

LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE MEETING

December 17, 1987
Commences at 9:00 a.m.

VOLUME I

The Mills House Hotel
Signers Ballroom (first floor)
115 Meeting and Queen Streets
Charleston, South Carolina 29402

Diversified Reporting Services, Inc.
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LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE MEETING

TIME AND PLACE: The meeting will commence at 9:00 a.m. on Thursday, December 17, 1987, and continue until 12:30 p.m. On Friday, December 18, the meeting will again convene at 9:00 a.m. until 11:00 a.m.

PLACE: The Mills House Hotel
Signers Ballroom (first floor)
115 Meeting and Queen Streets
Charleston, South Carolina 29402

STATUS OF MEETING: Open

PRESENTATIONS BY:	PAGE
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Emilia Disanto & Susan Sparks	17
PUBLIC COMMENTS BY:	PAGE
C. Joseph Roof	48
Michael Pritchard	53
Robert Wells	78
John G. Brooks	90

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LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE MEETING

CHAIRMAN WALLACE: Before we convene, we have got to make sure we have got a quorum. Mr. Smegal and Ms. Bernstein are not going to be here until this afternoon; so right now Ms. Miller and I are the only members of the committee.

However, in the absence of Chairman Durant, Acting Chairman Valois, I think, is going to fix our quorum problem for us.

MR. VALOIS: By the powers vested in me as Acting Chairman, I hereby appoint Hortencia Benevidez to this committee for the purposes of establishing a quorum and for serving today.

CHAIRMAN WALLACE: Thank you. Just so everybody knows, there are not likely to be any votes today. We just need to take testimony, so we are not trying to slip anything past you. We just need to get the job done today.

Ms. Benevidez, glad to have you on the committee. With the quorum being established, I will call this meeting to order. This is the Operations and Regulations Committee of the Board of Directors of Legal Services Corporation meeting pursuant to notice duly given in the federal register.

In addition to committee members and committee members

1 pro temp, we have got some board members with us and the
2 president of the Corporation. We welcome them to the
3 committee's deliberations today. We also welcome staff members
4 and members of the general public that are with us today.

5 The first thing we need to do is to review the agenda
6 that is printed in the board book. The agenda consists of the
7 approval of the agenda, approval of two sets of minutes, and
8 consideration and comment on our proposed regulations Part 1607.

9 Let me ask unanimous consent that the agenda be
10 adopted as printed in the board book.

11 (No response.)

12 CHAIRMAN WALLACE: Hearing no dissent, so ordered.

13 We need to try to clear up a potential problem that
14 was in the minutes of the August 27th and 28th meeting. Madame
15 Secretary, I know you have made a report to me in writing on
16 those minutes.

17 I do not know if everybody else has heard what you
18 have had to say after examining the record. If you can
19 summarize what you sent to me for the benefit of people who have
20 not seen it, I would appreciate it.

21 MS. BOZELL: What I sent to you was both the
22 transcript from which the minutes were taken and the minutes

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1 that you question. I also sent those to the rest of the board
2 so that they could comment to you a suggestion on how we might
3 better relay what was in the transcript into the minutes.

4 CHAIRMAN WALLACE: I am trying to find where this
5 second paragraph is. The second paragraph that concerns me, we
6 had a paragraph on page 3 where the general counsel's office had
7 indicated that community education on the immigration bill could
8 take place as long as it was not conducted in the context of
9 training, lobbying or forming of coalitions.

10 The paragraph on the second page relates my
11 conversations with Mr. Houseman where, according to the minutes,
12 we agreed -- whether we both liked it or not -- that Part 1612
13 prohibits training programs that disseminate information about
14 existing law unless the training is for attorneys and
15 paralegals.

16 I think, and I have gone back and I have looked at the
17 text, that is basically what we said. Mr. Houseman, just before
18 we started, said you wanted to speak to this issue because it
19 was our conversation that we are talking about.

20 Will you come forward and tell me how you see all of
21 this and how you recall it?

22 MR. HOUSEMAN: The only thing I wanted to point out is

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1 that the general counsel's interpretation was inconsistent with
2 what you and I thought the regulation meant. In my reviewing
3 the minutes and the transcript was that her statement was
4 correct as to what she said in the meeting, but that the
5 interpretation was not correct as you and I tried to clarify.

6 CHAIRMAN WALLACE: I think that is right. I do not
7 know that we need to specify all of that. I think the minutes
8 are correct as they read. I think at this point we are all
9 satisfied with it; at least I am satisfied with it.

10 Let me ask other members of the committee if any of
11 them have any further comments or insights on this discrepancy
12 in the last set of minutes.

13 MR. VALOIS: Not on your committee. I have a comment
14 and not particularly an insight I do not think. This testimony
15 which I read on the plane on the way down once again illustrates
16 in my opinion the folly of our structure.

17 Here we are having a discussion about whether or not
18 the funds spent by congress for LSC should be used to subsidize
19 state agencies to wit the mental health agency, social services
20 personnel, and so forth.

21 It is a rather awkward and indirect way, it seems to
22 me, of accomplishing our mission to go out subsidizing local

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1 counties and cities and so forth.

2 CHAIRMAN WALLACE: We have discussed our structure
3 with various people at various times. In any event, what we got
4 here are the minutes. Unless there are other comments from
5 members of the committee, let me ask unanimous consent that the
6 minutes of August 27th and 28th be approved as printed in the
7 board book.

8 (No response.)

9 CHAIRMAN WALLACE: Hearing no dissent, so ordered.

10 The next item is the minutes of our last meeting of
11 November 20. Madame Secretary, I went through these and found a
12 couple of things that I think may be typos and a couple of
13 things that may accurately reflect what I said but not what I
14 meant.

15 Let me go through those with you. We may be able to
16 clear them up by unanimous consent. Page 23, the paragraph
17 "Following Mr. Oxholm's comments, Chairman Wallace referred to
18 some of the public comments he had received. The Chairman
19 explained that he was concerned about states, unlike
20 Pennsylvania, where the local bars do not represent the same
21 bars as the legal services programs."

22 That may be exactly what I said, I do not know. What I

1 was pointing out was the Philadelphia situation where the
2 Philadelphia Bar coincides with the Philadelphia area. I do not
3 know whether the rest of the state of Pennsylvania is like that
4 or not. I rather doubt that it is.

5 I imaging you have got multi-county areas. What I
6 would do, unless there is an objection, is change the word
7 "states" to "areas" and change "Pennsylvania" to "Philadelphia."
8 I am concerned about areas unlike Philadelphia where the local
9 bars do not represent the same areas as legal services programs.
10 That may be exactly what I said, but that ain't what I meant.

11 The next page, 24, we talked about Mr. Gilmore from
12 South Missouri Legal Services. That is southeast Missouri Legal
13 Services.

14 Page 25, it says "after consultation with
15 Representative McCollum." I think what I said was
16 Representative McCollum's office. I have discussed this with
17 his staff. I have not discussed it with the congressman. That
18 ought to be clarified.

19 The top of page 27, I talked about complaints I heard
20 in Mississippi and my comments on north Texas were not that they
21 had complained, but that it looked to me from reading their
22 letter that they had a similar situation.

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1 I think the way that language at the top of page 27
2 ought to read I "had also detected similar situations in the
3 comment from" because I certainly do not want to imply that
4 North Central Texas Legal was complaining about the way they do
5 business. I am sure they are very satisfied with the way they
6 do business.

7 Page 28, Mr. Houseman talks about the letters from
8 Central Texas. That is North Central Texas.

9 Those are the items that I detected as I was flying
10 out here last night. I think those clarifications need to be
11 made. Any other members of the committee detect any problems
12 with the minutes as proposed in the committee book?

13 Mr. Houseman, did we foul something else up?

14 MR. HOUSEMAN: I do not know whether you fouled it up
15 -- I do not know how important this is, but I also discussed the
16 Alabama State Bar. So what I would suggest is adding in after
17 the Texas Legal Services Foundation and the Alabama State Bar.

18 CHAIRMAN WALLACE: That is exactly right. We will put
19 that in. I will ask unanimous consent then that all of the
20 amendments and corrections that Mr. Houseman and I together have
21 worked out, be adopted.

22 (No response.)

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1 CHAIRMAN WALLACE: Hearing no response, so ordered. I
2 ask unanimous consent that the minutes be approved as amended.

3 (No response.)

4 CHAIRMAN WALLACE: Hearing no dissent, so ordered.
5 Madame Secretary, does that complete our work with the minutes.

6 MS. BOZELL: That is it.

7 CHAIRMAN WALLACE: Thank you very much. I appreciate
8 it.

9 Let me turn then to Part 1607 to the reason we are
10 gathered here today. The first thing I want to state is what we
11 said in Philadelphia, that we would be willing to spend several
12 months working on this project unless the comments indicated to
13 us that there was a need to get them adopted sooner for
14 implementation purposes.

15 We have been through the stacks of comments. Neither I
16 nor the general counsel's office see anybody that is urging us
17 to act now or forever hold our peace. The implementation
18 problems do not seem to be of a nature that a month's delay or a
19 two month's delay is going to cause any more problems than we
20 would have by acting today.

21 So given that that is the case, unless the members of
22 my committee feel otherwise, I would plan not to vote on this

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1 regulation at this meeting. What we expect to do is hear public
2 comment today. We will reconvene tomorrow morning to hear
3 public comment from people who could not be here today.

4 The staff will take the next month to digest the
5 comments and see if there are changes that need to be made in
6 the regulation and the proposed regulation as a result of those
7 comments.

8 The plan would be to come back in January and vote if
9 the committee is ready to vote at that time. If the committee
10 is not ready to vote, we wait another month. In any event, what
11 we expect to do today is take all the public comments anybody
12 wants to give us and then get on with the business of regulating
13 at a later meeting, probably next month.

14 What we would like to do is begin with staff
15 presentations. Suzanne Glasow who has been working with this
16 committee is here from the general counsel's office. I am going
17 to ask her to come forward and review the comments for us.

18 At the same time, Ms. Disanto and Ms. Sparks from the
19 monitoring office might as well come forward because they have
20 prepared a report or at least are in the process of repairing a
21 report -- I do not know that anybody has finally edited it yet--
22 -- on what monitoring has revealed about board composition.

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1 I am going to let them make their presentation to us
2 before we get on with public comments. If you all would come on
3 forward together.

4 MR. EAGLIN: One point of clarification is that after
5 next month's meeting, if necessary, it would actually be another
6 month because our next proposed meeting is in March.

7 CHAIRMAN WALLACE: That is probably right. Again, I
8 do not know when we will vote.

9 MR. EAGLIN: It is March.

10 CHAIRMAN WALLACE: I appreciate that. Ms. Glasow, we
11 will be happy to begin with you. Mr. Shea, the general counsel,
12 is not here because his wife is about to deliver a baby, and we
13 thought that was a good excuse for not coming to Charleston.

14 So, Suzanne, if you would begin, I would appreciate
15 it.

16 PRESENTATION OF SUZANNE GLASOW

17 MS. GLASOW: The comment period that is proposed rule
18 ended formally on Thursday, December 10, 1987. However, we are
19 still continuing to receive comments and we will consider all of
20 them that come in.

21 As of that December 10 date, General Counsel's office
22 has received comments from 168 individuals, 130 bar associations

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1 -- 41 of those are from state bar associations -- 159 groups and
2 4 congressional comments.

3 With the exception of one individual who felt that the
4 revisions concerning bar elections and political party
5 restrictions were necessary to eliminate organized special
6 interest groups, balance of the comments were overwhelmingly
7 negative.

8 Section 1607(3)(c) issues concerning the state bar
9 selection is addressed in almost all the comments. The comments
10 there centered on a concern that local attorney board members
11 being familiar with the service area can better attend to the
12 problems and needs of the individual localities.

13 The commentators felt that the local bar associations
14 were presently functioning well in their appointment of attorney
15 board members, and therefore, a statewide election would serve
16 no purpose.

17 There were also comments on the fact that having the
18 state bar associations do the appointing process were not in
19 accord with the intent of the McCollum Amendment. The proposed
20 addition of 1607(3)(h) concerning political party affiliation
21 elicited strong resentment.

22 The general opinion was that a section mandate would

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1 only serve to politicize the process. Many current members felt
2 that politics presently has no effect on recipient board
3 decisions. The present boards are operated bipartisan, although
4 many said that they did not know the party membership of the
5 board members.

6 The proposed addition of 1607(3)(i) limiting the
7 amount of time a director can serve on a recipient board for a
8 total of six years received mixed response. Some commentors
9 felt that board members with longer service contributed
10 necessary experience to the governing boards and that their
11 willingness of a director to serve for a longer periods was an
12 indication of the director's commitment to quality legal
13 service.

14 Several commentors expressed the problem existing in
15 some areas, of getting enough good people to serve as board
16 members, felt a 10-year limit would actually exacerbate the
17 problem.

18 Other commentors did feel that a time limit
19 restriction might be useful, but felt that six years was too
20 short a period of time. There was also resistance to provision
21 1607(3)(j) which would limit the size of the governing boards to
22 19 members.

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1 The comments centered on the idea that in some areas
2 the boards need to be and are in fact larger to ensure that the
3 boards are representative of the service areas. It was noted,
4 however, that if a size limit was appropriate, 19 was too small
5 a number to impose on the boards.

6 The proposed addition on committee restraints,
7 1607(3)(k), was regarded as unworkable by the commentators. They
8 felt that their executive committees were functioning well and
9 that particularly programs that served a large geographic area,
10 committees were imperative.

11 Basically, they were saying that the executive
12 committees are indeed making final decisions on their own. In
13 such instances, board members are required to travel large
14 distances to attend meetings necessitating an executive
15 committee to handle much of the day to day business.

