

COPY

TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS

January 30, 1987

2:10 p.m.

Hotel Washington
Washington Room
515 15th Street, N.W.
Washington, D.C.

A P P E A R A N C E S

W. Clark Durant, III, Chairman
Robert A. Valois, Member
Thomas F. Smegal, Member
Hortencia Benavidez, Member
LeaAnne Bernstein, Member
Lorain Miller, Member
Pepe J. Mendez, Member
Claude G. Swafford, Member
Basile J. Uddo, Member
Paul L. Eaglin, Member
Michael B. Wallace, Member

Also Present:

John Bayly, President

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1 attention to the details in the many things that are put
 2 before you. You work very hard at what you do, I can see
 3 that, and I'm very gratified. Certainly by being here
 4 and also by having the opportunity to address you, and in
 5 particular because members of your group are talking
 6 about my services.

7 I'd like to say first of all, I think you as a
 8 board...I was not prepared to speak to you today, and there
 9 was material I would have liked to have shared with you
 10 to pass out. I'll do that after this meeting. However,
 11 I do have several programs of sorts. I have a copy of my
 12 program annual report, only one copy, which I just provided
 13 our board of directors last week. I also was fortunate
 14 enough to get the gentleman downstairs to at least xerox
 15 for you the case service report history, and I do have
 16 enough of those for each of you.

17 CHAIRMAN DURANT: Kim, will
 18 you pass them out?

19 MRS. BERNHARD: You have to
 20 take a look at this annual report on an individual basis,
 21 and as I've indicated, I will certainly share it with you
 22 at another time.

23 What you'll see is that as many of you may recall,

1 Wayne County Legal Services has been in existence since
2 approximately 1966. What Clark had reference to relative
3 to our case service statistics was that in the past year
4 we opened approximately 13,889 cases and closed 12,991.
5 That's the highest in the history of the program. It's
6 about 60 percent more both open and closed cases than we
7 did as recently as 1984.

8 We are currently, I think, in my opinion sort of
9 working at capacity. I'm not sure...I'm attempting to
10 stabilize our intake to approximately 13,000 cases a
11 year. We can do that without additional funding, but we
12 certainly cannot do any more than that.

13 In addition to that, of the 13,000 files that we
14 opened, 1,078 cases were referred to GAI. We're very,
15 very proud of that statistic, because of the fact that
16 for a couple of years...in 1985 and 1986 now, we are in
17 compliance. We've done a number of significant things in
18 this past year. We have upgraded our staff and added
19 additional personnel. We've expanded our training to
20 include those things which are not traditional in the
21 Legal Services concept itself. We do a great deal of
22 secretarial training, we do some management training. We
23 try to contrive to upgrade the professional sense of all

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1 of our employees, and educate them to the fact that this
2 is in fact a law firm. We want to be...and as you'll see
3 in that annual firm...bringing that office into the 20th
4 century in terms of lawful practice and also lawful...we've
5 attempted to exhibit in every conceivable way a more
6 professional environment in a total law firm, if you
7 will, a private law firm philosophy.

8 We've done a great deal of systems plan improvement.
9 We've relocated our central office and certainly upgraded
10 our field offices. Our offices are completely computerized
11 now. We've initiated a number of special projects.
12 We're a mobile unit for mediations projects. We're
13 attempting to get funding from the federal government for
14 a teen pregnancy project, a special office for the Hispanic
15 in our communities. Because of the things that we've
16 done, and we're not even sure that...we were approached
17 as recently as three weeks ago to consider taking over
18 the prosecutor's office function for juvenile hearings.
19 So we have a possibility right now of taking that contract,
20 if you will, from the prosecutor's office, which is
21 approximately \$250,000 a year, and taking over that
22 project. However, there are a number of things that are
23 associated with that, and I don't want to be involved

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1 in the project if we ultimately lose this money.

2 We've gotten the new personnel manuals, the new cost
3 accounting manuals. We also were fortunate enough to
4 segregate saving enough money for a pension again this
5 year, a first for the organization, initiated and finalized
6 and in fact executed collective bargaining agreements
7 with both our attorneys and our support staff, and within
8 two years there have been no grievances that have gone to
9 arbitration. So in many cases there's been progress made
10 in labor-management relations.

11 We've re-established intake in our Southwest Detroit
12 Hispanic community. We've gone to a merit evaluation
13 system with respect to the administrative and support
14 staff. We also presented a brown bag lecture series
15 in which we've had superior court justices come and speak
16 to our staff at lunchtime, a brown bag series, and we had
17 different guests during the month. We've also just
18 recently completed a teen pregnancy brochure.

19 I wanted to address just very quickly, because I know
20 you want to get on with your business, the real need that
21 we have for increased funding in order to respond to the
22 increased pay scale statistics which you see in our higher
23 caseload activity. There has been a dramatic increase in

1 the problem population in Detroit and Wayne County.
2 Wayne County is the fourth largest county in the United
3 States, with approximately 2.3 million people. That
4 population is large, growing and impoverished.

5 According to the 1980 census data which LSC currently
6 funds pursuant to, there are 327,304 poor people in Wayne
7 County, or roughly 14 percent of the population. Because
8 Detroit is a large urban center, the Census Bureau does a
9 supplemental census data report. It's done in all major
10 cities in the country. As a result of that survey,
11 157,205 new people were added to the poverty statistic in
12 that county, which gives us a total poverty population of
13 about 484,569 people, roughly a half a million people.

14 If you provide those people into our current grant,
15 if you will, from Legal Services Corporation, for
16 utilization of that service area, you come up with about
17 five dollars per poor person. That is essentially one of
18 the critical problems that we're facing, that the funding
19 formula as currently proposed number one does not address
20 the changes in the poverty populations that are documented
21 changes of the Census Bureau. But more importantly,
22 because we are in the lowest funded programs in the
23 country, we are shortchanged essentially on both ends.

1 The other thing I'd like you to keep in mind as you're
2 thinking about funding when you're dealing with the
3 issues that are before you today, is the fact that all of
4 the economic data for our area and for many other industrial
5 areas of the country indicate that that poverty population
6 is going to significantly increase. In Detroit, they anti-
7 cipate that about 30,000 additional people will lose
8 their jobs as a result of plant closings in that area.

9 These are serious issues, both for our region and I'm
10 sure for you. So it is particularly critical that as you
11 look at this funding issue, I think as you look at our
12 increased poverty populations of the country, not only in
13 my area but throughout the country, and also the increased
14 costs that we have.

15 One of the reasons that I missed part of your
16 presentation this morning dealing with our malpractice
17 insurance which is...one of the things that was of great
18 concern to me was that this past year, I had three million
19 dollars worth of coverage and I paid about \$26,000 for
20 that. Now I can no longer get three million dollars
21 worth of coverage, I can only get one million dollars
22 worth of coverage, which will totally unacceptable to my
23 board, incidentally, and that will cost me \$55,000.

1 This is a major obviously line item in my home and for
2 many other projects in the country. Our funding levels
3 have to keep pace both with our entering poverty populations
4 and also our increased costs of doing business, both in
5 terms of insurance and also in terms of salary.

6 We like other programs have absorbed the funding in
7 the past and I think we've done a lot of belt tightening.
8 A lot of credit goes to this board. You've built in
9 efficiencies within Legal Services that I think did not
10 previously exist. However, I think we have to be mindful
11 of the fact that we probably have done all the belt
12 tightening that we can do in view of matching those
13 poverty statistics to the increased costs, and three, the
14 limitations that are built within the funding formula
15 that the Corporation has itself.

16 If in fact you want us to continue to provide high
17 quality legal services, and I think we do that, in a
18 totally professional manner and as a law firm, one, we
19 have to equip those offices as law firms and, two, we
20 have to pay equitable salaries to individuals to keep
21 good people, keep professional people. We don't really
22 the cheapest, we want the best, at least, that's what I'm
23 interested in. We have to upgrade that staff with training

1 and other initiatives, to make sure that they're on the
2 cutting edge of their profession. They are going into
3 court against other lawyers, other law firms that are
4 highly equipped and who have a lot of resources at their
5 disposal. In order to compete in that environment and
6 provide the kind of quality representation, we have to do
7 that and we also have to have the facilities to do that.
8 All of that costs money, and I urge you to utilize your
9 collective minds, if you will, to address this situation
10 not only with respect to the requests of Congress, but
11 also with respect to your deliberations in general.

12 CHAIRMAN DURANT: Didn't
13 Michigan just approve our Supreme Court...

14 MRS. BERNHARD: Yes, they
15 did, but I don't anticipate that we'll see any funding in
16 this fiscal year. Perhaps by next fiscal year. They are
17 putting together a foundation now as points of control,
18 when they run it and so forth. They haven't done that
19 yet. But I'm very pleased that we finally did obtain
20 that. We're sort of way behind in Michigan in terms of
21 really addressing the need for...

22 CHAIRMAN DURANT: Mr. Mendez?

23 MR. MENDEZ: Your question

1 about insurance really intriged me. My rates have gone
2 up as well as I think everybody else. I'll address this
3 to you, and Martha, I'll address this question to you as
4 well.

5 Would you be interested in having us examine that and
6 see if we can come to a national negotiated contract
7 using the...this is on legal malpractice...or not?

8 MRS. BERNHARD: I would...
9 because Wayne County is the most litigious county in the
10 country with the exception of Los Angeles now. Malpractice
11 rates for chiropractors are extremely high in that area
12 already. For us to attempt to absorb a hundred percent
13 increase for one third of the coverage that we previously
14 had is going to frankly very, very difficult to find it
15 possible. At this point we don't have any other options,
16 so I would be very pleased if the Corporation takes that
17 initiative.

18 MR. MENDEZ: Just to examine
19 it. What we'll do is, Clark, if we could, let's set it
20 up for some time in the future.

21 CHAIRMAN DURANT: Okay.

22 MRS. BERNSTEIN: Could I
23 just ask a question? Do you currently...what you're

1 talking about in terms of your rates, is this the
2 malpractice insurance that's offered through NLADA?

3 MRS. BERNHARD: Yes, it is.

4 MRS. BERNSTEIN: So in
5 essence, just to clarify, most of the programs I think
6 participat in NLADA in order to get that insurance. So
7 to a great extent it already is a national program that
8 includes a greater number of lawyers because it includes
9 all the defense attorneys as well as others that belong
10 to NLADA than just LSC recipients.

