER: I would like to now invite Martha Bergmark to come to that Task Force conference, if it is okay.

MR. WALLACE: She is not here, but she always is. I haven't seen a meeting --

MS. MILLER: She did let me know that she wanted to come, so I am asking the Board and Mr. Wear --

MR. WALLACE: -- Absolutely. Oh, to the -- not the

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Public Task Force meeting, but to the mini-conference, we are calling it?

MS. MILLER: Yes. Yes.

MR. WALLACE: I will refer that to Mr. Wear, because I do not know who is on that agenda, but that sounds reasonable to me, on the face of it.

MS. MILLER: Okay. We would just like to hear from all side.

MR. WALLACE: No question. No question. All right. Is there anything further to come before the Board? (No response.)

We thank you all for your patience. The Board stands adjourned. As a matter of fact, as well as of law, thank you all.

(The Board stands adjourned at 2:58 p.m.)

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