16 It was also pointed out that in many states the laws
17 governing nonprofit corporations provide for such committees.
18 The compensation issue in 1607(6) was also the vehemently
19 criticized. The comments centered on the rationale that congress
20 did not mean "any" when it stated A in the Act and felt that
21 this position was supported by prior legislative history.

22 The commentators also felt that this prohibition would

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1 prevent recipient attorneys from serving on national support
2 centers where their first hand knowledge and experience is
3 invaluable.

4 Very few comments were received on the 1607(7)
5 compliance provision. The consensus opinion of those few
6 comments is that the compliance deadline was too short. Various
7 comments centered on the problem of meeting a December 31, 1988
8 deadline when the proposed changes would radically alter the
9 make-up boards.

10 CHAIRMAN WALLACE: I appreciate it. I have had the
11 chance to go through all of these things. Have all of these
12 been sent to all board members? Have all of the comments been
13 sent to everybody?

14 MS. GLASOW: All of the board members have received
15 Volume I and Volume II. Today we should have Federal Express
16 issue new volumes to those and also kind of quick copies of
17 those that have come in in the last few days.

18 CHAIRMAN WALLACE: I appreciate that. As I say, I
19 have had a chance to go through most of this, so I really do not
20 have any questions for Ms. Glasow. Do other members of the
21 committee and the board have any questions or any comments they
22 would like to make in light of Ms. Glasow's presentation?

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1 CHAIRMAN WALLACE: Okay. Besides you all had 16
2 inches of snow. Maybe the mail did not get through. I do not
3 know if we have got an extra set here, but certainly Ms.
4 Benevidez needs to get a set as soon as possible.

5 MS. GLASOW: They should arrive this morning.

6 CHAIRMAN WALLACE: Good, thank you. Any other
7 comments?

8 (No response.)

9 CHAIRMAN WALLACE: Let me thank you, ma'am. Let's go
10 on with Ms. Disanto and Ms. Sparks. You all split it up anyway
11 you like.

12 PRESENTATION OF EMILIA DISANTO AND SUSAN SPARKS

13 MS. DISANTO: Thank you. Good morning. My name is
14 Emilia Disanto and I am accompanied here today by Susan Sparks.
15 We are both from the Office of Monitoring, Audit and Compliance.
16 First I would like to express my thanks to Mr. Wallace for the
17 invitation and the opportunity to provide to you some factual
18 information gathered by the Office of Monitoring, Audit and
19 Compliance in the last two years regarding attorney composition
20 of recipient boards.

21 Indeed the Office of Monitoring, Audit and Compliance
22 has devoted considerable resources to this issue in the past two

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1 years. It has done so through its monitoring effort and by
2 reviewing and evaluating such things as bylaws, articles of
3 incorporation and board minutes.

4 Ms. Sparks has devoted a good deal of time to analyze
5 the attorney composition of recipient boards. Ms. Sparks will
6 discuss two major issues. The first is how the Office of
7 Monitoring, Audit and Compliance has monitored issues related to
8 1607 as well as other relevant provisions of law and the major
9 findings of the monitoring effort regarding attorney composition
10 of recipient boards.

11 Therefore, I will turn further substantive and factual
12 discussion of this matter to Ms. Sparks.

13 MS. SPARKS: As Ms. Disanto stated, the Office of
14 Monitoring, Audit and Compliance, MAC if you will, has devoted
15 considerable resources to examining attorney board composition
16 of recipient boards over the past two years.

17 In fact, about a year ago, MAC conducted an indepth
18 research on the McCollum Amendment in an effort to broaden our
19 knowledge on requirements set forth in that amendment as other
20 related provisions of the LSC Act and regulations.

21 Today I have been asked to discuss with you a little
22 bit about how we monitor the attorney board composition issue

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1 and discuss with you the results of that monitoring effort. Of
2 course, I will be happy to answer any questions. If I cannot
3 provide you with an answer today, we will certainly get you a
4 response at a later date.

5 First, how has the MAC monitored us this year? There
6 are several ways and there are several means by which we have
7 obtained documentation. First are bylaws. We have routinely
8 examined the recipient's bylaws to obtain facts on the process
9 articulated by the recipient for attorney board member
10 appointments.

11 We reviewed bylaws to see if the appointing bar
12 association is identified. We review bylaws, for example, to
13 see if the numerical breakdowns articulated by the recipient
14 are consistent with provisions of law.

15 Second, our interviews, interviews with board members.
16 Each monitoring team conducts interviews with both the client
17 and attorney board members to talk with that board member about
18 how they were appointed to the board.

19 Does the board member know who appointed him or her?
20 We asked the board member who interviewed you? Why screened
21 your resume? Do you know what process was utilized? Who
22 initially proposed your nomination to the board?

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1 Third, we interviewed bar association representatives.
2 We do that to obtain facts on the appointment process utilized
3 by the bar association. We ask representatives to describe the
4 process, to describe the role that they play in that process and
5 to describe the role played by the grantee, if any, in that
6 process.

7 Fourth, we review board minutes. Here we, of course,
8 obtain facts on the extent of the board's documented involvement
9 in governing a particular grantee. We also can obtain facts on
10 any documented discussions among board members on the selection
11 or appointment of board members.

12 Fifth and finally, we review funding applications.
13 This is where the grantees provide LSC with facts on current
14 board member appointments, tenures, length of time on board,
15 appointing organization, committees served on.

16 I know in the last two years we have attempted to
17 streamline the funding application to obtain better facts and
18 more information on the composition of governing bodies. This
19 monitoring process has provided LSC with numerous acts and in
20 respect relating to attorney board compositions.

21 Through this process, LSC has sought to ensure that
22 the requirements of the McCollum Amendment, the LSC Act and the

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1 regulations are carried out. We have also sought to ensure that
2 bar associations exercise their congressionally mandated
3 appointment power.

4 The office of MAC has found that these requirements
5 have not been met in all cases. Based on the documents analyzed
6 that we have been over, based on the interviews conducted and
7 based on our analysis of the related facts, we have found the
8 recipients exert influence over the appointment of attorney
9 board members to their board.

10 We have documented several ways this influence is
11 exerted, and I would like to discuss those now. First is the
12 nomination of board members to the appointing bar association.
13 We document our process whereby some recipients nominate a
14 slate or proposed board members.

15 Then forward that slate to appointing bar association
16 for approval. In some instances, the bar is presented with
17 exactly as many nominees as there are seats available.

18 In other instances, recipients bylaws indicate the
19 existence of a nominating committee on the board whose purpose
20 is to screen, to approve, to interview the proposed board
21 members.

22 This nomination process is not consistent with the

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1 McCollum Amendment which vests appointing powers not approval
2 powers to bar associations. Second is the retention of a veto
3 power by some recipients.

4 We have documented instances where recipients retain a
5 veto power over those individuals appointed by the bar
6 association. This veto usually manifests itself in the form of
7 a vote to "elect or approve or to seat" board members. You
8 picked this up before in the minutes and through discussions
9 with board members.

10 They will have a meeting to approve the slate proposed
11 by the bar association. These methods have been used in some
12 instances to delay and even to refuse legitimate bar
13 appointments. Again, this is not consistent with the governing
14 body requirements which prohibits recipients from restricting
15 the power of the bar association to appoint.

16 Third, we documented instances where grantees through
17 their influence of the appointment process, perpetuates the
18 tenures of particular attorney board members. Some of this
19 manifests itself in the lack of turnover and through the number
20 of years a board members has served on the board.

21 A year ago we did an analysis of the 1987 funding
22 applications to examine the tenures of board members serving on

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1 A year ago we did an analysis of the 1987 funding
2 applications to examine the tenures of board members serving on
3 recipient boards during calendar year 1986. The results of our
4 review show that at least 21 percent of all board members in
5 1986 were board members prior to the passage of the McCollum
6 Amendment.

7 Frequently these board members who served on the board
8 had an extended period of time, are the board members who hold
9 key positions on the board, on the executive committee -- the
10 chairman, the vice chairman, the audit committee chairman.

11 In those instances where bar association may not
12 reappoint a board member, the grantee has the discretion to
13 transfer that appointment to the "Other" category in the
14 regulation that allows for that extra 9 percent of attorney
15 board members to be appointed by or selected from bar
16 associations or legal organizations other than the majority bar.

17 The fourth way we documented in which a grantee
18 influences the process is through the selection of the
19 appointing bar association. LSC has documented a lack of
20 consistency in the grantee selection process.

21 For example, we found that grantees utilize a variety
22 of methods to use to meet the 51 percent requirement. First we

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1 associations in the service area as the appointing bars.

2 Together these county bar associations constitute a 51
3 percent requirement. Second, we found instances where grantees
4 use a state bar. This occurs when a grantee has a statewide
5 service area but it also occurs with grantees that do not have a
6 statewide service area and they utilize the state bar.

7 We have also found where grantees designate one
8 particular bar in the service area as the appointing
9 organization, but they require that that bar obtain appointments
10 from other bars in the service area.

11 This could be other county bars; this could be
12 minority or specialty bars. This lack of consistency and a
13 clear cut method on selecting bar association provides the
14 opportunity for the grantee to choose among bar associations, to
15 select a bar association.

16 Through the use of these four methods documented by
17 MAC, we have found that LSC recipients do exert influence over
18 the process. This influence infringes upon the power reserved
19 for bar associations.

20 There are two other important considerations that I
21 would like to speak to for a moment coupled with these
22 findings. First is the two year monitoring effort that has

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1 focused a great deal on 1607.

2 The effort has resulted in an increased awareness on
3 the part of some bar associations and bar leaders as to their
4 appointment authority. They have also, in many instances, have
5 an increased awareness of their fiduciary responsibility.

6 The second consideration is that the monitoring effort
7 has also resulted in an acknowledgement on the part of many
8 recipients of the bar associations point. We see this and we
9 have seen this over the last year in the increased number of
10 proposed bylaw changes admitted to LSC for approval.

11 Many of these bylaw changes go directly to the
12 composition of governing bodies. So we do believe that the last
13 two years has made a difference in bringing these provisions to
14 the forefront. Thank you.

15 CHAIRMAN WALLACE: Let me ask you a couple of
16 questions. Let me state up front -- we assured people at the
17 last meeting that we would get them copies of the report. The
18 report, I guess, is not final even yet. I got my copy yesterday
19 afternoon and had a chance to go through it.

20 Since we are not going to vote today, it is not going
21 to be the end of the world if the whole world does not see this
22 report today or tomorrow. What I would like you all to do is to

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1 get the report and the supporting exhibits in shape for public
2 distribution by the end of the year.

3 Ms. Disanto, are you all close enough to -- the report
4 looks fine. It is the backup documents where we have got a lot
5 of potentially confidential matters because we have reports that
6 are not final yet and that sort of situation.

7 Are we in shape where we can get the report and the
8 backup matter in a state to be public by the end of the year?

9 MS. DISANTO: Yes, Mr. Wallace. I do not have any
10 doubt that we can do that by the end of the year.

11 CHAIRMAN WALLACE: What I would like you to do -- I
12 know Mr. Houseman has asked for copies of it. Mr. Waystack from
13 New Hampshire has asked for copies of it. I do not know who
14 else has asked for a copy of it, but I am sure people will.
15 They need to contact you?

16 MS. DISANTO: Yes.

17 CHAIRMAN WALLACE: Find out who wants it and we will
18 get copies to people. That will give everybody a month to look
19 over it. I have seen some of the backup material. I think it
20 supports the summary that has been given to us here.

21 Obviously the only way this committee and this board
22 can know the truth is to have everybody take a look at the

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1 backup material and tell us whether it is right or wrong.

2 MS. DISANTO: Absolutely.

3 MR. MENDEZ: Mr. Wallace, may I? Does this seems
4 like a correct young lady to transfer my obligation from Mr.
5 Waysack to? (Laughter.)

6 I transfer my obligation to you to make sure that when
7 it comes to me -- at the same time you mail it to me, you mail
8 it to Mr. Waystack.

9 MS. DISANTO: Absolutely, Mr. Mendez.

10 CHAIRMAN WALLACE: Certainly all board members. You
11 know, a lot of people were flying around yesterday. I do not
12 know how widely this got distributed and how many DHL packages
13 are sitting on member's desks around the country even as we
14 speak.

15 You do need to make sure that all board members get a
16 copy not only of the report but of the backup data. Frankly, I
17 find the most interesting questions in the backup data. That is
18 what I want to ask you about.

19 There is one other thing in the draft of the report
20 that I got yesterday that does not speak directly to the things
21 in the regulation but speaks to some things that maybe we ought
22 to put in the regulation.

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1 Ms. Sparks, I did not hear you address them, but maybe
2 I was flipping through the backup data at the time. You have
3 got some background information on absenteeism, excessive use of
4 proxy voting, the use of executive committees.

5 Can you briefly describe the findings that your office
6 has made with regard to these practices?

7 MS. SPARKS: Yes, sir. As you say, our monitoring
8 efforts has revealed absenteeism problems on part of both client
9 and attorney board members. Although those program bylaws
10 contain provisions for the removal of members who continually
11 miss meetings, these rules we find are often unenforced.

12 In addition, the use of proxy, we find that many
13 recipients board have used proxy and uses the procedure for a
14 substitute as an actual attendance. Again I should state that
15 our findings once presented to grantees and commented upon by
16 grantees, we have found bylaw amendments and bylaw changes
17 directly to these issues.

18 One of the serious problems with the absenteeism issue
19 which we found is that by not participating fully in board
20 meetings, it goes without saying that board members are not
21 aware of the activities of the grantee.

22 Some problems can go undetected. Another issue which

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1 I do not think you issues but we probably should address is the
2 keeping of board minutes. We have found that they are not
3 always formed with an appropriate degree of care and precision
4 that is required by the Corporation.

5 We have found board minutes that have failed to
6 specific the exact attendance of numbers, the content of the
7 resolutions passed. It failed to specify the exercise of
8 proxies. It failed to specify the use of a telephone conference
9 call or the outcome of roll call votes and many other matters
10 essential to understanding the activities of the grantee.