11 So to some extent the best rates are probably being
12 negotiated.

13 MR. MENDEZ: But still, I
14 really don't want us to address this now. I'd really
15 like to have something in the future.

16 CHAIRMAN DURANT: Martha?

17 MRS. BERGMARK: LeAnne, as
18 you point out, there is a national entity that has been
19 bargaining for us for the best possible rates and coverage
20 for professional liability, and clearly that's to our
21 benefit. I think when the rates are compared to private
22 insurance rates, they're probably still less. I have a
23 husband who's in private practice but we haven't compared

1 notes on that recently. Our rate too has gone up
2 enormously. I think basically we're getting the best we
3 can get right now, and certainly the NLADA, as I understand
4 it, now because of the latest rates is exploring the
5 possibilities for some kind of leeway somewhere.

6 But Linda's point is that her rate has more than
7 doubled, the rate she's being quoted has more than doubled.
8 This is reflective of the cost pressure that we face, and
9 therefore the need for additional funds.

10 CHAIRMAN DURANT: Anything
11 else? Linda, thank you very much. I appreciate your coming.

12 MRS. BERNHARD: Thank you
13 very much.

14 CHAIRMAN DURANT: Thank
15 you. Why don't we now go into the main portion of the
16 meeting. May I have a motion to approve the agenda?

17 MRS. BERNSTEIN: So moved.

18 CHAIRMAN DURANT: Is there
19 a second?

20 MRS. MILLER: Second.

21 CHAIRMAN DURANT: Any
22 discussion? The only thing I'd like to say is, I know
23 there are some who have planes, and we'll try to do the

1 best we can to just move as quickly as we can. Tom, I
2 think you told me, what, 4:00?

3 MR. SMEGAL: Yes.

4 CHAIRMAN DURANT: All those
5 in favor signify by saying Aye.

6 (Chorus of Aye's.)

7 CHAIRMAN DURANT: Opposed?
8 The agenda is approved as written. Mrs. Bernstein?

9 MRS. BERNSTEIN: I would
10 like to make a motion at this time to close a portion of
11 this meeting to discuss personnel, personal litigation
12 and vescatory matters under the Government Sunshine Act
13 5 USC 552B-c, 2679b and 10 and 45 CFR, 1622.a, e, f, g
14 and h.

15 MR. VALOIS: Second.

16 MR. DURANT: Any discussion?

17 MR. EAGLIN: The only thing
18 I wonder about, Mr. Chairman, is, I'm not sure what we
19 need to talk about.

20 CHAIRMAN DURANT: I understand
21 there's a litigation in force that Mr. Bayly wants to make.
22 We need to review matters involving the president. Any
23 other discussion? All those in favor signify by saying Aye.

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MR. WALLACE: I think we
ought to take a roll call.

CHAIRMAN DURANT: Roll call?
Mrs. Benavidez?

MRS. BENAVIDEZ: Aye.

CHAIRMAN DURANT: Mrs. Miller?

MRS. MILLER: Yes.

CHAIRMAN DURANT: Mr. Uddo?

MR. UDDO: Yes.

CHAIRMAN DURANT: Mrs. Swafford?

MRS. SWAFFORD: Yes.

CHAIRMAN DURANT: Mr. Mendez?

MR. MENDEZ: Yes.

CHAIRMAN DURANT: Mrs. Bernstein?

MRS. BERNSTEIN: Yes.

CHAIRMAN DURANT: The
Chairman votes yes. Mr. Valois?

MR. VALOIS: Yes.

CHAIRMAN DURANT: Mr. Wallace?

MR. WALLACE: Aye.

CHAIRMAN DURANT: Mr. Eaglin?

MR. EAGLIN: Yes.

CHAIRMAN DURANT: Mr. Smegal?

1 MR. SMEGAL: Yes.

2 CHAIRMAN DURANT: Thank
3 you. The motion carries.

4 The first item on the agenda is...

5 MRS. BERNSTEIN: You have
6 to certify it by the general counsel's office, Mr. Fortuno.

7 CHAIRMAN DURANT: Mr.
8 Fortuno. Vic, do you want to certify a proper closing?
9 We're trying to move this along.

10 MR. FORTUNO: Yes, we'll
11 have the report prepared and duly executed sometime today.

12 CHAIRMAN DURANT: Okay.
13 Thank you, Mr. Fortuno. The next item on the agenda is
14 the report and recommendations from the Provisions
15 Committee. Excuse me, the minutes. I'm trying to move.

16 MRS. BERNSTEIN: Move that
17 we accept them.

18 CHAIRMAN DURANT: There's a
19 motion to accept the minutes as written.

20 MR. WALLACE: Second.

21 CHAIRMAN DURANT: Second.
22 Any discussion, corrections, changes?

23 MR. EAGLIN: Just that

1 what I did, I note abstaining concerning the...I say
2 that that is the reason I was absent. I'd like to have
3 it reflected. That's on page three.

4 CHAIRMAN DURANT: Mr. Baker,
5 will you make that...where is that paragraph?

6 MR. EAGLIN: It's on page
7 three.

8 CHAIRMAN DURANT: Okay.
9 Any other corrections or whatever? All those in favor of
10 approving the minutes with that correction that Mr. Eaglin
11 has brought up, signify by saying Aye.

12 (Chorus of Aye's.)

13 CHAIRMAN DURANT: Opposed?
14 Carried. Now we'll try the Provisions Committee report.
15 Mr. Valois, that's your committee.

16 MR. VALOIS: Mr. Uddo has
17 chaired that meeting for me.

18 MR. UDDO: A brief report.
19 The Provisions Committee did meet yesterday morning. I
20 chaired it in Mr. Valois' absence. We received three
21 reports, one on CALR, one on law school clinical project
22 and one on migrant study. All three were very extensive
23 reports. We had comments from the people involved in

1 doing the studies and making the reports. We had some
2 comments from the public. I invited all members of the
3 public to please submit any additional comment as quickly
4 as possible, and no action was taken. That's the report.

5 MR. MENDEZ: Mr. Durant,
6 may I make comments about the report?

7 CHAIRMAN DURANT: Please.

8 MR. MENDEZ: Mr. Uddo was
9 correct in stating that no action was taken. But I would
10 like to encourage us to take action as quickly as possible
11 on the various reports so that we can report to Congress
12 whether or not we're going to use the funding formulas
13 and criterias for the options suggested in the various
14 reports.

15 I for one, having spent a good deal of the evening
16 and the morning looking over migrants, would be very
17 interested in incorporating that quickly as well as
18 looking at the various options with regard to CALR as
19 well. I haven't had the opportunity to review the law
20 school clinic, and I would like to do that. I would like
21 to have those actions taken at the board level on what
22 we're going to do with regard to these reports before mid-
23 March, so we have time enough to clearly tell Congress ahead

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1 of our meetings with the Hill by a couple of weeks what
2 we're going to anticipate what we're going to be doing
3 and the way we're going to be funding these various line
4 items that I anticipate we'll be acting on later.

5 MR. WALLACE: Mr. Chairman.

6 CHAIRMAN DURANT: Mr. Wallace.

7 MR. WALLACE: Does anyone
8 know if we have a tentative date for our Appropriations
9 Committee hearings in the House?

10 MR. MENDEZ: Yes, we do.

11 MR. WALLACE: What is it?

12 MR. MENDEZ: March...I was
13 going to talk to you about that later. It's March 25.

14 MR. WALLACE: March 25.

15 MR. MENDEZ: I have to
16 check my office and make sure that I don't have a trial
17 going that day. If I don't we'll have the hearing.

18 CHAIRMAN DURANT: As far as
19 those three studies are concerned, I guess your question
20 is really directed to Mr. Valois to see what you're
21 saying, to see that there's board action.

22 MR. MENDEZ: Well, it's
23 directed to you. Part of it is to Mr. Valois, but I want

1 to make sure that we have board action on it.

2 MR. UDDO: I can add, Mr.
3 Chairman, that I think it was clear to everyone in
4 attendance yesterday that we are trying to get as much
5 comment gathered before that date and in time for the
6 board to take some action.

7 CHAIRMAN DURANT: Tim, will
8 you see that in the order of things to see that what Mr.
9 Mendez has requested on this is taken care of?

10 MR. MENDEZ: One other
11 thing. I have requested in the past that we publish the
12 tentative dates that we have set. I would again ask that
13 we publish and send those out, and what is the date that
14 we have set for February tentatively now?

15 MR. BAKER: It's the fourth
16 Friday and Saturday.

17 MRS. BERNSTEIN: Is there a
18 fourth in February?

19 MR. MENDEZ: It's the 27th.
20 The 27th is the fourth. Is that what we set? That's the
21 fourth Friday. It is, that's the fourth Friday.

22 MRS. BERNSTEIN: If we
23 don't need both of those days, we could just pick one of

1 them. But that's what it looks like right now.

2 MR. MENDEZ: Mr. Chairman,
3 I would hope that we would take action with regard to the
4 fourth Friday and Saturday.

5 CHAIRMAN DURANT: Mr. Baker,
6 we want to take action by that fourth Friday and Saturday,
7 so see that the appropriate materials get moved along and
8 prepared for that then. Mr. Bayly, do you see any problem
9 with that?

10 MR. BAYLY: I do not at
11 this time.

12 CHAIRMAN DURANT: Mr. Uddo,
13 any other...

14 MR. UDDO: No other report
15 from that committee.

16 CHAIRMAN DURANT: There's
17 no action item then in your...

18 MR. UDDO: No.

19 CHAIRMAN DURANT: Okay.
20 The next item is discussion and action on the recommendations
21 of the Audit and Appropriations Committee. Mr. Mendez,
22 your committee.

23 MR. MENDEZ: Mr. Chairman,

1 with regards to the Corporation's annual audit, as most
2 of the committee members recognized yesterday, we had a
3 tentative draft of the final audit, but because of the
4 inclement weather, it wasn't finalized.

5 I have asked the auditing group to prepare and send a
6 copy to each one of the board members, and subject to any
7 objections of the board members, I would request and move
8 that we accept the appropriations annual audit.

9 CHAIRMAN DURANT: The motion
10 is on the floor to accept the Corporation's annual audit.
11 Is there a second? There's been a second. Is there any
12 discussion?