11 CHAIRMAN WALLACE: I want to ask about some specifics
12 that I do not think are protected by any privilege or
13 confidentiality at this point. If I am wrong, somebody stop me.

14 One of the interesting items I saw in the backup data
15 was the saga of the D.C. bar and the national support centers.
16 To the extent that all of that is available for public
17 discussion -- I think it is. I think it has been discussed in
18 public before --

19 Would one of you all summarize the saga of the D.C.
20 Bar? I think our president may have had a little to do with
21 that as it has gone along. Whoever is the best person to tell
22 us about it, please proceed.

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1 MS. SPARKS: As you know, the D.C. Bar has a
2 considerable number of appointments to national support centers.

3 CHAIRMAN WALLACE: That is because those centers are
4 physically located in the District of Columbia.

5 MS. SPARKS: Some of them are and some of them have
6 branch offices here.

7 CHAIRMAN WALLACE: Okay.

8 MS. SPARKS: Through our monitoring of one grantee,
9 one national support center there in Washington -- through the
10 interview we found that the D.C. bar was not fully aware of the
11 responsibilities of the new McCollum Amendment.

12 The D.C. bar stated in response to questions that it
13 did not screen or interview or propose board members to the
14 national support center; that they routinely received
15 nominations from the national support centers and approved those
16 nominations.

17 We were told that they explained the corporation
18 monitors; that the notices of vacancies were not provided.
19 Through this process of monitoring effort, the D.C. Bar took a
20 look at its procedures and made some changes. I believe they
21 discussed that matter with officials of MAC as well as perhaps
22 Mr. Bayly; I do not know.

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1 They did change those procedures to have a more active
2 role in the selection of attorney board members.

3 CHAIRMAN WALLACE: At one point, they said they did
4 not want to do it anymore; is that correct?

5 MS. SPARKS: That is correct.

6 CHAIRMAN WALLACE: Are they doing it again?

7 MS. SPARKS: The documentation that we have seen comes
8 from the national support centers. The D.C. Bar is in fact
9 doing that as well as in some of the correspondence we have
10 seen.

11 CHAIRMAN WALLACE: Can you tell at this point whether
12 they are taking a more active role in selection and screening or
13 is it still the approval of the Wisk process that they have done
14 in the past?

15 MS. SPARKS: We have not reexamined that issue in
16 depth, but it is certainly something to look into.

17 CHAIRMAN WALLACE: I think we need to look into it.
18 Mr. Bayly, is it my imagination or did you have some
19 conversations with the D.C. bar people?

20 MR. BAYLY: In fact, Mr. Wallace, I did. I am a
21 member of the D.C. Bar. Over the past many weeks and months I
22 did have informal conversations with some of the officers;

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1 committee chairman and the like and asked them what the practice
2 was or the procedure about making appointments.

3 Quite frankly, I think that the matter had fallen if
4 not from sight, from concern. Consciousness is not at an all
5 time high. After a couple of conversations, I think that the
6 improvements that Ms. Sparks' has outlined took place. I feel
7 that the D.C. Bar at the very least is reexamining what its
8 responsibilities in this area are.

9 I did notice when I asked, for instance, for a list of
10 appointments, that a goodly number of lawyers appointed to the
11 support centers either have their headquarters or branch offices
12 in Washington where lawyers were not members of the District of
13 Columbia Bar.

14 I do not know if that makes their appointment invalid
15 or suspect or somehow an incorrect or questionable. I do know
16 that it means the D.C. Bar really probably has little say over
17 their conduct as it might, for instance, the same measure that
18 it would over a member of the D.C. Bar.

19 Secondly, of course, I wonder how it is that the D.C.
20 Bar would find a board member who was not domiciled from
21 Washington and was not a member of the D.C. Bar. I suspect they
22 must have gotten that information or it must have been a

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1 suggesting made to them by program.

2 I do not know that that is necessarily a question
3 within itself, but it does show you, I think, that there are
4 practices that are at some variance with what I think is the
5 intention of the regulation.

6 CHAIRMAN WALLACE: I was interested to see in some of
7 the documents submitted to us -- and I may have misunderstood it
8 -- I am sure when the ABA gets here tomorrow they will tell me
9 if I have misunderstood it -- apparently the standards for legal
10 services provider that is put out by the ABA indicate that
11 programs should not be in the business of influencing the
12 selection of their own boards; is that correct?

13 MR. BAYLY: I think that is correct, yes.

14 CHAIRMAN WALLACE: I want to ask some questions about
15 state support centers. I am not sure whether -- this may be
16 highly technical, but it goes back to something we did in
17 Mississippi a year and a half ago and I think has fallen through
18 the cracks.

19 It is correct, is it not, that several state support
20 centers, including the one in Mississippi, are not independently
21 funded organizations; they are subgrantees of other
22 organizations.

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1 MS. SPARKS: That is correct.

2 CHAIRMAN WALLACE: As a result, those programs do not
3 necessarily have boards that they consider to be subject to the
4 McCollum Amendment. I do not know whether they are subject or
5 whether they are not.

6 Can you all describe your findings in that area?

7 MS. SPARKS: I can speak a little bit to your
8 particular example. In that situation, the board of directors
9 of the once removed subgrantee is composed of the project
10 directors, the executive directors of those grantees.

11 CHAIRMAN WALLACE: The organization having
12 responsibility under the McCollum Amendment is the original
13 grantee, which in our case is South Mississippi Legal Services;
14 is that correct?

15 MS. SPARKS: Yes, sir.

16 CHAIRMAN WALLACE: Whose board is made up of members
17 from Harrison County and Jackson County and nobody from the
18 other 80 counties in Mississippi. Let me say this.

19 Louis Armstrong from Legal Services Corporation, I do
20 not mean to put the blame on anybody in Mississippi -- he came
21 for us in Mississippi and said, "We do not want to be a
22 subgrantee. Please do business with us directly."

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1 I remember saying a year and a half ago would somebody
2 please tell me why we cannot do that. After a year and a half
3 nobody, I think, has ever told me the answer to that.

4 I did not ask you all to come prepared for that today,
5 but it seems to me these state support centers, if we are going
6 to have them, ought to be directly funded and there should not
7 be any arguments about whether their board --

8 Alan, can you --

9 MR. HOUSEMAN: I want to point out that they wrote the
10 corporation and informally asked to change status a year and a
11 half ago.

12 CHAIRMAN WALLACE: I am not taking any shots at the
13 Legal Services Corporation. I am wondering why we have not done
14 anything about it. Does anybody know? I think it is field
15 services problem and not your problem.

16 MS. SPARKS: We will look into it for you.

17 CHAIRMAN WALLACE: This is a problem that, to a large
18 extent, is our fault because of the way we fund people. If we
19 would just fund them directly, we would not have any arguments
20 about whether the board is covered or whether it is not. Unless
21 someone can show me why we should not do that, I wish we would.

22 MR. MENDEZ: In that regard, I would like to see if we

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1 can -- let me just sort of put an editorial comment here. Since
2 Congress has not seen fit to increase our budget for '88, I
3 think we will be on a month to month for a period of time until
4 Congress tells us what they are going to do.

5 I would like to see us do some fairly active work in
6 this area especially if they make the formal request to see if
7 we can put it in place this year for this budgetary year.

8 CHAIRMAN WALLACE: I know you have a lot of problems
9 two weeks before the end of the year with no budget left. I
10 know there is a lot to do. This is a change that, it seems to
11 me, ought to be made unless somebody can give us a good reason
12 why not. I mean, this subgrant business causes unnecessary
13 complications.

14 I wanted to ask another question and some of this may
15 still be getting ready. You all have had problems with the
16 program in New Jersey with relationships between bar and the
17 program.

18 To the extent we are not going to wind up in court on
19 this next week, can you describe some of the problems you have
20 had there, please?

21 MS. SPARKS: Maybe I will just give you a little
22 history, briefly. There is a situation where the grantee was

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1 selecting the attorney board members and asking the bar to
2 approve that.

3 A new bar president came into the bar association and
4 this was a year and a half ago, two years ago, looked at that
5 situation and recognized the bar association's responsibility
6 under the act and the McCollum Amendment to exercise
7 responsibility in selecting board members and appointing board
8 members.

9 The bar association president put a procedure in place
10 and it was met with very extensive resistance by the grantee.
11 The grantee wrote letters to the bar association saying we have
12 established a process here and you are now trying to interfere
13 with that process.

14 This was a letter to the bar association. The second
15 bar association president came in and again decided that that
16 responsibility was the bar association's and he too put together
17 a process that did not include influence on the grantee.

18 The bar association recruited, screened, nominated,
19 interviewed and chose the attorney board members for the
20 grantee. We did enter into a situation where the grantee
21 refuses to see those board members.

22 This was a year or so ago. To date those -- at the

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1 conclusion of that, we are now in additional negotiations.

2 CHAIRMAN WALLACE: It ain't settled yet?

3 MS. SPARKS: Yes.

4 MR. BAYLY: Mr. Wallace, may I just add at this point
5 that at the present time, it is my understanding the Corporation
6 has two competing refunding applications. By the time a
7 decision is made, I guess, the new year will be upon us.

8 The Corporation will at some time have to decide
9 between those two competing applications.

10 CHAIRMAN WALLACE: Okay. I appreciate that. I am
11 walking through some of your backup papers. Maybe Mr. Eaglin
12 can explain it as well as anybody. You all apparently have some
13 concern with the structure of the system in North Carolina which
14 basically does go through the state bar as I understand it.

15 I am not sure how that works and I do not know to the
16 extent which it is consistent with the McCollum Amendment and to
17 what extent it is not. You all seem to see some problem. I was
18 not sure I knew what the problem was reading some of your backup
19 documents.

20 Maybe you are not in condition to describe it this
21 morning. I am kind of trying to figure out what the problem was
22 in North Carolina.

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1 MS. DISANTO: I do not have indepth knowledge on LSNC
2 which services in North Carolina, but I can tell you that they
3 have a federation of 15 affiliated programs, 12 which are more
4 or less countywide and 3 which are statewide.

5 The membership more or less consists of the board of
6 governors of the North Carolina Bar Association. LSC sometime
7 ago approved the federation's structure which now exists at
8 LSNC.

9 The bylaws of LSNC allow the voluntary bar of North
10 Carolina to choose 9 of the 10 attorney members of the LSNC
11 board of directors and the mandatory bar of North Carolina
12 elects the attorney board members.

13 CHAIRMAN WALLACE: Say that again.

14 MS. DISANTO: The bylaws of LSNC allow the voluntary
15 bar to choose 9 of 10 attorney members from the LSNC board of
16 directors. The mandatory bar elects the other attorney board
17 members.

18 We are closely examining the entire issue on the
19 organizational structure of LSNC at this time. We could provide
20 you with some further detailed information on that.

21 CHAIRMAN WALLACE: I mean leaving aside the question
22 of the subcorporations in North Carolina, at least at the LSNC

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1 level, the state bar, whether it is voluntary or mandatory,
2 picks the members. That looks to me like what McCollum was
3 trying to do; is that correct?

4 MS. DISANTO: Yes.

5 MR. EAGLIN: The state bar is mandatory. The bar
6 association is voluntary at the state level.

7 CHAIRMAN WALLACE: The voluntary bar has nine of the
8 seats and the mandatory bar has one of the seats; is that
9 correct?

10 MR. EAGLIN: I think that is what she said. Victor
11 Fortuno was just in North Carolina last week. I do not know if
12 he can add anything on this.

13 MS. SWAFFORD: What is the difference between the
14 voluntary bar and the mandatory bar?

15 MR. EAGLIN: The North Carolina State Bar is the
16 statutory authority. It has statutory authority over us, the
17 North Carolina State Bar. That is its name. The North Carolina
18 Bar Association is a statewide voluntary membership of
19 attorneys.

20 CHAIRMAN WALLACE: I had another question --

21 MR. EAGLIN: The attorneys in North Carolina must be
22 members of the North Carolina State Bar. We are subject to

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1 discipline through the North Carolina State Bar.

2 CHAIRMAN WALLACE: I was interested in one bar
3 association whose regulations tell the bars -- one recipient
4 whose regulations tell the bar association what kind of person
5 they have to put on.

6 They have to put on people who believe in, among other
7 things, far reaching and basic reforms to utilize enough of the
8 well flowing from extraction of the regions natural resources to
9 finance insofar as possible the institutions essential to a
10 mature, dignified, comfortable and civilized society.

11 MR. MENDEZ: That cannot be from Colorado. (Laughter.)

12 CHAIRMAN WALLACE: Do you all know whether the extent
13 to which anybody has ever tried to enforce that bylaw ont he
14 local bar? I mean, for instance, if the bar were to set up a
15 good old fashioned right wing nut, has the program ever tried to
16 say we will not take you? Is this something that is on paper or
17 is it something that has been enforced and practices or do you
18 all know?

19 MS. SPARKS: The context as you see is the retention
20 of that grantee of a veto power. We can certainly --

21 CHAIRMAN WALLACE: It may have an in terrorem effect,
22 as they say, just sitting there. I would be interested to know

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1 the extent to which that is actually been enforced on anybody.

2 One of the things you all did, apparently, was to take
3 a telephone poll in some of the bar associations to see the
4 extent to which the bar associations -- and the manner in which
5 they exercise their authority.

6 One of the things you really do not discuss in your
7 backup data is the methodology for that phone call. I was
8 interested in the results. I promise you when this is
9 generally released, we are going to spend quite a bit of time
10 arguing about whether the phone poll was any good or whether it
11 is the functional equivalent of man on the street interviews.

12 Maybe you can say something about it now and maybe you
13 cannot. I promise you you are going to have to before it is
14 over. Is there anything you all are in a position to say about
15 the methodology of that right now?

16 MS. SPARKS: As you say, it was a telephone survey.
17 The detail is in the paper that is presented to the public.

18 CHAIRMAN WALLACE: The bottom line of the survey was
19 that somewhat better than half of the bar associations reported
20 an influence by the recipient in the selection process?

21 MS. SPARKS: Yes, sir. We probably also state at this
22 time that we did telephone surveys to 30 bar associations and we

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1 attained the names of the people we spoke with from the
2 refunding applications as reported by the grantee.

3 CHAIRMAN WALLACE: I am sure that that will get
4 analyzed in some detail. If that is anything like the facts,
5 half of the programs are out of step with the ABA zone
6 recommendations much less the McCollum Amendment.

7 MR. HOUSEMAN: Mr. Wallace, when this report is made
8 public, and I assume all of this backup data will be made public
9 to us, could the questions that were asked be made public and
10 the list of people who asked them be made public?

11 CHAIRMAN WALLACE: Certainly the questions ought to be
12 made public. I do not know if there is any confidentiality
13 concerns about the names of the individuals. What I am telling
14 the staff is I know you are going to have legitimate questions
15 about that survey.

16 I want as much of the methodology as we can safely
17 reveal out on the table. I do not want to be back here in
18 January still arguing about whether the data is any good. So
19 that is my concern.

20 One other glorious thing that you have not mentioned
21 was the Western Center distribution on how to handle your board.
22 I found that quite fascinating. I imagine people would want to

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1 see copies of it eventually.

2 My last request of you is that you explain this
3 document called, "How to Keep Your Mandated Citizen Board Out of
4 Your Hair and Off Your Back: A Guide For Executive Directors."

5 MS. SPARKS: LSC routinely receives notification and
6 materials of training events helped by grantees in examining
7 materials distributed at a project director's training conducted
8 by one of our grantees in 1986.

9 LSC saw the name of this article and requested a copy
10 of the article. The name of the article as you stated is, "How
11 to Keep Your Mandated Citizen Board Out of Your Hair and Off
12 Your Back: A Guide for Project Directors."

13 We received a copy of the article which details how to
14 contain and render an effect of your board of directors. The
15 article states among other things that the starting point is to
16 maintain control of the process of nominating and selecting. I
17 think that quote is somewhat very central to our discussion
18 today.

19 When we inquired about the article, we should note
20 that we were informed by the grantee and by the author of the
21 article that it was a spoof. In reading the article, it may in
22 fact be a spoof, but the information provided in the article is

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1 information that does reflect upon reality.

2 CHAIRMAN WALLACE: I do not know whether it is a spoof
3 or not, but I have been fixing meetings ever since I was in
4 grade school. Techniques for fixing meetings set forth in that
5 article work. That is how it is done.

6 There may be some poor benighted directors out there
7 who have to be told how to fix a meeting. If they need it, that
8 article sure tells them how to do it.

9 MR. MENDEZ: I wish that on some of these boards that
10 I sit on that they would appoint me to some of these committees.
11 I like this. I would like to be on the flowers and gifts or the
12 annual party meeting or the recreational committees. I am
13 always stuck on finance. (Laughter.)

14 MS. SWAFFORD: I have not seen it. May I see it,
15 please.

16 CHAIRMAN WALLACE: Ms. Swafford wanted to see it. I
17 do not know whether it was a spoof or not, but as you say, there
18 are things in it that represent reality. All I am concerned
19 with is that the objective of congress was for boards to control
20 executive directors and not vice versa.

21 If there is evidence that is not what is happening, it
22 is evidence we need to investigate. I have talked to much

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1 because I have had the benefit of looking at this stuff for
2 almost 12 hours now.

3 If there are any other board members or committee
4 members that have any questions for any members of the staff,
5 please do so.

6 MS. SWAFFORD: Can I get a copy of these?

7 MS. SPARKS: We will provide a copy.

8 MR. EAGLIN: We said it is going to be coming around.

9 CHAIRMAN WALLACE: It is going to come to everybody
10 before the next meeting. If you have got a school board meeting
11 you want to put this to work on between now and next week, I am
12 sure we can get --

13 MR. EAGLIN: Did you say it has been sent to us?

14 CHAIRMAN WALLACE: I do not know whether it has or has
15 not. I got it yesterday.

16 MR. EAGLIN: I have not received it.

17 CHAIRMAN WALLACE: I do not know how widely it has
18 been distributed. It needs to be. We all got to see this
19 stuff.

20 MS. SPARKS: I believe also in your backup
21 information was the relative correspondence.

22 CHAIRMAN WALLACE: Yes, that is right.

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1 MS. SPARKS: That would also be provided.

2 CHAIRMAN WALLACE: That is right. Any questions or
3 comments from members of the staff at this point?

4 (No response.)

5 CHAIRMAN WALLACE: Thank you all very much. I
6 appreciate it. Let me ask this. It is 9:15 in Mississippi and
7 I have got a message to call my office. Before we take public
8 comment, why don't we take about a five minute break.

9 Everybody can refill their coffee and do whatever is
10 necessary. Then we will come back and take public comment for
11 the rest of the morning.

12 (A short recess was taken.)

13 CHAIRMAN WALLACE: I have got four people who want to
14 speak. I know Mr. Houseman will have a few comments. I would
15 think that we could probably get all that done by noon and then
16 come back tomorrow morning because we have at least three people
17 who want to talk tomorrow morning.

18 Let me begin by inviting Mr. Joseph Roof, President of
19 the Richland County Bar Association to come to the table and
20 offer his comments.

21 Mr. Roof, I take it that Richland County is Columbia;
22 is that correct?

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1 MR. PRITCHARD: Yes, that is correct. Mr. Chairman, I
2 am Mike Pritchard. I am the director of the local legal
3 services program. I was listed to speak, but I do not have a
4 statement. I was planning for us to just do a tandem
5 appearance.

6 CHAIRMAN WALLACE: That is fine. Welcome, Mr.
7 Pritchard. Why don't you all both sit down and tell us how
8 things are in Columbia and anything you have got for us to hear.

9 By the way, before we begin, the assistant general
10 counsel tells me that out on the table out there are several
11 sets of comments that have come in on this regulation. I think
12 some of them have been distributed to board members. If there
13 are any board members that do not have them, they are out there.

14 After the board members are finished grabbing them, if
15 members of the public would like to have the comments, we have
16 got a whole bunch of them out there. So feel free; dig in.

17 Gentlemen, I am sorry; go ahead.

18 PUBLIC COMMENT BY C. JOSEPH ROOF

19 MR. ROOF: Good morning. My name is Joseph Roof. I
20 am the immediate past president of the Richland County Bar
21 Association. I gave up the gavel the second of this month.
22 Richland County is the largest local bar association in South

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1 Carolina.

2 We have a little over 1,000 due paying members out of
3 a lawyer population of about 1,600 in that county. It is, of
4 course, where Columbia is as you indicated. Columbia, I will
5 tell all of you, is the capital city of South Carolina, contrary
6 to what some residents of Charleston may feel. (Laughter.)

7 The executive committee of the Richland County Bar
8 Association at a meeting in early December, had a copy of the
9 proposed regulation we are here to discuss today.

10 So the views I express are the views of the executive
11 committee of the Richland County Bar taken at that meeting and
12 colored by the views of the practitioner of 25 years who has seen
13 legal services to the poor evolve from a one hour a week
14 meaningless operation to a very meaningful operation in Columbia
15 and in central South Carolina.

16 CHAIRMAN WALLACE: Have you all submitted written
17 comments yet?

18 MR. ROOF: Yes.

19 CHAIRMAN WALLACE: I looked for them and did not see
20 them. Maybe they were not in the bunch that I got in advance
21 coming. I have gotten a new stack this morning that have come
22 in. Never mind. We can go ahead.

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1 MR. ROOF: I think we probably have another copy we
2 could provide you with.

3 CHAIRMAN WALLACE: I am sure it is in here someplace.
4 Anyway, go ahead.

5 MR. ROOF: Our county bar appoints three members of a
6 24 member board which is the policy making board of Palmetto
7 Legal Services. We feel that a closeness to and a comfort with
8 this board and the Office of Legal Aid, as I still call it,
9 Palmetto Legal Services, through these appointments is vital to
10 the delivery of legal services to those who cannot otherwise
11 afford them.

12 There is a good working relationship between the board
13 and I am going to address only two aspects of the proposed
14 regulation; that affecting the board's appointments and that
15 affecting the party composition of the board.

16 There is a good working relationship between the
17 board, the administration, the staff and the private bar in this
18 entire area. Our legal services cooperation provides competent
19 legal services, we feel, to the spectrum of the public which is
20 unable to otherwise afford these services.

21 The private bar supports these services and the way in
22 which they are being rendered. We feel that giving the state

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1 bar the authority to appoint board members may be imposing upon
2 that organization a privilege it does not want and an obligation
3 which it may be unwilling to accept.

4 The rendering of legal services is affected uniquely
5 by local conditions. Lawyers and policymakers must be familiar
6 with local needs and local problems. In removing the input of
7 local bars, you are, in effect, depriving the parties being
8 served of these unique local knowledge rights.

9 I was talking to some of my partners about this
10 problem yesterday telling them where I would be today. We were
11 talking about the fact that many large law firms are attempting
12 to become statewide law firms in South Carolina. This is
13 happening everywhere I am sure.

14 If you notice, these large law firms do not send
15 lawyers from one city to another; they have local people there,
16 local lawyers, local lawyers familiar with the problems of that
17 area.

18 I think that the rendering of legal services through
19 Palmetto Legal Services and other legal service corporations
20 must be done in the same way. Looking at the question of the
21 political composition of the board, as had been expressed
22 earlier, we feel like this would inject into services for the

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1 poor and unnecessary political consideration.

2 Particularly in South Carolina, we had very
3 independent minded voters. Few South Carolinians claim a party
4 affiliation. Many are uncomfortable with party labels. Most
5 would be uncomfortable expressing a political party preference.

6 South Carolina primaries are open primaries. We
7 require no designation of party preference to register or vote.
8 We feel that lower income people in particular may be ill at
9 ease declaring a political allegiance in the presence of
10 intimidating lawyers and to lawyers.

11 In summary, these proposed regulations, we feel, lose
12 sight of a purpose of having legal services corporations; that
13 is, the availability of effective quality legal services to
14 those who cannot otherwise afford them.

15 To burden this service with a meaningless maze of
16 artificial regulations might be to just be a display of power
17 that would impede what we feel are decades of progress made by
18 those who are dedicated to giving to all Americans the
19 opportunities that were envisioned by our founding fathers to
20 justice.

21 That is our position.

22 CHAIRMAN WALLACE: Okay. I appreciate that. Mr.

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1 Pritchard, do you have anything to add?

2 PUBLIC STATEMENT BY MICHAEL PRITCHARD

3 MR. PRITCHARD: Just a very few brief comments. I
4 would not want the committee to underestimate the amount of work
5 and dislocation that would go into implementing these
6 regulations.

7 I will leave it to our bar association representatives
8 to talk about their viewpoint of the change in the appointment
9 process. Reorganizing the board of directors, it may have long
10 term relationship with one another, long term expressed interest
11 in legal services requires immense amounts of work, will impede
12 the effectiveness of that board in doing what I think is your
13 purpose which is to provide real guidance to the program.

14 I think experienced board members, board members that
15 have a local perspective are going to be more assertive and
16 better able to provide project directors and program staff with
17 that sort of guidance.

18 So I think the regulation that is proposed will
19 counter the stated purposes.

20 CHAIRMAN WALLACE: Let me ask you all a couple of
21 questions about your program. I asked the staff before we came
22 to get me the data on the various South Carolina programs. It

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1 may or may not be accurate, but it is supposed to come from your
2 refunding applications.

3 If it got mistranslated to me, I apologize. As I look
4 at the Palmetto service area, we have six or eight counties that
5 apparently do not have representation on the board; Allendale,
6 Bamberg, Barnwell, Calhoun, Fairfield, and Saluda.

7 First of all, let me ask you have you made efforts to
8 secure representation from those counties on the board and what
9 have been the results? If you have not made such efforts, why
10 not?

11 MR. PRITCHARD: That decision was made at the time
12 that we initially reorganized under the McCollum Amendment which
13 was before my time, so I am not privy to the internal
14 discussions that went on about that.

15 The present justification of keeping that way is that
16 you have a real problem where you have Richland County which has
17 an immense number of lawyers. Probably 40 percent of the
18 lawyers in our services are represented by the Richland County
19 Bar would be my guess; yet they only have 3 of the 15 positions
20 on the board which they picked.

21 So there is, in terms of the rural areas -- those
22 counties that you named are all very rural counties. There is,

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1 in fact, overrepresentation of the rural counties now. Unless
2 you are going to greatly increase the size of the board say to
3 30 or 40 people -- we have 24 on the board now -- that would be
4 the only real practical way to provide some representation to
5 those very small counties, yet maintain some level of
6 significant or proportional representation to Richland County.

7 In some instances, such as the Orangeburg County
8 board, which appoints two people to our board, many of those
9 attorneys practice in those very small counties. In those very
10 small counties, there may, if you exclude the judges and the
11 prosecuting attorneys, there may only be five or six lawyers
12 practicing.

13 Some of those counties have more than that, but some
14 of them a very limited number of private practitioners and in
15 fact, much of the legal work that is done in those counties is
16 done by the larger bar associations such as the Orangeburg,
17 Sumpter, and Lexington Country bars.

18 Attorneys practicing in those counties are represented
19 on our board. It is simply a trade off between having each
20 country represented and getting in a very extensive board, say,
21 30 to 40 people and not having perfect representation of each
22 single country represented.

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1 I guess a trade off was made, a decision was made at
2 that time to have some representation of the larger rural bar
3 associations but to maintain some weighing in terms of having
4 more appointments for your very, very big bar associations.