13 Hearing none, all those in favor signify by saying Aye.
14 (Chorus of Aye's.)

15 CHAIRMAN DURANT: Opposed?

16 MR. SMEGAL: Mr. Chairman.

17 CHAIRMAN DURANT: Yes, Mr.
18 Smegal.

19 MR. SMEGAL: I'm going to
20 abstain. I do not see an audited letter which I was told
21 would be here today, and I am not going to vote on this
22 matter until I see the audited letter.

23 MR. MENDEZ: Mr. Chairman, I

1 think Mr. Smegal is talking about a management letter,
2 and I have requested Mr. Coster to forward the management
3 letter to all of the board members as soon as it comes
4 in, so the board members have an opportunity to review
5 the management letter, as well as sending us a copy
6 of...or a memorandum concerning his response to each of
7 the items listed in the management letter.

8 Turning next to the FY 86 final budget review, that
9 was accomplished yesterday and subsequently the committee
10 prepared an allocation. After reviewing the budget, we
11 determined what the carryover was. There was a motion
12 made which was approved with various modifications which
13 I will repeat in substance to you at this time as to how
14 to spend the unreserved carryover funds.

15 CHAIRMAN DURANT: What
16 about the final budget? I'm sorry.

17 MR. MENDEZ: Referring
18 everyone to the carryover allocation, it was the blue
19 sheet that we had yesterday, on the floor, subject to the
20 board's request I will just refer everyone to the
21 appropriate column and we will act thereon.

22 Column four of the FY 86 under discretionary commitments,
23 the committee adopted column four with the exception of the

1 \$460,000 in program development. It was removed from 1B
2 to corporation management and grant administration, line
3 nine, unallocated reserve, making that total amount
4 \$685,200 and with the specific instruction to Mr. Bayly
5 to have within four weeks something to the board as to
6 how he deems the \$685,200 to be most effectively used.

7 With that, I would move the adoption of the carryover.

8 MR. WALLACE: Second.

9 CHAIRMAN DURANT: Any
10 discussion?

11 MRS. BERNSTEIN: Am I to
12 understand that Mr. Bayly would not be precluded from
13 putting that back in program development if he determined
14 that that was the most effective use?

15 MR. MENDEZ: That is
16 correct. He has to come to us and tell us what he's doing.

17 MRS. BERNSTEIN: I understand.

18 MR. MENDEZ: But whatever
19 he wants to do, he is specifically to come to us with
20 specific hard numbers where he wants to do it and what he
21 wants to do.

22 CHAIRMAN DURANT: Mr.
23 Mendez, is the...in this carryover, is that where the three

1 percent item on the COLA was?

2 MR. MENDEZ: Yes.

3 CHAIRMAN DURANT: I'm trying
4 to find your list here. Is that for this year we're talking?

5 MR. MENDEZ: Yes.

6 CHAIRMAN DURANT: Mr. Bayly
7 and I had a conversation regarding the allocation of some
8 of these particular funds, on the timing. Can we reserve
9 the COLA and the \$225,000 on the unfilled positions within
10 LSC until our next meeting?

11 MR. MENDEZ: We could, but
12 I don't wish to do that, and that's not my motion.

13 CHAIRMAN DURANT: You
14 wouldn't consider a friendly amendment to do that?

15 MR. MENDEZ: No.

16 CHAIRMAN DURANT: Any other
17 discussion on the...

18 MR. SMEGAL: It's not clear
19 to me what happened to the \$91,000 on line two.

20 MR. MENDEZ: The \$91,000,
21 my motion to remove it was defeated and so it's been
22 removed from it, as stated in the line, as it presently
23 is here.

1 MRS. BERNSTEIN: As a deduction?

2 MR. MENDEZ: As a deduction,
3 yes.

4 MR. SMEGAL: That number
5 comes from line Roman numeral 2A-1. If I understood
6 correctly the discussion we had yesterday, apparently the
7 Corporation has given testimony in a...if I understood it
8 correctly, GAO hearing, where the training development
9 and technical assistance mandatory commitments is actually
10 \$147,000, not \$468,658. The difference between 147 and
11 468 is roughly \$322,000, \$91,000 of which I see has been
12 moved. But it leaves \$231,000 in there, which does not
13 appear to have a use in fiscal year '86 mandatory commitments.

14 MR. MENDEZ: We had that
15 discussion yesterday, Tom. I can't recall, but I do
16 recall that there was specific rationale for it, and it
17 was committed, but I just don't recall. Mr. Coster,
18 would you please come forward?

19 MR. SMEGAL: Yes, there was
20 a discussion, and my recollection of the discussion is
21 that it didn't come anywhere near \$231,000.

22 MR. COSTER: The \$147,000
23 figure was the estimate for training costs provided to GAO

1 in writing for training and time keeping. The larger sum
2 that's on the budget still reserved in the mandatory
3 commitment by the board is the balance of funds set aside
4 for computer purchase and software purchase, software
5 modification, training in the CSR program as well as
6 training and timekeeping and a number of other issues.
7 So we're not comparing the same budget for the funds. I
8 think the \$147,000 estimate for GAO was at their request
9 to budget around strict training for timekeeping.

10 CHAIRMAN DURANT: So what
11 was the number for timekeeping?

12 MR. MENDEZ: 147.

13 CHAIRMAN DURANT: 147?
14 What if the GAO determines that that's not...I think it
15 is, but I don't know what GAO is going to decide. What
16 if they say that it's not an effective tool? What will
17 happen to that money?

18 MR. MENDEZ: It will be
19 released. It will be brought to us and we'll release it.
20 We'll change our obligation.

21 CHAIRMAN DURANT: But the
22 way it's set up here is...

23 MR. MENDEZ: We've obligated

1 it ourselves.

2 MR. COSTER: The board is
3 isn't able to unobligate funds.

4 MRS. BERNSTEIN: Besides
5 which, I would like to clarify, Tom, when you brought
6 this up, to my knowledge there's not been a hearing
7 regarding GAO. We've been responding to questions and to
8 JAO inquiry investigation, but to my knowledge there's
9 not been a hearing. We have provided them a written
10 estimate so that we would be able to make determinations
11 as to whether or not it's reasonable.

12 But the GAO is an advisory body and will report to
13 Congress, and we will hear about it. But it would be not
14 unlike anything else that we are dealing with. Your
15 question in terms of the \$322,000 extra is, as I understand
16 it from Mike, was the commitment that we made generally
17 to this particular effort, which included timekeeping.

18 MR. COSTER: In September
19 of 1985 in Rockland, Virginia, the board prior to my
20 service to the Corporation, the board committed \$905,000.
21 Five months later when I was with the Corporation we
22 committed an additional hundred or hundred and a quarter
23 as additional costs to supplement that program with the

1 timekeeping and function on the reporting trends, what
2 have you. Out of those funds, about \$740,000 has been
3 spent on computers...this is from memory...about \$37,500
4 has been spent on software and modification to that software
5 in the amount of \$7500 total of 37,5.

6 I don't believe any other expenditures, a few nominal
7 expenditures of less than \$10,000 total. So out of that
8 about million dollar pot, we have this \$468,000 remaining.
9 That is to include not just the additional funds...but
10 also the balance of the CSR project to completion. The
11 training for the CSR program was more extensive and more
12 time consuming than merely the timekeeping contemplated
13 in my estimates to the General Accounting Office earlier
14 in January of this year.

15 So these aren't the exact things like training that
16 we're talking about.

17 MRS. SWAFFORD: Mr. Chairman,
18 I'm going to move the question.

19 MR. MENDEZ: The question
20 has been moved.

21 CHAIRMAN DURANT: Just a
22 second. Mrs. Swafford, would you mind if we took a
23 comment from Mrs. Bergmark?

1 MRS. SWAFFORD: I'd be glad
2 for you to.

3 CHAIRMAN DURANT: Thank you
4 very much. Martha?

5 MRS. BERGMARK: I just
6 wanted to add that in the letter to Mr. Hanson at GAO the
7 context in which that letter was sent, is the context in
8 which there is an assessing about how much timekeeping
9 and functional accounting has been taught, and that the
10 Corporation staff posture in that context seems to be to
11 put an estimate on that that doesn't make it appear to
12 be too burdensome or too costly and so forth. In that
13 context is where we get the \$146,000 estimate. Whereas
14 here, when there's a possibility of allocating this money
15 to direct service delivery, we see a figure that is about
16 three times that, and that there's a lot of soft money
17 there that we just feel to be allocated to the...

18 MRS. BERNSTEIN: I think
19 you're mischaracterizing what was said. There's a larger
20 computer use training effort under way. Training in
21 timekeeping and implementing the timekeeping requirement
22 is part of the larger effort, but the fact is that the
23 commitment has been made to the effort. The timekeeping

1 element was all GAO asked about. Therefore, the entire
2 effort commitment is still there. It's not a matter that we're
3 estimating for our own purposes somehow maliciously,
4 three times the amount that we told GAO about. The fact
5 of the matter is, you've got apples and you've got oranges
6 all in a big fruitbasket. You're talking about the apples
7 and we're talking about the basket.

8 MRS. BERGMARK: I'm not
9 sure what the oranges are.

10 MRS. BERNSTEIN: The oranges
11 are training on CSR, on other computer use.

12 MRS. BERGMARK: But that's
13 the same training, it's the same training event that we
14 sent out notices on a year ago that we would have these
15 trainings go to and learn it. They're totally inter-related
16 issues.

17 MR. COSTER: Mrs. Bernstein,
18 I would be happy to provide a copy of the minutes of the
19 September meeting to Mrs. Bergmark so that she can become
20 familiar with the budget that we...

21 MR. MENDEZ: Mr. Coster, that's
22 fine. Send a copy of the relevant questions to the board
23 members, and also send a copy of the letter that you sent

1 to GAO to all the board members.

2 MRS. BERNSTEIN: I understand
3 why she's confused now, because I hadn't...I wasn't sent
4 the information about the training event. The fact that
5 the training event may take place at the same time doesn't
6 mean that for what was broken out as a portion that was
7 attributable to timekeeping efforts at training, was
8 broken out for the purpose of trying to comply with GAO's
9 request. But the training could still be done in the
10 most efficient manner to combine the two approaches.
11 That may be where you're confused.

12 MRS. BERGMARK: I'm just
13 concerned that \$233,000 for something that I really have
14 not heard anything going into that would cost that kind
15 of money when we're talking about half that or 60 percent
16 of that that really seems to be allocated.