5 CHAIRMAN WALLACE: Let me ask you about the weighing.
6 I do recognize your dilemma. I am not sure the way you solved
7 it is consistent with the McCollum Amendment. Maybe it is and
8 maybe it is not.

9 According to the data we have got, 61 percent of the
10 lawyers in your service area are in Richland County. I do not
11 know if all of them are members of your bar association. I
12 cannot tell you that.

13 Basically, 61 percent of your lawyers are in Richland
14 Country. The Richland County Bar appoints 3 out of 15 lawyers
15 on the board. That is 20 percent of the lawyers and I guess
16 about 12 percent of the total board.

17 As I understand McCollum, what he wanted was that a
18 bar association, the bar association, a bar association
19 representing a majority of the lawyers in the country should
20 have a majority of the board.

21 If Richland really does have a majority of the lawyers
22 in the county, it ought to be appointing not 3 members of the

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1 board but, what, 13 members of the board. I commend your
2 efforts to get rural representation even though they have not
3 completely done the job.

4 I am not sure that the way you have done it is
5 consistent with the content of Congressman McCollum and
6 Congress; that a majority of the lawyers should control a
7 majority of the board.

8 Three seats for Richland County is not anywhere close
9 to a majority.

10 MR. PRITCHARD: I think we read McCollum a different
11 way. I read it as the attorney members of our board have to be
12 appointed by some combination of the bar associations that
13 represent 51 percent of the attorneys in my service area.

14 Also, while 61 percent of the lawyers are in Richland
15 County, the Richland County Bar Association is a voluntary
16 association. It is not an integrated bar. So I think the
17 percentage of the practicing lawyers in our area who are
18 members of the Richland County Bar Association is probably
19 somewhere around 40 percent.

20 A significant portion, I would guess about a third of
21 the lawyers in Richland County, are not members of the Richland
22 County Bar Association. So you do not have the 61 percent as

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1 members of the Richland County Bar Association. You have a
2 smaller number.

3 Again, it is the kind of practical judgment you have
4 to make on a local level. The Richland County Bar members tend
5 to be more active per member than the more rural members because
6 it is simply more convenient for them to attend meetings, board
7 committee meetings.

8 So I think they get more bangs per member in the board
9 because they are centrally located to our main offices.
10 However, it is a local decision of wanting to ensure that the
11 rural areas that had disadvantages of isolation and distance
12 feel a real participation in the program, do not feel that it is
13 some sort of an organization to just operate out of Columbia and
14 they are merely edging to it.

15 That decision was made on the local level that by
16 giving a greater proportional representation the numbers would
17 suggest, was the correct way to approach that very local
18 problem.

19 CHAIRMAN WALLACE: It is a greater proportional
20 representation the numbers would suggest because, for instance,
21 Sumpter County with 90 lawyers has two seats on the board.
22 Orangeburg Country with 66 lawyers has two seats on the board.

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1 Those 156 lawyers can outvote the 3 representatives of Richland
2 which have 1,500 lawyers in that county.

3 That kind of ten to one ration is the sort of thing
4 that got us Baker versus Carr to begin with. I realize the
5 problem that that puts you in, but it ain't a very
6 representative -- it may or may not be consistent with the
7 McCollum Amendment.

8 By the one man, one vote standards we have gotten used
9 to over the last 20 years, it is not a very representative
10 board; is it?

11 MR. PRITCHARD: I am not aware the Baker versus Carr
12 applies to the boards nonprofit organizations.

13 CHAIRMAN WALLACE: It probably does not except you are
14 funded with federal --

15 MR. PRITCHARD: I think a local nonprofit agency has
16 to look at the various constituencies it represents and then
17 make a localized determination as to how it can best have full
18 involvement by all those bar associations. That may mean some
19 disproportion outs.

20 I will leave Joe to comment on it. I have not had
21 complaints from the Richland County Bar Association. They are
22 aware of our setup. I would note the South Carolina Bar

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1 appointees to our board both come from Lexington County.

2 Again, that is somewhat a function of their ability of
3 that statewide bar association to recruit good board members.
4 It is much easier for them to do it locally and get Richland
5 County people because it is easier for them to attend and
6 participate.

7 So there is a greater Richland County representation
8 on the board that would be indicated simply by the Richland
9 County Bar Association appointee. I do not know if there is an
10 dissatisfaction on the Richland County Bar; none has been
11 expressed to me.

12 I will turn that over to Mr. Roof.

13 MR. ROOF: I would say absolutely none, no
14 dissatisfaction. The one thing we would not want is the
15 obligation of filling more spots on that board. We absolutely
16 would not want that because we have difficulty getting qualified
17 people to devote the time to this board now.

18 We go through a careful selection process. We do not
19 go through the process that has been described as existing in
20 some areas. The board members are selected by our bar. We may
21 run names by other people, but the selection process is lengthy.
22 It is detailed and time consuming.

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1 We certainly do not want the responsibility of
2 selecting additional members to this board. We do not object to
3 the representation that exists by the rural areas at all. I
4 might mention that the last time I saw any figures, Saluda
5 County had less than 10 lawyers.

6 CHAIRMAN WALLACE: Five.

7 MR. ROOF: Allendale probably had about the same
8 number, maybe a few more. These areas do not have a large
9 lawyer population. As Mr. Pritchard just mentioned, lawyers
10 from other areas do practice there. A great deal of my practice
11 is in some of these counties.

12 We, as a bar, certainly do not want any more
13 responsibility with reference to appointments on this board.

14 CHAIRMAN WALLACE: Let me ask you: On the
15 appointments that the South Carolina Bar makes, does it consult
16 with the Richland Bar and the other local bars in making its
17 selections or are they -- how is it done?

18 MR. ROOF: We have not been consulted prior to any
19 appointments by the South Carolina Bar to my knowledge. I think
20 that is done by the South Carolina Bar independently of any
21 discussion with Richland Bar.

22 CHAIRMAN WALLACE: I appreciate anybody's lack of

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1 desire to have to go out and recruit bar members for this or any
2 other legal services project. I am sure that it is difficult.

3 On the other hand, Congress has plainly delegated that
4 responsibility to the organized bar. My concern is to see that
5 a majority of the organized bar controls a majority of the
6 board. That is what McCollum seems to require.

7 While the way you have distributed it in Palmetto may
8 be consistent with whatever guidelines legal services has
9 issued so far implementing McCollum, it looks to me on the face
10 of it that it is far and away inconsistent with what I
11 understand Congressman McCollum to have been trying to do and
12 that is to make sure that the big organized bar has a majority
13 of seats.

14 You all just do not. It may be working fine in
15 Palmetto Legal Services area and you all may like it wonderful,
16 I am just not sure it is consistent with what Congress has toned
17 us to do. That is why I am trying to find a way to fix it
18 without causing anymore disruption.

19 Let me ask you this question and then I will let other
20 members of the panel ask what questions they have. Assuming
21 there are problems -- you all heard the testimony this morning.
22 Of course, we are going to distribute that factual material. I

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1 know in January we will have an opportunity to have people tell
2 us why no problem exists. Maybe it does not.

3 Based on the testimony we heard this morning, there
4 appears to be some problem in some areas of the country where
5 the staff controls the board instead of the board controlling
6 the staff.

7 If that is a problem and if the evidence when we
8 finally digest it all shows that that problem exists, do you
9 have any suggestions based on your experience as to how that
10 problem can be solved; how we can get to the point where the bar
11 associations control the board and the board controls the staff?

12 MR. ROOF: Let me just tell you how it works in
13 Richland County. Maybe that will give us an insight into how it
14 can work in other areas.

15 When a position on the board needs to be filled, we
16 are usually alerted to the expiring member's position well in
17 advance by the executive director. The executive committee of
18 the bar does a screening process as I described before and we
19 talk with people who have an interest and are willing to serve.

20 I think the key is simply good communications between
21 the executive director, his offices and the bar association and
22 an active interest by the bar association in the affairs of the

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1 Legal Services Corporation.

2 I think there are other things perhaps that can be
3 done to promote that kind of interest and to promote that kind
4 of communication other than some regulations that may or may not
5 address the issue.

6 CHAIRMAN WALLACE: Like what? The problem with the
7 federal government, as some people in Mississippi told me
8 yesterday, we are going after a fly with a sledge hammer. The
9 Code of Federal Regulations is by nature a sledge hammer.

10 If you have got some ideas of things we can do that
11 are not arbitrary and capricious, I would be delighted to hear
12 what they are.

13 MR. ROOF: First of all, I think local bar
14 associations need to be kept aware of their rights and their
15 obligations. I think that communication by this board to local
16 bar associations would be a step in that direction.

17 To often during the change of administrations of local
18 bar associations, there is a disorderliness that is an absence
19 of falling forward and the kind of communications that needs to
20 go on from one administration to another.

21 I know in our own situation, there are many
22 appointments for which we are responsible. Some of these have

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1 slipped through the crack from time to time because of that. I
2 think communication by this board to local bars making them
3 aware of their rights, making them aware of their obligations
4 would be the first step.

5 They should be alerted to not only those rights or
6 obligations but how to exercise them and who to reach and how to
7 get more complete information about it. Perhaps the other
8 problem of communication which has been on the level between
9 local bar and between the local bar and the local Legal Services
10 Corporation can best be addressed by the organizations that
11 exist supporting legal services.

12 I have learned here today that there is such an
13 organization where this group works together. I think that
14 group also needs to communicate with local bar associations. It
15 seems to me that the bottom line is always that good
16 communication.

17 When people stop talking, problems develop. The
18 communication among and between all the people involved and
19 interested in this subject is just vital. I think we have that
20 and I think that is the key to the success of the program in
21 Richland County, the people involved, the communications among
22 those people.

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1 CHAIRMAN WALLACE: I think your suggestion that we
2 need to communicate directly with local bars is a good one.
3 That is a non sledge hammer approach. I hope Mr. Bayly is taking
4 good notes on that. I think that is something the staff ought
5 to do.

6 The next question is to tell them how to exercise
7 their rights and obligations. Suppose Mr. Bayly writes to the
8 27 members of the Barnwell County Bar and say, "Under the
9 McCollum Amendment, bar associations are supposed to have
10 appointment authority in the service area."

11 Barnwell County writes back and says, "That is great.
12 We would like to have a seat on the board of Palmetto area legal
13 services." The next step is how do we do that? This board and
14 Mr. Bayly cannot force that. I do not think we can force that
15 under currently existing regulations.

16 Maybe we would not have to force that. We send a copy
17 of the letter to Mr. Pritchard and they get representation on
18 the board. Suppose you have a situation where a country bar
19 wants representation and it cannot get representation by
20 cooperation with the local programs.

21 Should the national board have authority to force that
22 kind of representation or not?

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1 MR. ROOF: I personally do not think the national
2 board should have authority to enforce it. I think the board
3 should have authority to grease it. I think that can be done.
4 I think local bars, for instance, the Barnwell Bar that does
5 have that kind of interest in the board, it could contact the
6 Richland Bar, the other bars involved and the offices of the bar
7 could meet with the executive director.

8 I think that could be worked out. I do not think
9 anyone particularly covets others seats on this board. I just
10 think that it is a matter of cooperation that could be worked
11 out. It may take some pressure from the national board.

12 CHAIRMAN WALLACE: Our ability to exert pressure is of
13 the sledge hammer variety. That is one of the problems we have.
14 Mr. Mendez?

15 MR. MENDEZ: I would like to follow up this thought
16 that you have and see where we can take it and explore it a
17 little more fully.

18 When we talk about being aware of the rights and the
19 local boards and you say communicate directly, sometimes we have
20 a little bit of difficulty getting the names and addresses of
21 the local bar.

22 Would you think it would be to much of an imposition

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1 if we said, in maybe their funding applications, that they have
2 to give us those addresses so that we can direct the --

3 CHAIRMAN WALLACE: I think we do; don't we?

4 MR. PRITCHARD: Yes, I think we do. In the refunding
5 application we have to give, I think, the name of the president
6 and the address of each of our bar associations, not just that
7 are appointed to our board but within our service area.

8 CHAIRMAN WALLACE: I think the problem with some rural
9 bars is that the name and address is largely theoretical. You
10 can write to the last guy they elected president, but they may
11 not --

12 MR. ROOF: Let me give you a good example of just what
13 was mentioned. A year ago when I was elected president elect of
14 Richland County Bar, I was meeting with a friend in a small
15 rural county.

16 I was saying to him that this was nice. I am
17 president elect of the Richland Bar. He was quite upset. He
18 said in our county, we do not elect any president of the local
19 bar until he is ready to die. Are you sick?

20 Getting the names and addresses of people who are
21 presidents or officers of local bar associations is difficult
22 because lots of times they do not go through the formality of

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1 electing.

2 The Saluda Bar with five lawyers or whatever the
3 number is there now, they can meet over a drink and do all the
4 business of the bar once a year maybe.

5 MR. MENDEZ: Let's followup where the duties lie.
6 Should the duties lie on the national board to advise the local
7 bars about their rights and how to exercise their rights or
8 should the duties lie at the grantee, the local level to advise
9 them?

10 MR. ROOF: From what I learned here today --

11 MR. MENDEZ: The grantee is your compatriot.

12 MR. ROOF: I know. I got that together. It seems
13 like this is where the problems lie from what I have heard
14 discussed here today. I think the national board should
15 communicate -- that is just a personal opinion -- to get that
16 information to the local bars.

17 Not only does that get the information there with some
18 degree of uncertainty but it makes the local bar association
19 feel that it is a part of the national program too.

20 MR. PRITCHARD: I would like to respond to some of Mr.
21 Wallace's comments and I think some of your questions. I think
22 we are involved very much with a local problem because as Mr.

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1 Roof stated, there are some local bar associations that
2 literally --

3 I have called and talked to the presidents of those
4 bar associations with respect to other program issues and they
5 will say, quite frankly, we meet once a year for Christmas
6 parties and that is the extent of our activity.

7 Then there are other bar associations that are very
8 active, committees taking interest in active role in
9 development of all sorts of issues. So I think it is an
10 awareness out of those peculiarly local situations that will
11 lead a board to make decisions as to how they apportion
12 representation and what is appropriate for their local
13 situation.

14 I think it has been very difficult to craft a national
15 rule or impossible to craft a national rule that is going to fit
16 each different locality for 300 and some odd programs that serve
17 the country.

18 I think the Corporation has another much less of a
19 sledge hammer, maybe a small nailing hammer in terms of
20 monitoring. They can come through and look at each program
21 individually on approximately 18 month schedule.

22 That, I think, is the appropriate time to review board

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1 minutes and things like that and see if there is the correct
2 level of board activity or judiciary interest in the ongoing
3 operations of the program.

4 Again, I think you have to look at how the program is
5 performing on the local level to properly evaluate that. You
6 may have a program with a long term director or long term staff
7 where you have a very interested board, yet it can meet four
8 times a year, look over operations and say, all right, this is
9 going well. We do not need you to do more than this and leave
10 it at that.

11 Whereas, a program with a newer director, lesser
12 relationship between staff and board, they may want to meet more
13 often than that. They may want to take on issues in more
14 detail. It is going to be a very localized decision.

15 I think you have to look at the whole life of the
16 program, the contacts in which it operates, the level of
17 activity and interest in local bar associations in each place
18 before you make a judgment as to this is the proper match or
19 this is the proper interaction for this board and this program.

20 If the program is performing well and there is a basic
21 understanding by the board members of the programs operations
22 and the proper level of involvement, particularly the audit

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1 committee, and those sort of essential things, I think it is
2 best left alone.

3 CHAIRMAN WALLACE: I understand it is a local problem.
4 Believe me, after wading through these comments as I read them,
5 it is obvious that it is hard to have a national solution to it.
6 We do have a national statute.

7 We have a national rule or a national guidelines,
8 anyway, right now. I think with the guideline we have, what you
9 all have done, your local solution to your local problem at
10 Palmetto Legal Services is probably consistent with our
11 guidelines because you have accumulated a group of bar
12 associations that represent the majority of the people in your
13 area.

14 You have left some areas out, at which maybe you had
15 no choice, and you have distributed the seats in a fashion that
16 I think, while it is consistent with our rule, it is probably
17 inconsistent with what McCollum thought he was doing when he put
18 this together.

19 Three seats out of fifteen for a 61 percent bar
20 association on the face of it, does not look like majority
21 control by the majority bar. You have got problems. The
22 problem that vexes me was how you assure that every lawyer is

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1 represented. Every lawyer has some input into the board without
2 having a board that is as big as the United Nations.

3 The only solution that comes to my mind is to do it
4 through the state bar where every lawyer in the district has a
5 voice in the election of every lawyer on the panel. That may
6 not be the best solution, but it gives everybody representation.

7 It gives everybody a voice. It is one way that a
8 majority bar is going to be assured of control of the board. I
9 am willing to consider other solutions, but it does not seem to
10 me satisfactory to say you ought to let people solve it locally.

11 The way you all have solved it in the best good faith
12 in the whole world, it does not look to me like it is consistent
13 with that Congressman McCollum was trying to do. Three seats
14 for Richland ain't enough.

15 MR. PRITCHARD: I guess we disagree as to the
16 intention of that amendment. What was in Congressman
17 McCollum's mind, I cannot say. I think the legislative history
18 of that amendment and the text of the amendment and approvals
19 over the years given by the Legal Services Corporation, both to
20 the organization of our board and to monitoring visits since
21 then, indicates we have not been told otherwise.

22 CHAIRMAN WALLACE: I know you have not. That is what

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1 these hearings are for is to find whether you should be.

2 MR. PRITCHARD: I think for many lawyers, even though
3 they are members of the State Bar Association in South Carolina
4 -- I cannot speak for other states -- feel a much greater level
5 involvement with their local bar association.

6 Even though this may not be perfect proportional
7 representation, I think we have gotten a pretty good mix to have
8 the maximum number of lawyers to feel through both appointments
9 -- by the state bar and the local bar associations -- feel some
10 involvement in the program and feel there is somebody they know
11 who they can go to if they have some sort of a problem.

12 No solution is perfect, but I do not think the law
13 requires perfect solutions. I think we have a very good
14 solution. My real fear is that we are going from a solution to
15 a problem.

16 CHAIRMAN WALLACE: Other members of the committee, any
17 other questions?

18 MR. MENDEZ: Turning to the length of service on your
19 board, how many board members do you have that have served over
20 eight years?

21 MR. PRITCHARD: Over eight years? I think I may have
22 one. When we implemented the McCollum Amendment, we put a six

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1 year cap; however, the time on that cap did not start to run
2 until the new board was put in place in '81.

3 I think I have -- this is just from memory -- I think
4 I have two board members that are bumping up against that limit
5 this year and will move off the board for a period of a year. I
6 think I have another one or two who will bump up against that
7 limitation next year.

8 So there are presently some board members -- I think
9 eight is the max for anybody. There are some board members that
10 are already -- maybe one that I can think of that has eight
11 years of service.

12 That person will have to go off next year because
13 there are two consecutive three years terms under our bylaws
14 that will end, I think, in December of '88. I am not sure of
15 that.

16 MS. SWAFFORD: Do you have any vacancies on your
17 board?

18 MR. PRITCHARD: I have one client vacancy. My client
19 counsel has not met recently and they have a vacancy they need
20 to fill.

21 MS. SWAFFORD: The chairman talked about the fact that
22 there were only three from the largest bar. Do you have any

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1 way of publicizing to the bar generally that this is an
2 opportunity for you to serve in a pro bono fashion?

3 I guess what I am trying to say is do you have
4 difficulty getting people to serve on the board?

5 MR. PRITCHARD: You will have to ask Mr. Roof that
6 because I do not do that. I go to the bar --

7 MS. SWAFFORD: I did not really mean to address it to
8 you. I was just asking.

9 MR. ROOF: The client vacancy you are talking about, I
10 do not have anything to do with that.

11 MS. SWAFFORD: No, no, not client.

12 MR. ROOF: The appointment of numbers on the bar takes
13 place by advertisement in the Rich Bar News which is our monthly
14 news letter. We indicate that for those who have an interest to
15 contact a number on the executive committee.

16 That is the way it is initiated. The newsletter, the
17 monthly newsletter is the way we communicate with our bar. In
18 addition, our bar meets once a month at least. In addition to
19 that, the executive committee meets once a month.

20 In addition to that, we have other meetings. There is
21 a regular monthly meeting with the executive committee and then
22 other special meetings that take place during the course of the

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1 year.

2 During those meetings, of course, the business of the
3 bar is transacted and the communications take place. So through
4 the newsletter and these meetings, that is the way we
5 communicate the position of the vacancies that may exist.

6 MS. SWAFFORD: What kind of response does that elicit?
7 Are people wanting to do this or is this a sort of thing where
8 you say, "Oh, come on. You ought to do it"?

9 MR. ROOF: Sometimes there is a response. Frankly,
10 usually there is not. We then call people and say, "We have
11 this vacancy. You have had an interest in this." We talk with
12 them about it.

13 We may not get a positive response there. We then
14 call someone else. It is infrequent that there is a positive
15 response to that kind of communication unless we reach out
16 personally one on one.

17 CHAIRMAN WALLACE: Any other questions or comments?

18 (No response.)

19 CHAIRMAN WALLACE: We thank you for being with us
20 today. I do appreciate your remarks. I think there is some
21 problem and I am not sure I know that there is a solution. I
22 appreciate the time you have spent with us.

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1 MR. MENDEZ: I will tell you that a couple of the
2 ideas you gave here are just as good as anything I have heard
3 since we have been here in terms of how to see if we can
4 straighten this problem out.

5 CHAIRMAN WALLACE: Thank you very much. We appreciate
6 you being with us. We have also today Mr. Robert S. Wells,
7 Executive Director of the South Carolina Bar. I take it that is
8 Mr. Wells coming forward; welcome.

9 PUBLIC COMMENT BY ROBERT WELLS

10 MR. WELLS: Thank you. You are correct. I am Mr.
11 Wells. I am the executive director of the bar. I am here to
12 present what has already been mailed to the Corporation which is
13 a resolution of the board of governors of the bar. I am here to
14 make a personal statement among the authorized who made that
15 presentation.

16 We are, like many of the other bars, opposed to this
17 particular regulation as a solution to whatever problem there
18 may be. We do not foresee such a problem in South Carolina. We
19 are opposed to this.

20 There are some particulars about it. We wanted to
21 give you the state bar perspective or at least a bar perspective
22 on why we do not think this will work. We have been fostering

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1 at the South Carolina Bar the growth of local bars.

2 We are trying to get them to take on more and for us
3 to have -- let them have the local authority to do the programs
4 that would be best in their local. Law related education is one
5 of those. Recruitment for interest on our trust accounts is one
6 of those.

7 Programs were revealed that the local bars can do a
8 better job than the state bar can do. We do not think the state
9 bar is the answer in many of these situations. We feel also
10 that the participation for many lawyers is better on the local
11 level.

12 We have a lot of lawyers who do participate in the
13 state bar. We have about 6,400 members. We have maybe 1,000
14 of those members who are really active doing things in the state
15 bar level.

16 There are an awful lot of lawyers who do things at the
17 local bar level that the state bar just does not reach. Those
18 members can be more active in this type of a program and other
19 times with local programs. That is where that authority should
20 remain.

21 We currently have very good relations between our
22 local bars and our legal services programs and would not like to

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1 see anything strain them. We also have a statewide pro bono
2 program which has just been launched.

3 We rely upon the cooperation of the local legal
4 services offices and the local bars to make that program work.
5 We do not want to see anything to strain that. We feel that the
6 solution that has been offered in this regulation is a bit to
7 broad. I think you heard earlier why that may be.

8 We also feel that in particular in South Carolina, the
9 local boards have addressed problems. I can think of one
10 instance where, in fact, it has happened where there was a local
11 concern and a local lawyer stepped in and talked with their
12 local board representatives.

13 I do not think the state bar would have. I do not
14 think the state bar would change its nominating process under
15 the regulation your proposed. I think the state bar would have
16 been reluctant to step in and do something that the local bar is
17 not reluctant to do.

18 I do not think you should get rid of that local power,
19 get them to change, or make the changes needed to happen. Also,
20 the election process is contrary to my current bylaws. I doubt
21 the state bar would be inclined to changes its bylaws to create
22 committees. It just does not do things that way.

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1 Our appointments are done by our president. There are
2 no state bar elections or committee appointments. There are
3 state bar elections only for officers. We also feel that it
4 would narrow the input into how local people might be collected.

5 I can tell you now that appointments are made or
6 discussions that are made at the board of governors level rely
7 only upon the 14 people that are there and who might know. You
8 are down to one or two people who might know some people at the
9 local level to get something accomplished.

10 It is just not a reasonable way to address the local
11 concerns of delivered legal services. With respect to the
12 political appointments or the balancing the political interests,
13 the bar does not feel that the delivery of services should be
14 involved at all in political issues.

15 We do not think that in any manner you should
16 introduce partisan politics. That runs contrary to the
17 principle of getting equal access to justice. We feel that
18 partisan politics would pulverize local boards and might result
19 the introduction of political issues that do not need to be
20 there. They have not been there before.

21 We also feel that the balancing might even be
22 difficult in less populated areas. Mr. Roof has stated

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1 correctly that many people do not want to declare their
2 affiliation.

3 Politics plays an awfully large part in a balanced
4 state like ours. It is rural and has a few cities in it. I do
5 not think would work very well at all in South Carolina. The
6 bar also opposes the elimination of the current regulation which
7 requires the inclusion of women and minorities.

8 We feel that that helps the best representation of
9 clients who are to be served. Also we believe there is
10 legislative history that recognized the need for that balancing.
11 We personally believe that that balancing still is needed in the
12 state of South Carolina.

13 The bar also opposed the board size of 19. We feel
14 that there are many areas where 19 is just not a workable number
15 if you want all the representation that you can get.

16 Thank you.

17 CHAIRMAN WALLACE: Let me ask you a couple of
18 questions. You intrigued me with the story about a local bar
19 that solved a local problem without breaking confidences and
20 changing the names to protect the innocent and all of that.

21 Can you tell us what happened in the situation you are
22 talking about?

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1 MR. WELLS: I do not have all the facts. I would
2 probably be guessing at too much. Evasively it came down to
3 the situation where the staff personnel, as I understand it,
4 were removed because whatever problems the local bar determined.

5 CHAIRMAN WALLACE: Pepe, were you about to ask a
6 question?

7 MR. MENDEZ: You made a statement about one thing.
8 Whenever I go to various areas, I always ask how the IOLTA
9 program is coming. Since you are the executive director, you
10 are a good man to tell me. IOLTA is an interest on lawyers
11 trust forms.

12 Would you tell me how it is working here and what the
13 status is?

14 MR. WELLS: We feel it has been very sexist. We are
15 only in our first year of collected of funds. We do not know
16 the level of funding we may see. We have had one grand cycle
17 already. A substantial portion has gone towards legal services
18 as we suspected it would.

19 We have an opt out program which is not mandatory.
20 You have to opt out. What we have projected as the number of
21 lawyers who have trust accounts, we have about a 72 percent
22 participation in South Carolina, people doing interest on other

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1 trust accounts. We are very pleased with the program.

2 MR. MENDEZ: How do you make this determination of
3 which programs get what funds?

4 MR. WELLS: There is the board of directors of the
5 foundation who make the grants. They sit as a board. They send
6 out the grant proposals with a complete application and they sit
7 and review all of those applications and make a determination
8 based on quotes presented to them.