17 CHAIRMAN DURANT: Mr.
18 Coster, is that full 230 that she's talking about, are
19 you saying that that's part of this overall program or basket?

20 MR. COSTER: I don't know
21 where she derived the 233. Is that the difference between
22 the two?

23 MRS. BERGMARK: Yes. In other

1 words, once you subtract \$91,000 from the \$458 and then
2 subtract 146 from that, you should come out with the 233.

3 MR. COSTER: On a side
4 note, I didn't yesterday state that the \$91,000 were
5 surplus and unneeded funds. I think that if we are able
6 to proceed with that project this year, the funds will be
7 found in that...after we receive that training and pay
8 off the bills. So the urgency of that \$91,000 was really
9 at that point. I don't recall all the budget to the CSR
10 proposal, I wasn't here at the time, Mr. Chairman. I
11 know the spending within those guidelines and that there's
12 still money for that regional training waiting. That's
13 what that...

14 CHAIRMAN DURANT: May I just
15 ask...Martha, what I'd like you to do is, if you would
16 just simply do a short letter to Mr. Coster with a copy
17 as to how you make that analysis. Then, Mr. Coster, if
18 you could see that she gets an answer and then send me a
19 copy of the correspondence as well, and Mr. Mendez as
20 chairman of the Audits and Appropriations.

21 I assume that this money is not immediately going to
22 be spent, is that correct, if this carryover is approved?

23 MR. COSTER: Nothing can be

1 spent out of that line in about nine months.

2 CHAIRMAN DURANT: That's
3 fine. Mr. Mendez?

4 MR. MENDEZ: I want to vote.

5 CHAIRMAN DURANT: The
6 question has been called. All those in favor of Mr.
7 Mendez' motion on the use of the carryover funds signify
8 by saying Aye.

9 (Chorus of Aye's.)

10 CHAIRMAN DURANT: Opposed?

11 MR. SMEGAL: Mr. Coster,
12 this was the carryover funds listed in column four of the
13 particular document, is that correct?

14 CHAIRMAN DURANT: That's
15 correct.

16 MR. SMEGAL: We did not
17 vote on column three, which I see totals \$7,200,000.
18 Those are mandatory commitments, and would I be correct
19 in assuming, Mr. Coster, that we will have updates on the
20 status of those various accounts as we go along month to month?

21 MR. COSTER: That has
22 traditionally been a part of...

23 MR. SMEGAL: Thank you.

1 MR. MENDEZ: One further
2 question, Mr. Chairman. I just don't recall if we formally
3 transferred the Congressional mandated matters previously.
4 Everybody's recollection is that we did, but I would call
5 on the collective memories of the board, because I just
6 don't remember if we did that.

7 CHAIRMAN DURANT: Why don't
8 you just make a motion to...

9 MR. SMEGAL: You're talking
10 about column three, Mr. Mendez?

11 MR. MENDEZ: No, I'm talking
12 about the \$3,300,000 that Congress told us to...was
13 unallocated previously.

14 MR. COSTER: Column three
15 on page two, the very top figure is \$3.5 million
16 approximately; \$3.3 exactly is made up of the Congressional
17 ...report language. Those funds were discussed at the
18 last meeting of the board. We had uncertain recall as to
19 whether the board officially...

20 CHAIRMAN DURANT: Mr.
21 Mendez, why don't you make a motion?

22 MR. MENDEZ: Mr. Durant, I
23 would move that we transfer the \$3.3 million as mandated by

1 the Congressional office and carryover funds to management
2 administration. That's the motion.

3 CHAIRMAN DURANT: Is there
4 a second?

5 MRS. BERNSTEIN: Second.

6 CHAIRMAN DURANT: Any discussion?
7 All those in favor signify by saying Aye.

8 (Chorus of Aye's.)

9 CHAIRMAN DURANT: Opposed?
10 Motion carries. Mr. Mendez?

11 MR. MENDEZ: Mr. Chairman,
12 we are now to what has kept everybody in their seats and
13 on pins and needles, the 88 mark.

14 After this morning's discussion, I asked Mr. Coster
15 to prepare a mark as approved by the committee, and
16 everyone should have a copy of that, on the board. I
17 asked Mr. Coster...if the audience doesn't have it, I've
18 asked him to distribute it. I would assume that you have
19 that available.

20 Mr. Chairman, the Audit and Appropriations Committee
21 met this morning and approved a budget mark of \$325
22 million with, under 1A-4...I transferred it from A-5 to A-4
23 to make more sense, of a meritorious service fund in honor

1 of Mr. Wallace. This meritorious service fund is
2 discretionary with the Corporation for those groups,
3 those basic field programs which give the highest and
4 best services as to be determined by Mr. Bayly and the
5 corporate staff. Is that a fair recitation?

6 MR. WALLACE: Sounds pretty
7 good to me.

8 MR. MENDEZ: The chairman
9 voted against it, but this is the motion of the committee
10 as the chairman would do that. But the chairman is going
11 to speak against that. I assume there's a second from
12 Mr. Wallace's...

13 MR. WALLACE: I'll second it.

14 CHAIRMAN DURANT: Any
15 discussion or substituted motions?

16 MR. MENDEZ: Mr. Chairman,
17 I have a substitute motion.

18 CHAIRMAN DURANT: What is
19 your substitute motion?

20 MR. MENDEZ: The substitute
21 motion is an overall budget of \$305.5 million as shown in
22 FY '87 appropriation levels. The \$305.5 is there under
23 the appropriation levels. I would change the \$7.4 million

1 in management and administration under line three to 12-2
2 and take those funds out of basic field programs, as a
3 substitute motion.

4 MR. VALOIS: Second.

5 CHAIRMAN DURANT: What does
6 that make as far as the basic field programs? What's the
7 number then?

8 MR. MENDEZ: 255...

9 CHAIRMAN DURANT: 842?

10 MR. MENDEZ: 255,842,756.

11 MR. WALLACE: 256,493,672.

12 MR. MENDEZ: Yes. Mr.

13 Chairman, unless there's other discussion I would suggest
14 that we vote on it, because I think everybody was present
15 this morning.

16 MR. WALLACE: I don't think
17 everybody was, and let me just state my opposition to the
18 motion of my esteemed committee chairman, Mr. Mendez, and
19 my support of the committee report.

20 It is my objective and has been my objective for some
21 time for this corporation to have some authority over how
22 its money is spent. Congress has been unwilling to give
23 us any authority over how the money is spent. I am satisfied

1 on what we've learned over the last two years. There are
2 a lot of good programs doing a good job. Monitoring
3 shows that. We could wisely spend more money. I'm also
4 satisfied that there are several programs that are not
5 doing a good job, and to increase their funds along with
6 everybody else's funds would simply be throwing good
7 money after bad.

8 I therefore would like us to ask for more money to
9 give to those programs that our staff on the basis of its
10 investigations are satisfied are doing a good job, where
11 the money can be properly spent. It was indicated in the
12 course of yesterday's discussions that what we have is a
13 chicken and egg proposition, that we won't ask for more
14 money because we don't have the discretion to spend it,
15 and Congress won't give us the discretion to spend it
16 unless we ask for more money.

17 I have made this motion in an attempt to break out of
18 that deadlock. This as far as I'm concerned is a put up
19 or shut up time. I am putting up a proposal to spend
20 \$19.5 million over which we will have some discretion.
21 We will see whether anybody is willing to let us have 19
22 and a half million dollars worth of discretion. I will
23 say this. There was fear on the committee that what we

1 would get out of the House Appropriations Committee was a
2 \$325 million appropriation, no discretion. If that is
3 the case, then I would say we haven't got a chicken and
4 egg proposition; we've got a hopeless proposition. It
5 will be my commitment to go to the Republican leadership
6 of the House of Representatives under those circumstances
7 and ask them to cut this appropriation right back down to
8 \$305 million where it's been for the last several years.
9 I think they've got the votes to do it, because they cut
10 it on the House floor last year and I think they can cut
11 it again this year. But I'm willing to make a put up or
12 shut up bid. We're asking for more money, we're also
13 asking for discretion. If you give us that package deal,
14 I think it's a step worth taking.

15 I therefore oppose the amendment of my esteemed
16 chairman.

17 CHAIRMAN DURANT: Mr.
18 Wallace, let me respond if I might. I am concerned about
19 the 305.5 number, in part because there is a...as I
20 understand the numbers in terms of basic field programs
21 in 1986 having \$257 million and in 1987 having \$261 and
22 under this possibly having approximately \$256.

23 It is my concern, I have always emphasized in my private

1 comments and my public comments direct delivery programs.
2 But I've also believed that it isn't really a chicken and
3 egg situation because I think the lobbying process that
4 has taken place earlier today is a perfect example of
5 when each side is...maybe I shouldn't say each side, but
6 competing notion of how things ought to be done, to get
7 together in good faith and resolve those problems. I
8 think for the most part that's what happens.

9 There are some things that I voted for that in another
10 time and another place I wouldn't have voted for. But I
11 voted for them because I felt and believed that the people
12 involved in that process had put down their different
13 previous approaches to things to come to a consensus
14 about what is best for the programs.

15 My concern about the budget number is that in all
16 those it is always posed in a way that all you have to do
17 is ask for more money and you'll get cooperation. I've
18 been in politics all my life, and I don't feel that it is
19 necessary to buy cooperation. I think there are many
20 excellent programs. I can tell you that in the two years
21 that I've been here, it has been very important to me to
22 meet a number of different project directors and programs
23 throughout the country, and the good job, the unrecognized

1 job that many of those people are doing, on the front
2 lines, without recognition in the toughest kinds of
3 circumstances.

4 But I also believe that it is necessary to fundamentally
5 and continue to rethink the concepts by which our formulas
6 are devised. We've debated whether minimum access is the
7 proper way of doing it, just simply because it's been
8 there since 1976. I think there are a variety of things
9 in terms of...that can be focussed on in terms of maximizing
10 access to justice that is not measured in a strictly
11 dollar sense. I do not think that this is strictly a
12 dollar department. It would not surprise me, by the way,
13 that Congress might and would be very much inclined to
14 appropriate an additional \$19 million to let the Corporation
15 use in their discretion. I don't think that's much of a
16 gauntlet, Michael. I think that in fact there may be a
17 reasonable likelihood of something like that occurring.
18 On the other hand, and I said to Mr. Smegal when we were
19 debating this in committee, Congress has taken a very
20 active interest in the things that this Corporation has
21 done. While I have not always agreed with the Congressional
22 resolution of them, I have never objected to the process
23 nor the interest, because I do think that that does make

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1 for a better situation.

2 So it isn't in my judgment a chicken and egg situation;
3 it is a matter of again trying to come up and continue to
4 redefine some of these concepts, rather than the status
5 quo situation that has been before us for the last two
6 years.

7 I admit, in fact, in my conversation with Martha,
8 that there should be more of an effort to recognize the
9 good programs and the good things that are being done. I
10 think to my understanding, anyway, that some monitoring
11 reports show those things. I know in all of my speeches
12 and comments and whatever, I've tried to do that. I know
13 that others have as well.

14 But again, I don't think it's a dollars problem.
15 Congress has not disagreed with us on the 305 figure in
16 the time I have been here. They have been actively
17 persuaded by men and women certainly more persuasive than
18 I in terms of doing things. So I speak in favor of Mr.
19 Mendez' motion at this time.

20 MR. MENDEZ: Mr. Chairman,
21 I have a couple of clarifying remarks that I would like
22 to make, and ask Mr. Wallace if this is correct.

23 In the Wallace-Smegal motion at the committee level,

1 we discussed the issue of the various studies. It's my
2 understanding that the actions that we're doing and that
3 we take on this mark will be consistent with the review
4 of the studies of a later date, and whatever we come up
5 with at that time will be the way that we allocate within
6 the lines.

7 MR. WALLACE: That's what all
8 those asterisks are for.

9 CHAIRMAN DURANT: I just
10 wanted to make sure that that was the case, reaffirm
11 that, and the same issue with national and state support.

12 CHAIRMAN DURANT: One of
13 the things I also want to make clear is that I have asked
14 Mr. Bayly to review the management and budget number,
15 because I think the 12-2 is high, in fact, is too high.
16 I want us to revisit it because I frankly think it can be
17 and ought to be lower. I want to see how the studies
18 come out, hopefully within the next couple of months that
19 you're referring to, Mr. Mendez, in terms of migrants and
20 national or state support, Mr. Uddo's work, because I do
21 feel a very strong desire to want to maintain the direct
22 delivery totals.

23 Having gone through these budget processes, it's obviously

1 clear to me that this is only a first step, and that
2 there are always adjustments that take place on down the
3 line. Any other discussions?

4 MR. UDDO: Let me just say,
5 Mr. Chairman, since I wasn't at the meeting this morning,
6 I've had to spend some time thinking about it over the recess.
7 I'm going to vote against Mr. Mendez' substitute motion
8 and I'm going to support the committee proposal. I want
9 to support it because I think Mr. Wallace is right. I
10 think he has a very sound rationale and I think it's
11 something we thought about since we first got on the
12 board. I would assume that if that proposal would pass,
13 Mr. Bayly would promulgate some guidelines to give programs
14 some idea of how it is they compete for that money. I
15 think the overall effect would be positive.

16 CHAIRMAN DURANT: Shall we
17 take a vote? Mr. Smegal, I'm sorry.

18 MR. SMEGAL: I did comment
19 extensively this morning, and several of you weren't
20 here, but I think in view of the tenet of this conversation
21 I'll refrain from further comment, other than to point
22 out that \$325 million was the number selected by a recessed
23 board that preceded us by several years, four or five years

1 ago, and that we even recognize that the cost of doing
2 business for our staff has increased. We proposed a
3 footnote, a three percent...we're talking about in effect
4 a six percent increase over the course of five years for
5 this program. Thank you.

6 CHAIRMAN DURANT: Yes, Mrs.
7 Bernstein?

8 MRS. BERNSTEIN: Since Tom
9 keeps insisting that we refer to that increase in funds
10 that the recessed board asked for and got without any
11 discretion whatsoever, I think it's important for us to
12 recognize that the kind of gauntlet that we're putting
13 down before Congress is put up or shut up, that's like an
14 ant approaching an elephant.

15 We have to do things here based on whether we think
16 money is going to solve the problem or whether we think
17 the approach to the delivery of legal services in the
18 long run is going to solve the problem.

19 CHAIRMAN DURANT: Any other
20 comment? Mr. Smegal, this is on Mr. Mendez' motion, the
21 substituted motion.

22 MR. SMEGAL: This is what
23 you're calling the substitute motion? I vote no.

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CHAIRMAN DURANT: Mr. Eaglin?

MR. EAGLIN: No to Mr.

Mendez' motion.

CHAIRMAN DURANT: Mr. Wallace.

MR. WALLACE: No.

CHAIRMAN DURANT: Mr. Valois?

MR. VALOIS: Yes.

CHAIRMAN DURANT: The

Chairman votes yes. Mrs. Bernstein?

MRS. BERNSTEIN: Yes.

CHAIRMAN DURANT: Mr. Mendez.

MR. MENDEZ: Yes.

CHAIRMAN DURANT: Mrs. Swafford.

MRS. SWAFFORD: Yes.

CHAIRMAN DURANT: Mr. Uddo.

MR. UDDO: No.

CHAIRMAN DURANT: Mrs. Miller.

MRS. MILLER: Yes.

CHAIRMAN DURANT: Mrs. Benavidez.

MRS. BENAVIDEZ: No.

CHAIRMAN DURANT: The

motion carries on a vote of six to five. What does that technically do as far as the..

1 MR. WALLACE: It means the
2 main motion on the table is still up for final passage.

3 CHAIRMAN DURANT: So now
4 here's the main motion, all right. Mr. Smegal, on Mr.
5 Mendez' motion?

6 MR. SMEGAL: No.

7 CHAIRMAN DURANT: Wait a
8 minute, let me get my...Mr. Eaglin?

9 MR. EAGLIN: I vote no.

10 CHAIRMAN DURANT: Mr. Wallace.

11 MR. EAGLIN: No.

12 CHAIRMAN DURANT: Mr. Valois.

13 MR. VALOIS: Yes.

14 CHAIRMAN DURANT: The
15 Chairman votes yes. Mrs. Bernstein?

16 MRS. BERNSTEIN: Yes.

17 CHAIRMAN DURANT: Mr. Mendez.

18 MR. MENDEZ: Yes.

19 CHAIRMAN DURANT: Mrs. Swafford.

20 MRS. SWAFFORD: Yes.

21 CHAIRMAN DURANT: Mr. Uddo.

22 MR. UDDO: No.

23 CHAIRMAN DURANT: Mrs. Miller.

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MRS. MILLER: Yes.

CHAIRMAN DURANT: Mrs. Benavidez.

MRS. BENAVIDEZ: No.

CHAIRMAN DURANT: The motion carries on a vote of six to five.

MR. MENDEZ: Mr. Chairman, may I...

CHAIRMAN DURANT: Mr. Mendez.

MR. MENDEZ: I recognize that there's a wide variety of opinions about what is an appropriate level. In good faith, I know we all negotiated long and hard and voted our conscience. I would hope that in the future that we are able to work as well and cooperate as well as we did on this one. Thank you.

CHAIRMAN DURANT: Mr. Bayly, I want to say again, I want to revisit the management and grant administration monies at our next meeting, or in March, I guess. I guess the end of February. For the purpose of shifting further funds into the basic field programs.

The next item on the agenda is the Operations and Regulations Committee, Mr. Wallace.

1 MR. WALLACE: Thank you,
2 Mr. Chairman. The Operations and Regulations Committee
3 for its last three meetings has been reconsidering the
4 lobbying regulation, part 60 as well. While I'm making
5 my introduction, I would suggest Mrs. Glasso of our
6 general counsel's office and Mrs. Hausman who represents
7 several interested parties go ahead and come on up front
8 and get settled.

9 As the board is well aware, we have adopted previously
10 a lobbying regulation which is currently in effect but
11 which we currently lack funds to enforce. The Senate
12 Appropriations Committee chose to invalidate the
13 regulation. The full Senate chose not to invalidate the
14 regulation, to permit the regulation to continue to be in
15 effect, but denied us funds to enforce us. This puts us
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11 which we currently lack funds to enforce. The Senate
12 Appropriations Committee chose to invalidate the
13 regulation. The full Senate chose not to invalidate the
14 regulation, to permit the regulation to continue to be in
15 effect, but denied us funds to enforce us. This puts us
16 and our recipients in a terribly anomalous situation.

17 So we are passing a new regulation which we can
18 enforce with current funds, and which we hope will prove a
19 satisfactory compromise to all parties and interests. It
20 is not necessary to move the adoption of our committee
21 report, so I don't move it. I would go through it, and
22 it is subject to amendment as we get to particular places.
23 I think that...

1 MR. MENDEZ: Mr. Wallace,
2 can I ask a question?

3 MR. WALLACE: Yes, sir.

4 MR. MENDEZ: This is
5 particularly directed to Mr. Hausman through you, or to
6 you through Mr. Hausman, one or the other. Will PAG
7 actively oppose this?

8 MR. WALLACE: I can't speak
9 for Mr. Hausman's clients. I'm not sure if he can, on
10 this subject.

11 CHAIRMAN DURANT: Mr. Hausman?

12 MR. HAUSMAN: I think it's
13 fair to say that Mr. Wallace and I, assuming you approve,
14 have worked out an agreement that you can live with. I
15 haven't instruction from my clients as to whether we
16 would oppose it or not...it seems to me it would be very
17 difficult for us to oppose it. We haven't crossed that
18 bridge yet. We've come very far in meeting our needs, is
19 the best way I can put it. It's very unlikely we would
20 oppose it.

21 MR. MENDEZ: Mr. Hausman,
22 how much time would you need to write me a letter telling
23 me what your position is on that?

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MR. HAUSMAN: I need to consult with...

MR. MENDEZ: I understand. How much time do you need to consult with your clients, and how much time do you need to do that?

MR. HAUSMAN: I can say that...

MR. MENDEZ: A week? Could you do it in a week?

MR. HAUSMAN: Obviously we'd need to see the whole thing. Oh, sure. We need to see the whole thing as passed by this board.

MR. MENDEZ: I understand.