9 CHAIRMAN WALLACE: Let me ask you a couple of
10 questions. YOU do appoint two members of the Palmetto Legal
11 Services board. I think you appoint two members here in the
12 Charleston area. I do not know about the rest of the state.

13 Can you tell us how the state bar does about
14 exercising its appointing responsibilities where it has
15 appointing responsibilities?

16 MR. WELLS: I can tell you the single incidents that
17 has occurred since I have been executive director. We were
18 notified by the executive director of there program that our
19 appointment was due.

20 I met with the president of the bar. The president
21 solicited names for various individuals including myself and
22 made the appointment himself.

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1 CHAIRMAN WALLACE: Certainly, to the extent the South
2 Carolina bar has appointing authority, whether it is a couple of
3 seats or whether it is all the seats, the South Carolina bar is
4 going to consult with lawyers and bar associations in the
5 relative services area; are you not?

6 MR. WELLS: It would depend entirely upon the
7 president. It is entirely a presidential prerogative.

8 CHAIRMAN WALLACE: Let me ask you about your state
9 support center here in South Carolina.

10 MR. WELLS: I will stop you right there because I
11 would not be able to give you an intelligent answer.

12 CHAIRMAN WALLACE: You do not know anything about it
13 either?

14 MR. WELLS: I know a little but not enough that I am
15 sure I would be able to answer anything in particular.

16 CHAIRMAN WALLACE: I do not see anything in the state
17 bar's resolution about the support centers. I understand how it
18 says local bar associations are in the best positions to make
19 new appointments to local boards.

20 I can understand the rationale behind that. A state
21 support center which is serving the needs of the entire state,
22 is there any reason why the state bar should not be responsible

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1 for the appointments to that board?

2 After all, the state bar and only the state bar
3 represents the entire state.

4 MR. WELLS: You are correct. State bars are the only
5 entity in South Carolina that represents the entire state. The
6 matter was not discussed at the board of governors at its
7 meeting for this resolution. I would not be in a position to
8 speculate nor would I be authorized to.

9 CHAIRMAN WALLACE: I understand your position. I
10 appreciate that.

11 MR. MENDEZ: You stated previously that you attempted
12 to foster the growth of the local bars. Could you give me a
13 little bit of history -- did not have much local bar
14 participation?

15 MR. WELLS: It is as Mr. Roof stated. We have some
16 local bars that are very autonomous -- Richland, Greenville,
17 Charleston. There are really a lot of programs already going,
18 programs that otherwise the state bar would want to do for the
19 population at large in South Carolina such as law day
20 celebrations, active programs to get people involved and
21 understand how the law works.

22 We have other bars that are so small in population,

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1 board population that they have not been involved in that type
2 of program. We are trying to set up mechanisms whereby we can do
3 some of the administrative work or say, "You can do the second
4 program very easily," and get it out to those programs and let
5 them do the work within their communities so the state bar does
6 not have to go through that expense and that kind of labor.

7 CHAIRMAN WALLACE: Do we have any other questions and
8 comments for Mr. Wells from members of the committee and members
9 of the board?

10 MR. MENDEZ: A lot of my questions are not exactly
11 relevant to your thing, but as long as I have got him here --

12 CHAIRMAN WALLACE: You may not get him in your
13 community.

14 MR. MENDEZ: Could you tell us a little bit about your
15 state pro bono? You mentioned that as well.

16 MR. WELLS: The state pro bono, we set that up. The
17 mechanism is the intake is done through our local legal services
18 offices. When they do not have the staffing, take a matter
19 which conflict of interest or it is not something they are able
20 to take on, it is referred over to our statewide pro bono
21 coordinator.

22 We have recruited lawyers from around the state to

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1 participate. We have gotten over 700 or 800. We are still in
2 our first year of operation. We farm those cases out. We have
3 asked every lawyer in South Carolina to do 20 hours of pro bono.

4 We feel we have gotten pretty good response in our
5 first year of operation. Those go out. We have a mechanism to
6 follow up and make sure the matter was handled correctly. We do
7 a little client survey to see if it was handled correctly.

8 All this has been done in conjunction with the local
9 legal services office to make it the most efficient and
10 cooperative program we can. We cannot thank those offices
11 enough.

12 We feel we have been able to deliver a lot of legal
13 services on a pro bono basis that otherwise might not have been
14 permitted.

15 CHAIRMAN WALLACE: Let me ask one other question
16 before you go. I understand that it is uncomfortable to quiz
17 people on their political affiliations. I know it was
18 uncomfortable for Ms. Bernstein, one of the members of this
19 board when she was cross examined by the Senate Labor Committee
20 on her political affiliations.

21 They found it to be relevant to service in the legal
22 services program. I tend to concur with that. We are sitting

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1 today in a state that has a Republican governor, a Republican
2 Senator, a Democratic Senator, two Republican Congressman and
3 four Democratic Congressman which is about as evenly balanced a
4 political state as I can imagine at least in the major offices.

5 While it may be uncomfortable, is it really impossible
6 for South Carolina to produce some marginal political balance
7 in its boards?

8 MR. WELLS: Let me suggest that you might be able to
9 identify particular people with particular political
10 affiliations, but those people may not be people willing to
11 serve on the boards or be the best people for dealing with that.

12 You may be excluding people who otherwise are not
13 willing to because they want to play both sides of the fence. I
14 do not think the board wants to see those people excluded.

15 CHAIRMAN WALLACE: I understand how hard it is. I
16 know how hard it was for President Reagan to give 11 people who
17 met the political balancing test that he could get confirmed.
18 We have got the scars to show for it.

19 Congress thought it was an important thing to do. I
20 tend to think they are right. I tend to think the same
21 principle applies from top to bottom. I do understand the
22 position of the South Carolina bar on this subject.

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1 I appreciate you coming to be with us today. Thank
2 you, Mr. Wells.

3 Mr. Brooks, would you come forward. Mr. Brooks, I did
4 not get your first name when we met a little earlier this
5 morning. If you would identify yourself for the board, I would
6 appreciate hearing from you at this time.

7 PUBLIC COMMENT BY JOHN BROOKS

8 MR. BROOKS: Thank you, Mr. Chairman. My name is John
9 G. Brooks. I am from Boston. I am here in several capacities
10 today. I have been in private practice even longer than our
11 friend from South Carolina. I have been at it for 50 years.

12 During that time, I have been active in the bar
13 association of theirs. I have been the president of the Boston
14 Bar Association. I have been in the House of Delegates and on
15 various committees of the Massachusetts Bar Association and on
16 the branded pro bono committee that has just been set up by the
17 state bar.

18 I have been in the House of Delegates of the American
19 Bar Association and chairman of the Massachusetts Board of our
20 overseers which is the disciplinary arm of the straight judicial
21 court.

22 I have been involved with legal services for a period

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1 which would be totally outlandish if the new regulation takes
2 effect. I have been on the board of the Boston Legal Aid
3 Society, now the Greater Boston Legal Services, since 1955.

4 I have been a board member of the National Consumer
5 Law Center for four years. I was president of the National
6 League Defenders Association ten years ago, on that board for
7 ten years. I have been a registered Republican all my life.

8 CHAIRMAN WALLACE: There are getting to be fewer and
9 fewer of you in the commonwealth these days.

10 MR. BROOKS: As I was testifying before the
11 appropriations of a guest of my committee at one point, a guest
12 of the appropriation for the Legal Services Corporation.
13 Representative Railsback was given an opportunity to question
14 me. His only comment was, Well, Mr. Brooks, I am glad there is
15 still one Republican left in Massachusetts.

16 Today I am here as an individual. I have been asked
17 by the president of the Boston Bar Association and by the
18 president of the Massachusetts Bar Association, by the chairman
19 of the board of the Greater Boston Legal Services and with the
20 encouragement of the president of the National Consumer Law
21 Center; I have also been asked by the executive director of the
22 Massachusetts Legal Assistance Corporation to express their

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1 opposition.

2 Believe it or not, it was a rare example of total
3 unanimity. The Boston Bar and the Massachusetts Bar do not
4 always agree on much, but this time they do.

5 Each one of those organizations has adopted by its
6 governing body a vote and has filed comments in the form of a
7 letter. The only one I find in the packet which was just handed
8 me was the Boston Bar Association.

9 I have copies of letters from each of the other four
10 if Mr. Chairman would like a copy.

11 CHAIRMAN WALLACE: The stack you have just got was
12 probably the latest stack. I got two earlier stacks that I am
13 sure Boston and Massachusetts are both in here somewhere. I
14 know Mr. Rogers is in here because I remember reading it. We
15 have got comments from Massachusetts in here.

16 MR. BROOKS: If you come up short, I have more. The
17 substance of the objections are in the letter, but I would just
18 like to highlight a few of them if I may. If I refer to my
19 organizations, it is not in any proprietary sense but just as a
20 convenient habit.

21 As for the selection of board members by the local
22 bar, state or national bar associations, first off with respect

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1 to Greater Boston Legal Services, it is a local program serving
2 greater Boston.

3 The Boston Bar Association is, without any question,
4 the major local bar association serving the same area. It is
5 governing body and membership are far more familiar with Greater
6 Boston problems of the poor and rendering of legal services than
7 is the state bar which has broader and different
8 responsibilities.

9 I think that is true with the rest of the commonwealth
10 of Massachusetts as well. The state bar has in fact left the
11 appointment process to the local and county bar associations who
12 are familiar with the local situations.

13 I think to eliminate the participation of the local
14 bar associations and it would have a weakening affect of
15 support for legal services without any question. There may be a
16 subtle change, but nevertheless it is real.

17 Unless there is a great deal would be gained by the
18 change, which I cannot see, it seems to me important to be left
19 alone. National Legal Services Center is a National Support
20 Center. The bar association now performs the appointing
21 function.

22 That was a very practical solution to difficult

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1 problems. The Legal Services Corporation is well aware of it
2 and has been aware of it since it was first done and has
3 approved. I think the alternative of the American Bar
4 Association is one which is very impractical and would not, in
5 my opinion, work any better and would be extremely cumbersome.

6 As far as the attention of the appointing bar
7 associations, there is comment in the proposed regulations that
8 the local bars are altered indifferent. There is no basis, in
9 fact, given to the state of Massachusetts for any such
10 statement.

11 They are not indifferent. They are not lax. They are
12 not rubberstamps in any sense. That is not to say that they do
13 not receive and respect nominations from the programs; they do.
14 Speaking for Boston, Greater Boston Legal Services has a
15 nominating committee which is broadly based on the bar.

16 Members of the bar association -- incidentally, there
17 is generally, and I think pretty consistently, an overlap
18 between the board members of Greater Boston Legal Services and
19 the Boston Bar Association Council.

20 So there is constant communication, familiarity with
21 the situation, between the two groups which, as we have heard
22 today, is a very important constituent for the relationship and

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1 the function for the appointment process.

2 That is not to say that merely because the program
3 nominating committee may present names to the bar association
4 that the bar association does not take that upon the process
5 seriously; it does.

6 I have been there myself. I have talked many times
7 with the current president, with the past president. They know
8 and the Boston Bar Association Council knows who they appoint.
9 They are well aware that they have a right to appoint someone
10 else if they want to.

11 Having investigated the nominees, they have not felt a
12 necessity of doing so. That is also true with the appointments
13 to the National Consumer Law Center Board.

14 As you know, they are spread over the country. There
15 are 12 members of the board all of whom have impressive resumes
16 from the solicited general of Arizona who is now president,
17 former member of New York State Utilities Commission, former
18 member of the Massachusetts State Utilities Commission, former
19 bar presidents and the staff members of local programs.

20 I will get to that in a minute, but it is a broad
21 faced impressive board which works well. If, for example, that
22 process was transferred to the ABA or the Greater Boston Legal

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1 Services appointments were transferred to the Mass. Bar, sure it
2 could theoretically be done, it would not, in my opinion,
3 particularly inflation of the ABA, impose such burdens.

4 I think it is also true of the state bars. In those
5 such burdens that some of them might just say this is so grossly
6 unfair that we are not going to do it. There was an intimation
7 that the South Carolina Bar might not do it.

8 I think that is a real danger. Should that happen, it
9 just seems to me that there is going to be a cinch in supporters
10 of legal services that this board has deliberately imposed such
11 hazards in the way of efficient operations of the legal
12 citizens program that they have deliberately strangled the
13 programs.

14 I may be unjustified, but nevertheless I think that
15 would be a feeling in the field. I just do not think that ought
16 to be. Whatever is to be gained is so small, in my opinion, in
17 relation to the problem that it should not be promulgated.

18 Also, as I read the proposal, the nine member
19 committee members can serve only for three years. That means
20 to me not only that there would be one election by the state of
21 National Bar Association to start it off with, there would have
22 to be elections each single year.

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1 The ABA can speak for itself, but I have been told
2 that they believe it would cost something on the order of
3 \$100,000 for such an election and make it happen. You will
4 hear more about that tomorrow I am sure.

5 It is really a major burden without any question. Now
6 with respect to party affiliations, I agree with what has been
7 said so far. I can only say that Massachusetts seems to be much
8 like South Carolina but more independence than there are
9 Republicans and Democrats, I think, in the state of
10 Massachusetts.

11 How do you handle that? I guess you can appoint all
12 the independence you wanted. They are not members of either
13 parties, so you can cover them all that way. It is academic as
14 far as Massachusetts is concerned.

15 On limitations in terms of service, I am probably as
16 guilty a party in that respect than anybody around. It is fair
17 to say that there has been, ever since I have been around that
18 board, a mix of experienced directors and new directors.

19 There is always a turnover. There are always younger
20 members coming on, different constituencies being together and
21 represented or reinforced so that it is by no means an after
22 vision situation.

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1 Some of the old timers like me do not go to every
2 board meeting. That does not mean that we are not -- and I
3 should not speak to myself here except that I know how I behaved
4 and I believe other ones do too.