MR. HAUSMAN: I think if what's adopted by this board is essentially what the committee adopted, that consistent with an effort to work out something between the committee and us, we couldn't possibly oppose it. I'm not trying to quibble about it, I'm trying to make it clear that what I agree to do is sit down with Mr. Wallace and reach a compromise. I think we've reached that compromise. We've reached a compromise as we did in 1630. We didn't oppose it.

MR. MENDEZ: I just wanted to make sure that I understood exactly where everybody was

1 coming from.

2 MR. WALLACE: Mr. Mendez, I
3 wish I could put an incontestability clause in this thing,
4 but I don't think you can. We've negotiated; this is
5 where we've come to, and after the public discussions
6 we've had, I think it would be difficult for anybody
7 who's been involved in those discussions to go to the
8 Hill and work against the enforcement of this regulation.
9 Difficult, but not impossible. Washington is a funny place.

10 I want to walk through it. People who have amendments
11 to make can stop me as we get there.

12 On page three, and this may be the most important
13 amendment we've made, because the primary thing we're
14 doing is regulating legislative activity. We consider
15 legislative activity to include lobbying of administrative
16 agencies on rulemaking matters. We have amended the
17 language to make clear that we do not include adjudicatory
18 proceedings or negotiations directly involving the clients'
19 legal rights and responsibilities with respect to a
20 particular application, claim or case. That takes a
21 whole category of matters out of the basic thrust of this
22 regulation.

23 When you get to page five, we have clarified the

1 definition of publicity and propaganda. We have made it
2 plain that the publicity and propaganda does not include
3 neutral reporting on pending legislation. But if at the
4 end of it you stick a name or address of somebody to
5 comment about how to support or oppose that legislation,
6 you have crossed the line into publicity and propaganda.
7 If you want to publish what's in a regulation, that's not
8 publicity. You tell people how to contact to support or
9 oppose, that is publicity and propaganda, and that remains
10 prohibited by this regulation.

11 Get over to section three on page six, the main change
12 we have made here is to change the focus on dues paying
13 from the activities of the organization to the use of the
14 funds. We had previously prohibited paying dues
15 organizations which engage in political or legislative
16 activities. We now say that you may pay dues to such
17 organizations, but our funds may not be used to engage in
18 legislative or political activities. The burden is on
19 our recipient to document that our money is not going for
20 legislative and political activities.

21 I am conscious of the problems of accounting and the
22 ability to juggle money between accounts. But this is
23 one of those compromises that we worked on, and was satis-

1 factory to the committee.

2 The next item...by the way, we eliminated A on
3 maintaining separate offices for political or legislative
4 activities. There was opposition to this position, and
5 really we don't know any programs that do it anyway. You
6 get farther down the page; we do permit transportation of
7 law students, client's family and other employees for
8 training purposes to proceedings. We somewhat broadened
9 the number of people you can take along.

10 On the next page on what is now Item F, we prohibit
11 the...we had previously prohibited involvement in any
12 coalition if it was involved in legislative activity. We
13 have now said, you can't attend meetings of that coalition
14 if the meeting is to discuss or engage in legislative
15 activities.

16 The purpose for this primarily is to deal with groups
17 of charitable organizations and providers that may meet
18 to discuss common problems. Once in a while they may be
19 involved in taking the matter to the legislative for
20 matters that are of common concern of charities. That's
21 not what we want our people involved in; we don't want
22 them withdrawing from coalitions altogether.

23 Most of what comes in the next few pages is simply

1 clarifying the paperwork. I don't think we have made any
2 substantive changes on page eight and nine. We have not
3 required that everything be done in writing. We have
4 limited the paperwork burden on pages eight and nine.
5 On ten, we have removed the requirement that a client
6 state his needs in his own words. We have kept the
7 requirement that the retainer state the specific legal
8 interest of the client identified by the client. We did
9 consult with our monitoring people and frankly these
10 retainer agreements have not been of much use to anybody
11 as far as I was told.

12 Now, farther down that page, and by the way, I probably
13 should have said at the outset, I'm working out a draft
14 which was mailed to everybody earlier this week. It is
15 not what's in the board book. Farther down on page ten,
16 in F, sub one, a motion was made to strike the language
17 "which shall include a report on the exhaustion of
18 appropriate judicial and administrative relief."

19 What this amendment would have done had it been passed
20 is to require the director of a recipient to report
21 periodically to the governing body, the board of directors,
22 on communications with public officials. Our current
23 regulation requires that that report should include a

1 discussion of the exhaustion of appropriate judicial and
2 administrative relief in each case. All we've simply
3 said...there was a motion in committee to delete that
4 language, which would simply leave it up to the local
5 board whether or not they wanted to require such a report
6 instead of mandating it in the regulation.

7 This as I say is an amendment that failed, which
8 shall include...that's all still in the regulation in the
9 committee report.

10 Mr. Chairman, I will pause at this point and see if
11 any member of the board wishes to renew the motion to
12 strike the language in Fl.

13 MR. SMEGAL: I'll make that
14 motion.

15 MR. WALLACE: Let me clarify
16 it. On this draft we proposed in the committee to strike
17 the language "which shall include a report on the exhaustion
18 of appropriate judicial and administrative relief." That
19 motion failed on a tie vote. So in the committee report
20 this language is still in. Mr. Smegal has just moved to
21 strike it.

22 CHAIRMAN DURANT: Did you
23 second it?

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MR. WALLACE: I will second
it.

CHAIRMAN DURANT: Any
discussion? Let's vote. Mr. Smegal?

MR. SMEGAL: Yes.

CHAIRMAN DURANT: Mr. Eaglin?

MR. EAGLIN: Yes.

CHAIRMAN DURANT: Mr. Wallace.

MR. WALLACE: Aye.

CHAIRMAN DURANT: Mr. Valois.

MR. VALOIS: No.

CHAIRMAN DURANT: Mr.
Durant, yes. Mrs. Bernstein?

MRS. BERNSTEIN: No.

MRS. SWAFFORD: No.

MR. MENDEZ: Yes.

MRS. MILLER: Yes.

MRS. BENAVIDEZ: No.

CHAIRMAN DURANT: One, two,
three, four, five, six yesses.

MR. WALLACE: That phrase
is deleted. On page 11, this was a problem that was
brought to our attention by Senator Rudman's staff. We

1 had defined the private relief bill. The Senator's staff
2 is concerned that different bodies have different
3 definitions of private relief bill. So all we've said
4 is, if a particular legislative body defines a private
5 relief bill, we follow their definition. If there is no
6 definition, we provide a definition here that shall be
7 followed.

8 It seems to be a reasonable resolution of the issue.
9 On the top of page 12 we did not adopt four to participate
10 in bar meetings. We did adopt five permitting our
11 recipients to inform a client of that client's right to
12 communicate directly with elected officials. At the
13 committee meeting, we asked Mr. Hausman and Mrs. Glasso to
14 work on language on bar associations. Here is the concern.
15 We certainly wish to permit our staff people to be involved
16 in bar committee work. What we do not wish to permit is
17 to allow bar committee work to become a vehicle for grass
18 roots lobbying. We don't think that our recipients'
19 employees ought to represent bar committees, going out
20 around civic groups generally to engage in grass roots lobbying

21 Now, this is the language they've given to me and I
22 haven't read it yet, so we'll all learn it together. What
23 will be permitted by this proposed amendment is the following:

1 Five, participation in meetings or serving on committees
2 of bar associations, providing that such participation is
3 not for the purpose of engaging in grass roots lobbying,
4 rather than focus on the purpose, let me ask the two
5 people who worked on this, provided such participation
6 does not include grass roots lobbying. Does not...

7 MR. VALOIS: Mr. Wallace,
8 what is that five...

9 MR. WALLACE: It's five
10 because when we adopted "inform a client" that gave us
11 four. It doesn't matter. We did not adopt the five in
12 committee. Does not include grass roots lobbying.

13 Now, I think this language addresses the concern of
14 the committee. Let me read it again. Participation in
15 meetings or serving on committees of bar associations
16 provided such participation does not include grass roots
17 lobbying. I'm satisfied that these are concerns; I'm
18 happy to move the adoption of that amendment.

19 MR. VALOIS: Second.

20 CHAIRMAN DURANT: Any discussion?

21 MRS. BERNSTEIN: I don't
22 think that it takes care of the problem, because I think
23 that you can sit in committee, not participate directly in

1 grass roots lobbying, but encourage others to do so. I
2 think that's unethical and is inappropriate. So I can't
3 support it even with that change, because I don't think
4 it's enough of a change.

5 CHAIRMAN DURANT: Any other?

6 Mr. Valois?

7 MR. VALOIS: She's just
8 simply asking for clarification...

9 MR. WALLACE: I just don't
10 how you regulate what people encourage in a committee meeting.

11 MRS. BERNSTEIN: Well, we
12 regulate it in other places.

13 CHAIRMAN DURANT: Any other
14 discussion?

15 MRS. BERNSTEIN: Or amounts
16 to grass roots lobbying. How about that? We like amounts
17 to.

18 MR. WALLACE: We already
19 had that with the propaganda.

20 CHAIRMAN DURANT: Mr.
21 Wallace, it's your amendment.

22 MR. WALLACE: I think this
23 is the best language we can come up with, Mr. Chairman.

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I'm satisfied, I've moved its adoption. Unless somebody has got some words to propose, I can draft it out.

MR. VALOIS: I really think it covers it, because it says "includes". Includes in my opinion would include encouragement or connivance.

CHAIRMAN DURANT: Mr. Smegal.

MR. SMEGAL: Aye.

CHAIRMAN DURANT: Mr. Eaglin.

MR. EAGLIN: Aye.

CHAIRMAN DURANT: Mr. Wallace.

MR. WALLACE: Aye.

CHAIRMAN DURANT: Mr. Valois.

MR. VALOIS: Aye.

CHAIRMAN DURANT: The Chairman votes Aye. Mrs. Bernstein.

MRS. BERNSTEIN: No.

CHAIRMAN DURANT: Mrs. Swafford.

MRS. SWAFFORD: No.

CHAIRMAN DURANT: Mr. Uddo.

MR. UDDO: Aye.

CHAIRMAN DURANT: Mrs. Miller.

MRS. MILLER: No.

CHAIRMAN DURANT: Mrs.

1 Benavidez.

2 MRS. BENAVIDEZ: Aye.

3 CHAIRMAN DURANT: Motion
4 carries.

5 MR. WALLACE: At the bottom
6 of page 12, we did not adopt the sentence in B, which
7 says, "this paragraph shall not be construed to prohibit
8 recipients from informing officials about the services,
9 eligibility requirements and priorities of the recipient."

10 We didn't adopt it because we really don't think
11 there is anything anywhere in the regulation that prohibits
12 informing officials about what you do. I was reluctant
13 to put in this language specifically because I had visions
14 of mass mailings going out to legislators all over the
15 states saying, this is what we do, why don't you ask us
16 for our help. That's a little too much like soliciting a
17 request to me.

18 But as long as what we're talking about is simply
19 informing officials of what your services are, I don't
20 think we've got any problem. I don't think it's prohibited.
21 We did not adopt this section. Now, we said that Mr.
22 Hausman and Mrs. Glasso could work on alternative language.
23 Nobody has given me any. Are you happy?

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MR. HAUSMAN: Yes.

MR. WALLACE: We're all happy. So that language in B is not in the committee report.

MR. SMEGAL: You're talking about just the underlying portion?

MR. WALLACE: Yes. Just that portion is not in.

MR. SMEGAL: But then you have to correct the line immediately below there. It should be C then.

MR. WALLACE: It should be C. On the next page at the top of 13, we did not use the word matter, but we used specific concern. What we're trying to address here is the problem where an official may ask you about a problem, may ask you for help, but either doesn't know or doesn't refer to a particular regulation, legislation or order. We're looking for something that is somewhat broader than regulation, legislation or order, but is not so broad as to say, please help me on anything that might make life better for poor people. Specific concern is somewhere in the middle and Mrs. Glasso in the preamble has been instructed to try to explain what we're trying to get at there.

1 At the bottom of that page and the top of the next
2 page, we discuss the distribution of publications. What
3 the amendment does is to say that you may circulate to
4 the public at large or eligible clients generally references
5 to pending legislation, so long as it's only an incidental
6 reference. This is what I mean by an incidental reference.
7 In your publication you have an article about how to
8 conduct social security hearings, tell people how to go
9 through the steps. You are permitted to put in a paragraph
10 that says, by the way, there is a regulation pending that
11 would change this, so you need to keep, you know, look out
12 and see if this regulation is adopted. That is an incidental
13 reference and it may be circulated to the public at large.
14 If you wish to have a whole article describing pending or
15 proposed legislation that is not incidental, it may not be
16 circulated to the public at large or to eligible clients,
17 generally. That is the essence of this proposal which was
18 adopted by the committee.

19 On organizing, on page 17, that is the next addition,
20 the first part of the language makes clear that the organi-
21 zational provisions do not prohibit informational meetings
22 among Legal Services staff. You're not engaging in an
23 organization, you're getting people together to talk about

1 what common problems and concerns they have about family
2 law, income maintenance, whatever's going on. It's not
3 an organization, it's an informational meeting.

4 We have decided to permit Legal Services recipients to
5 facilitate, to organize, to initiate the formation of
6 organizations composed exclusively of eligible clients,
7 and here's where we change the language, formed for the
8 sole purpose of advising a Legal Services program about the
9 delivery of legal services. This is client councils. While
10 some client councils may be self-organizing, there are other
11 client councils that our recipients need to take an initiating
12 role in. It is true that the statute prohibits organizing.
13 It is also true that the statute encourages client input
14 and that, for years under the act, recipients have been
15 permitted to organize client councils.

16 I concede that this language is difficult to square with
17 the pure prohibition on organization, but I think the practical
18 construction of the act that has been given over the last
19 10 or 13 years tells us that this is an okay thing to do;
20 and that is why the committee agreed to adopt this language.

21 MRS. BERNSTEIN: Since I spoke
22 against it at the committee level, I will make a motion if
23 it's in order right now that we delete the portion of that

1 new material after the word "discussed" so that the section
2 which would permit the use of LSC funds to organize be
3 deleted and that the new material on page 17 at the top
4 would be "this paragraph shall not be construed to apply
5 to informational meetings" on down through "cases or matters
6 are discussed" and it would end as a period, add a period
7 there.

8 The reason is very simple. I think the act gives us a
9 straight prohibition against organizing, and I do not believe
10 there is an exception. I think that the way that even in
11 fixing it with the form for the sole purpose of advising
12 a Legal Services program, we are unable to control what that
13 organization that we helped start is going to do or whether
14 their sole purpose will continue to be to advise the Legal
15 Services program. I don't think Congress intended for us
16 to be in the business of organizing. I think they intended
17 for us to be in the business of providing legal services.

18 I think we can get input from client councils that are
19 organized on their own and from individual clients and, to
20 tell you the truth although we didn't discuss it this morning,
21 I think there is some reason to resist the concept of always
22 looking to some organized group for our input rather than
23 listening to the needs of individual clients and, therefore,

1 I do oppose the change that was made and I would suggest
2 that we delete that matter.

3 MR. VALOIS: I would second
4 the motion but I would like, frankly, to have somebody tell
5 me what the motion does to the present paragraph as printed
6 in what I've been given. Do I understand that it would leave
7 everything in there which is not now underlined?

8 MR. WALLACE: Everything
9 which is not now underlined stays in. The underlined portion
10 was added in committee, and what Mrs. Bernstein proposes to
11 do is to keep the first half of that new sentence and to put
12 a period after "discussed"; to strike everything after
13 "discussed".

14 MR. SMEGAL: Call for the
15 question.

16 MR. DURANT: Was there a
17 second to the motion?

18 MR. WALLACE: Oh, yes. Mr.
19 Valois.

20 MR. DURANT: Okay. A question
21 has been called. Mr. Smegal?

22 MR. SMEGAL: No.

23 MR. DURANT: Mr. Eaglin?

MR. EAGLIN: No.

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MR. DURANT: Mr. Wallace?

MR. WALLACE: No.

MR. DURANT: Mr. Valois?

MR. VALOIS: Yes.

MR. DURANT: Chairman votes

no. Mrs. Bernstein?

MRS. BERNSTEIN: Yes.

MR. DURANT: Mr. Mendez?

MR. MENDEZ: Yes.

MR. DURANT: Mrs. Swafford?

MRS. SWAFFORD: Yes.

MR. DURANT: Mr. Uddo?

MR. UDDO: No.

MR. DURANT: Mrs. Miller?

MISS MILLER: Yes.

MR. DURANT: Mrs. Benavidez?

MISS BENAVIDEZ: No.

MR. DURANT: One, two, three, four, five, six to five votes. The amendment's defeated.

MR. WALLACE: All right.

Mr. Chairman, the next provision is on accounting and timekeeping. Actually, I guess we should have stricken

1 "and timekeeping" because that's what we did. The
2 amendment adopted by the committee requires accounting.
3 It requires the documentation of the expenditure of funds
4 for legislative activities. We had previously required
5 timekeeping. That has resulted in a certain amount of
6 hostility on Capitol Hill. The committee has determined to
7 delete timekeeping. It remains my view, I think it remains
8 the view of most members of the committee and of this board,
9 that we ought to have timekeeping not only for lobbying
10 but for all purposes. We passed it; we've never rescinded
11 it. But, it was the judgment of the committee that it
12 would be better to fight a timekeeping battle on the big
13 picture and not to let it get tied up with the question
14 of the substantive regulation of lobbying.

15 MR. VALOIS: Mr. Wallace, let
16 me ask you a question and that is, why would not the time
17 which is money idea apply here, when you refer to indirect
18 expenses. Why would not the salary, at least, be a...it's
19 either a direct or indirect expense.

20 MR. WALLACE: I hadn't gotten
21 an accountant here and I'm not sure I can tell you how our
22 recipients can properly account for their funds without having
23 some way to judge the time that was spent, to make some

1 allocation of salaries. I don't know how it can be done.
2 Mr. Williams who has been before us on the question of costs
3 and on our part 1625 regulations has repeatedly reminded us
4 that it is the burden...the burden is on our recipients to
5 prove that all of their expenditures were proper. All I'm
6 doing here is to say, if you can prove your expenditures were
7 proper without keeping time records, you've got the right to
8 try.

9 MR. VALOIS: So, you're saying
10 that it would be all right for Mr. Williams to ask them how
11 much salary was spent on that particular activity?

12 MR. WALLACE: Absolutely. It's
13 their burden to establish that a proper allocation has been
14 made. But, if they think they can do it without timekeeping,
15 they've got a right to try. That's all it means.

16 MRS. BERNSTEIN: We discussed
17 this this morning, Clark, and I made my pitch for the fact
18 that we've got a different Congress this year and there's no
19 reason not to send it up if we believe in timekeeping and I
20 won't belabor the matter.

21 MR. WALLACE: There's no motion.

22 MRS. BERNSTEIN: There's no
23 motion. That's the way it is. I'm just telling you.

1 MR. WALLACE: It's part of
2 the report and there's been no motion made to amend the
3 report.

4 MRS. BERNSTEIN: I could
5 count noses.

6 MR. WALLACE: Yes, it's...
7 as it appears on page...the top of page 19, very technical.
8 We just added 1630, which is the questioned cost regulations.
9 The last sentence is essentially subsumed in the questioned
10 cost regulation. Through Part 1630 we may recover costs
11 incurred by recipients as a result of activities prescribed
12 by this party.

13 When you get to page 20, you get into probably the most
14 contentious parts of this regulation. Thirteen-A was already
15 in the regulation, that's the regulation as it exists. We
16 permit the use of private funds to engage in legislative and
17 administrative lobbying on Legal Services matters. B was
18 adopted on a three to two vote by the committee. I will
19 describe for the benefit of the full board what I described
20 for the benefit of the committee this morning.

21 I have drawn throughout this regulation the distinction
22 between bringing a matter to a public official's attention,
23 which is something you can do with our funds, and conducting

1 a full court press on the issue, which you can't. What
2 13B would permit is the use of private funds to conduct that
3 full court press. You may not solicit a client, but if
4 you have an unsolicited client for whom you may bring a
5 matter to a legislator's attention, in that case you may
6 use private funds to go beyond that and to do other things
7 which might be done in the lobbying situation. You can
8 write floor speeches for the member, you can work on
9 committee report language. You can do all the various
10 and sundry things that you would be able to do consistent
11 with ethical limitations on a...for any other client.
12 You cannot conduct grass roots lobbying. You cannot go
13 around and encourage people to beat up on that legislator
14 to get you what you want. But in-house lobbying may be
15 done to the full extent of ethical obligations and limitations.