5 There are very valuable functions that experienced
6 board members can perform other than being at every meeting such
7 as being here today. There are lots of other things, support in
8 the community and the liaison and so on.

9 We all feel strongly that the limitations on the term
10 of service is not necessary. As far as the limitation of size
11 of the board, that has been addressed and is addressed, I know,
12 in the comments.

13 Just let me say that Greater Boston Legal Services has
14 been singled out in the comment, I believe, to that proposal as
15 handling a very large board. It was 66, I think, with some
16 vacancies when the monitoring was done.

17 It is now 71. I think the limit is 72. It sounds
18 onerous. It sounds unweilding. It is not. It works. The
19 board members are attentive. The board meetings are well
20 attended.

21 It gives an opportunity, particularly in this diverse
22 community as Greater Boston for representation of elements that

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1 would not be possibly able to be represented on a smaller board.
2 We have been thinking about this rural counties of South
3 Carolina.

4 There are a lot of rural counties in the city of
5 Boston when you come down to it -- ethnic, racial and others
6 not to mention the outlying communities, the suburbs of Boston
7 which Greater Boston Legal Services does serve.

8 Not only can we get more client representation, more
9 community representation, et cetera, but it leaves room for a
10 few nonclient/nonlawyer members of the board which we find very
11 valuable community leaders.

12 They would not fit in any category and if you take 19,
13 that mathematically excludes anybody who is not a lawyer or an
14 attorney and that we think is self defeating. When they have to
15 go to 72, it depends on local circumstances.

16 Each community needs the latitude to adapt to its own
17 situation. The National Consumer Law Center gets its
18 representation and diversity with 12, but there is no room for
19 any extras on that obviously.

20 So flexibility seems to me to be absolutely essential.
21 The quorum requirements, I think that is almost self evident
22 that that is unworkable because you get with the Consumer Law

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1 Center where the board is all over the country, an audit
2 committee of this place.

3 There are lots of things that a committee, a smaller
4 committee can do which the entire board or committee with the
5 same quorum requirements with the board just cannot do
6 effectively.

7 The audit committee, the sight committee is a case of
8 Greater Boston Legal Services are particular examples, I think,
9 where it takes a smaller group to do the investigation, the
10 thinking, the basic deciding within the authority given by the
11 board.

12 The same is true of the executive committee. Many
13 times in both my boards, there are situations where the entire
14 board will make a basic decision and then authorize the
15 executive committee or the audit committee or the sight
16 committee, whichever it is, to fill in the details and finish
17 out the data.

18 It certainly is a matter of state laws and a practice
19 in the corporation. That is a very common way to do it. It
20 seems to me no less essential and no less proper in the legal
21 services context.

22 As to the propriety of a staff member of one program

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1 sitting on the board of another, I think there are obviously two
2 possibilities there. One is a staff of one field program
3 sitting on the board of another field program. That, I expect,
4 is rare. I do not know the exceptions, but I do not know why
5 there is not an opportunity for cross fertilization ideas there.

6 Where I have run into it is in the Consumer Law Center
7 where the whole constituency of the center is the field
8 programs. As the local programs need client members to provide
9 client input, so do the support centers need representation of
10 their constituency in the field programs.

11 The meetings of the Consumer Law Center Board enriched
12 enormously by the ideas, the input, point of view of the two
13 staff members of field programs that we have had on the board
14 which brings me to something I forgot to say in relation to all
15 of the members and that turnover.

16 The Consumer Law Center, I think, has a few working on
17 there for several years, but I think there are five new members
18 in the last four years since I have been on it. So there is a
19 turnover there and again in the small board.

20 There is some suggestion that the proposed regulation
21 would even preclude board members of one program, a board member
22 of one program sitting on the board of another. I do not read

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1 it that way, but I urge that it should not be in there if that
2 is true.

3 The same thing is true with the Consumer Law Center
4 Board where I sit on the board of the local program. I think at
5 least one other does as well. I think, again, it provides a
6 cross fertilization that is desirable.

7 I will not get into the chaos that I foresee if the
8 regulations are adopted and the implementation limited is as
9 opposed. It would be chaos I think. I was struck by the fact
10 that this was proposed and published in the federal register on
11 the 19th.

12 There was another element of chaos on that day as you
13 may remember.

14 CHAIRMAN WALLACE: It had very little to do with me,
15 but I remember.

16 MR. BROOKS: In summary, in each of my multiple
17 representative capacities and as a concerned individual, I urge
18 you as strongly as I know how to withdraw the proposed changes.
19 If specific problems exist, and it may well be that they do,
20 although I must say I got the feeling that the effort was to
21 look very far under the rug to find real problems --

22 If those do exist, it seems to me the monitoring

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1 process and other approaches can be used to remedy those without
2 the sledge hammer being applied across the entire country to all
3 reports where they are working and the situation is working well
4 and far better, in my opinion, than it would under the new
5 proposal.

6 As far as I can make out, there are, from my
7 experience nationally as well as locally, there are no real
8 widespread problems which are bad to any extent. I know there
9 are not any in Massachusetts.

10 I think the proposals would only cause unnecessary
11 complications. The old axiom "if it ain't broke, don't fix it"
12 I think applies here in the overall, especially if the cure
13 would be far worse than the disease because I believe it would
14 be.

15 CHAIRMAN WALLACE: Thank you, Mr. Brooks. We are
16 going to have to recess shortly so Mr. Mendez can have his
17 committee meeting this afternoon, but I do have a couple of
18 questions I want to ask you.

19 How many members are on the executive committee of the
20 Greater Boston Legal Services Board?

21 MR. BROOKS: I can tell you exactly if you give me a
22 moment. I think I can. I think I have it in my briefcase. It

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1 is about eight, I think.

2 CHAIRMAN WALLACE: Do you know how many of those eight
3 are appointees of the Boston Bar?

4 MR. BROOKS: Well, I know the president is. Actually,
5 I can say this in general terms. The executive committee is
6 representative, is a cross section as nearly as can be within
7 that group of the entire board with client members, attorney
8 members. As I say, I can give you the detail on that if you
9 want.

10 CHAIRMAN WALLACE: I will not stop you now, but I will
11 ask you at some point -- my staff probably already has that
12 information. It may be in the refunding application. If it is
13 not, I would like to know who is on the board and who is on the
14 executive committee and who the appointing authority is.

15 I have got a question about the nomination process on
16 some of the boards on which you sit. I think you have said that
17 the bar associations do take recommendations from the program
18 and take that into account.

19 Our staff indicated this morning that they thought
20 that practice was inconsistent with the ABA standards. I do not
21 set myself up to be an expert on the ABA standards, but as a
22 former member of the House of Delegates, I wonder if you

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1 understand the ABA standards prohibit that kind of communication
2 between a program and a nominating authority?

3 MR. BROOKS: I confess I have not seen the ABA
4 standards. I did not even know they existed on this subject.

5 CHAIRMAN WALLACE: I did not either until I saw it in
6 the materials that were sent out to me. It came as a surprise
7 to find it, but that is one thing I will ask the ABA about
8 tomorrow.

9 Let me ask you one other question: The McCollum
10 Amendment requires that the appointing authority be bar
11 associations representing a majority of lawyers in the service
12 area.

13 I am sure that legal services has approved the Boston
14 Bar's authority over the National Consumer Law Center and the
15 Massachusetts Bar authority over the Education Center, but I
16 must confess it is hard for me to understand how using those
17 institutions as appointing authorities is consistent with the
18 McCollum Amendment.

19 It is obvious that neither Boston or Massachusetts
20 represent the majority of the lawyers in the service area for
21 those projects. The service area is the whole country. I am
22 sure the ABA does not want the responsibility, but consistent

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1 with the McCollum Amendment, how is it possible for Boston and
2 Massachusetts to have appointing authority over National Support
3 Centers?

4 MR. BROOKS: I do not want to get into technicalities
5 because I am not prepared to analyze the McCollum Amendment. My
6 understanding is there are differences of opinion as to how it
7 should be read.

8 Apparently it was satisfactory to your predecessors.
9 It seemed reasonable to others concerned with it. I am not
10 prepared to say technically whether that is right or not. It
11 seems to me wholly practical it works.

12 I believe it is consistent with the Act in taking it
13 in its entirety.

14 CHAIRMAN WALLACE: I do not want to belabor it
15 further. I know you will find the information I asked for and
16 we will get. At this point, let me ask other members of the
17 committee and of the board if they have any questions for Mr.
18 Brooks.

19 MR. MENDEZ: Yes, I have one. I think one of the
20 prime movers and instigators of the six year term distresses me
21 considerably to hear that that is not a good option. First, at
22 the end of six years, you are only required to be off one year.

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1 MR. BROOKS: Three.

2 MR. MENDEZ: Is it one or three?

3 MR. BROOKS: Three.

4 MR. MENDEZ: I suggested one and I will tell you that
5 was my intent. That might be an amendment that comes back to
6 change it. I think it should be something similar to that. The
7 reason I believe that is that I have the unfortunate duty on one
8 of my boards when I was chairman to ask several gentlemen that
9 had been there for 25 or 30 years to leave because they were no
10 longer pursuing the best interests of our group and were not
11 attending and were not doing various things.

12 I was reading a book the other night where they asked
13 a once Supreme Court Justice of the United States to step down
14 and later came back and tried to approach the subject with
15 another Supreme Court Justice and he said, "I have never done a
16 dirtier day's work in my life."

17 I am going to tell you I have never done anything
18 dirtier in my life. If I can avoid that for other members of
19 other boards, that is the intent of that. To allow somebody to
20 stay on that is not interested -- and we have notes here that
21 reflect that -- that there are people who are not interested and
22 who are not attending and they are not forcing them out --

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1 I know why they are not. That is a dirty day's work.

2 MR. BROOKS: I know. I have done it myself.

3 MR. MENDEZ: That is the reason that is there. That
4 is the reason why -- as long as I am here, I am going to be
5 pushing that. That is the lecture that I have on that. You
6 can respond on that in one minute. I have one question for you.

7 Do you think you can find 29 nondemocrats in
8 Massachusetts because if 60 percent is right, that is the number
9 of the board that you are going to have to have that are not
10 democrats.

11 CHAIRMAN WALLACE: That is on Greater Boston. I am
12 not sure you can find 29 nondemocrats in Boston.

13 MR. BROOKS: You might well find 29 independents. Let
14 me just answer your question. I think that it is true with my
15 boards and I think it should be true with all other boards that
16 there be a definite term of office for which directors are
17 elected, be it 20 years, 3 years, even 5 years.

18 So that at the end of the term, you do not have to
19 fire somebody. It is a lot easier not to reelect, not to
20 reappoint that it is to fire. I think that is the solution
21 which a great many, particularly nonprofit corporations, have
22 been coming to.

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1 I know I have been involved with several where the
2 terms of office were unlimited, just on there for life more or
3 less. The checkpoint is there at which time if the bar
4 association is on its toes, as it ought to be, and in
5 Massachusetts I believe it is, that is the time to screen out
6 the superannuated characters who are not contributing.

7 MR. MENDEZ: I hate to go back to my own experience,
8 but we had terms. The fact that they had been on so long gave
9 them the right to be elected again and again and again. That is
10 the whole point I am making.

11 They have to be out for a period of time. They have
12 to know that they go off. Three years is, I think, artificially
13 long. I just want to have a period of time so they are off for
14 a period, so the board can -- if they are a good person, they
15 can be back on in pretty quick time. If they do not want him,
16 they can just let him sit.

17 MR. BROOKS: I suggested imposing that on the places
18 where it works best for the benefit of saving a few dirty day's
19 work. As much as I sympathize with that problem. It seems to
20 me the wrong way to go about it.

21 CHAIRMAN WALLACE: Any more questions for Mr. Brooks?

22 MS. SWAFFORD: I was really impressed with your long

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1 list of services. Did I understand you to say -- how many board
2 are you presently sitting on?

3 MR. BROOKS: Two.

4 MS. SWAFFORD: The Consumer Law Center --

5 MR. BROOKS: -- and the Greater Boston Legal Services.
6 I am on bar association committees, but that is not the point of
7 your question.

8 MS. SWAFFORD: No, but two legal service boards?

9 MR. BROOKS: Yes.

10 CHAIRMAN WALLACE: Any other questions from members of
11 the committee?

12 (No response.)

13 CHAIRMAN WALLACE: Mr. Brooks, I thank you for making
14 the long trip to be with us. I am sure it is marginally warmer
15 down here than it is --

16 MR. BROOKS: No question.

17 CHAIRMAN WALLACE: We are glad to have you. Thank
18 you.

19 MR. BROOKS: Excuse me for interrupting, but there are
20 11 members of the executive committee of which I quickly count 4
21 as being Boston Bar appointees. There may be one or two others,
22 I am not quite sure and probably five and several clients.

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1 CHAIRMAN WALLACE: Thank you very much. I appreciate
2 it.

3 MR. BROOKS: Thank you.

4 CHAIRMAN WALLACE: At this point, Mr. Mendez has a
5 meeting to begin in here at 1:45. Mr. Houseman, we heard you in
6 Philadelphia. We will hear you tomorrow morning. I think for a
7 rare occasion, we will all get a fairly leisurely lunch at the
8 board meeting.

9 Pepe, will we be ready to begin your committee at
10 1:45?

11 MR. MENDEZ: I am always ready to go 1:45.

12 CHAIRMAN WALLACE: At this point, I will ask unanimous
13 consent that this committee recess until 9:00 tomorrow morning.

14 (No response.)

15 CHAIRMAN WALLACE: Hearing no dissents, so ordered.
16 Thank you all.

17 (Whereupon, at 12:20 the Operations and Regulations
18 Committee meeting adjourned until 9:00 a.m. the following day.)

19 * * * * *

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