16 13B was adopted in the committee as you see it here
17 in this book by a three-two vote. If somebody wants to
18 revisit that issue, I guess now is the time to do it,
19 before I go on to anything else.

20 MRS. BERNSTEIN: I move to
21 strike it.

22 MRS. SWAFFORD: Second it.

23 MR. DURANT: Discussion?

1 MR. DURANT: Discussion?

2 MR. WALLACE: I will say
3 for the benefit of the full board what I said to Bernstein
4 this morning, that if Congress didn't want to use public
5 funds on something it is reasonable to suppose they didn't
6 want to use private funds on it, either. That's what 1010C
7 means. But 1010C did not specifically cover this. This is
8 in the rider. This is an area where I think we have
9 discretion. We used our discretion last time to prohibit
10 the use of private funds in this manner, and we were
11 denied the authority to enforce the regulation. I think
12 we were right last time. I'd like to vote for this with
13 Mrs. Bernstein this time, but this is part of the compromise
14 process that we've been discussing, and I think this is
15 the best deal we can get.

16 MRS. BERNSTEIN: For the
17 benefit of anybody who wasn't here this morning, what
18 Michael said earlier today was that he believes that
19 legally that I'm right and morally I'm right, but that he
20 sold out.

21 MR. WALLACE: The object of
22 politicians is to sell out for the best price you can
23 get, and I think this is the best price we can get.

1 MR. MENDEZ: This is
2 the key language if he compromises at...

3 MR. DURANT: That's correct.

4 MR. WALLACE: Congressman
5 Locke's administrative assistant used to tell me that my
6 problem was that I wasn't diplomatic, and that's why he
7 got to be ambassador of Barbados and I got this job.

8 But that's all that's going on here. You can describe
9 it in flowery terms as the art of compromise, or you can
10 describe it as selling out for the best price you can
11 get. This I think is the best price we can get on this
12 regulation, and I'll vote for it.

13 MR. VALOIS: Does your
14 approval of Section B...let me withdraw that, I see it
15 now. I couldn't find it before.

16 MR. DURANT: Mr. Wallace,
17 let me say one brief thing if I can. I'm going to vote
18 as I did in the committee in favor of this. I have
19 because of 1010C my reservations. I don't see this as a
20 matter of selling out or anything of that sort.

21 MR. WALLACE: You're more
22 diplomatic. Maybe you can be ambassador to Barbados.

23 MR. DURANT: As I said at

1 the conclusion of our meeting in December when Mr. Hausman
2 was there during your committee meeting, I think it has
3 been important both symbolically and actually to try and
4 work out one of the tougher problems that has confronted
5 this board. I have had numerous conversations with the
6 appropriate members on the Hill. I am convinced that
7 this is consistent with our mission, to explore this and
8 to allow this. Again, because of the hard work that you
9 and Mr. Hausman have put in on this, I'm supporting it.
10 Any other discussion?

11 MR. MENDEZ: Mr. Durant, I don't
12 support it because those two guys worked hard. That
13 makes very little difference to me.

14 MR. DURANT: Well, you know
15 what I mean, Mr. Mendez. The motion that is on the table
16 is Mrs. Bernstein's motion to strike. Mr. Smegal?

17 MR. SMEGAL: In over 50
18 years, Clark, I haven't sold out to anything. I vote no.

19 MR. DURANT: Mr. Eaglin.

20 MR. EAGLIN: No.

21 MR. DURANT: Wait a minute,
22 I'd better write these down in case this is close. Mr.
23 Wallace.

1 MR. WALLACE: I've got to
2 ask Mr. Smegal about that some time, but I'll vote no.

3 MR. DURANT: Mr. Valois.

4 MR. VALOIS: No.

5 MR. DURANT: Mr. Smegal, I
6 haven't, either, and I still vote no. Mrs. Bernstein.

7 MRS. BERNSTEIN: Yes.

8 MR. DURANT: Mrs. Swafford.

9 MRS. SWAFFORD: You missed one.

10 MR. DURANT: I'm sorry.

11 Mr. Mendez.

12 MR. MENDEZ: No.

13 MR. DURANT: Mrs. Swafford.

14 MRS. SWAFFORD: Yes.

15 MR. DURANT: Mr. Uddo.

16 MR. UDDO: No.

17 MR. DURANT: Mrs. Miller.

18 MRS. MILLER: Yes.

19 MR. DURANT: Mrs. Benavidez.

20 MRS. BENAVIDEZ: No.

21 MR. DURANT: The motion is
22 not carried, the motion to strike is not carried.

23 MR. WALLACE: Mr. Chairman,

1 C is somewhat complicated. First I'm going to read it to
2 you because it has been amended from what you see before
3 you. Then I'm going to try to explain to you what it
4 means.

5 A recipient may use private funds to pay reasonable
6 annual dues to organizations which are tax exempt under
7 Section 501C-3 of the Internal Revenue Code, provided
8 however, that such funds may be used only for purposes
9 otherwise permitted by the act and all regulations adopted
10 pursuant thereto.

11 What we are saying is that you may not use private
12 funds to pay dues which then may be used for unrestricted
13 purposes. We are saying that you may use private funds
14 to go to an organization, and those private funds may be
15 used for all the purposes for which our funds might be used,
16 but no farther.

17 As we've already discussed earlier, we're requiring a
18 segregation of accounts; that's back in Section 3A as I
19 recall. What we're saying is, private funds from our
20 recipients may go into the same account with Legal Services
21 funds, and they may be used for the same purposes as
22 Legal Services funds. They may not be used for other
23 purposes. This, it seems to me, is mandated by Section

1 10-0785 of the act and by 1010C. The act prohibits
2 directly or indirectly influencing legislation. 1010C
3 says you can't use private funds for purposes that our
4 funds would be prohibited for. If you cannot use our
5 funds to conduct impermissible lobbying, you should not
6 be able to take private funds, give them to an organization
7 to which you pay dues, and permit those funds to be used
8 for purposes prohibited by 1007A-5.

9 Now, this is a very complicated piece of language,
10 but all it says is, yes, you may use private funds to pay
11 reasonable dues, but those funds may only be used for
12 purposes consistent with the act and these regulations.

13 As I read it, which is somewhat more extensive than
14 what you see on the paper, that provision was adopted by
15 the committee on a three to two vote. Again, if there's...

16 MRS. BERNSTEIN: As one of
17 the two, I think the issue could be stated simply in another
18 way. That is that if we have a purpose of serving clients,
19 that this as it's stated doesn't give any limitation on
20 the number of 501C-3 organizations to which we can pay
21 dues, nor really the kind of control...we have no control
22 over those organizations and what they will actually
23 spend those dues monies for.

1 Therefore, I think it's unnecessary and we shouldn't
2 be addressing this. I would move to strike it.

3 MRS. SWAFFORD: Second.

4 MR. DURANT: Any discussion?

5 MR. WALLACE: I would say
6 this. The amount of dues is to be reasonable. That's in
7 the language here. We have a separate section in our
8 code of regulations describing what kind of organizations
9 we can pay dues for, has to be related to the practice of
10 law, to provision of legal services.

11 So some of Mrs. Bernstein's concerns are dealt with
12 elsewhere in the regulation, but it is a fact that you
13 pay money to other people who don't file their accounts
14 with us, and you do have a good bit of trouble tracking
15 where that money goes and what it's used for. We've got
16 some guidelines on it, but it ain't perfect. You've got
17 a point.

18 MRS. BERNSTEIN: You can go
19 ahead and call the question.

20 MR. DURANT: The question
21 has been called. Mr. Smegal.

22 MR. SMEGAL: On the motion
23 to strike, I vote no.

1 MR. DURANT: Mr. Eaglin.

2 MR. EAGLIN: No.

3 MR. DURANT: Mr. Wallace.

4 MR. WALLACE: No.

5 MR. DURANT: Mr. Valois.

6 MR. VALOIS: Yes.

7 MR. DURANT: Chairman votes

8 no. Mrs. Bernstein?

9 MRS. BERNSTEIN: Yes.

10 MR. MENDEZ: No.

11 MRS. SWAFFORD: Yes.

12 MR. UDDO: No.

13 MRS. MILLER: Yes.

14 MRS. BENAVIDEZ: No.

15 MR. DURANT: The motion fails.

16 MR. WALLACE: D did not

17 pass the committee. That would have slightly or greatly
18 or somehow broadened the use of private funds for the
19 pending meetings and coalitions. That provision did not
20 find favor with the committee and is not part of the
21 committee report.

22 E was adopted...of course, it's now D...on a vote of
23 three to two. Now, this has to do again with the

1 distribution of newsletters. I told you the kind of
 2 newsletters that could not be sent to the public at large
 3 or to clients generally, and that is a newsletter that
 4 has a reference to pending or proposed legislation that
 5 is not merely incidental, but is the main thrust of the
 6 piece. You cannot use our funds to send that kind of a
 7 newsletter to the public generally or to clients generally.
 8 You can use private funds to send that kind of a newsletter
 9 to the public generally and clients generally. You
 10 produce the program; you can send it out with private
 11 funds to other people.

12 There must be a proper allocation of production costs
 13 between private accounts and public accounts. As I
 14 understand the thrust of other regulations, Part 1630,
 15 for instance, and Mr. Hausman has agreed with this, if
 16 you are going to send half of it to people who are in the
 17 world at large and half to people who are clients and
 18 providers you have a specific right to do it. You would
 19 have to allocate half the production costs to private
 20 funds and half of it to public funds and accordingly with
 21 whatever the proportion is.

22 I'm not an accountant, but that's roughly what you
 23 have to do. You'd have to allocate the cost of supporting

1 your audience. This was adopted again by a three to two
2 vote in the committee and is part of the committee report.

3 That completes the committee report, Mr. Chairman.

4 MRS. BERNSTEIN: I would
5 move to strike that, if we can have a consensus of the
6 board in the preamble that there be as much explication
7 as possible regarding the necessity for properly allocating
8 these funds, and that that will be something that the
9 programs can be held accountable for.

10 MR. WALLACE: Mrs. Glasso
11 didn't have the great thrill of working on Part 1630, but
12 I'm sure you'll hear all about it in the time to write
13 the preamble. As I say, Mr. Chairman, that completes the
14 committee report, and before the board now is the committee
15 report as amended by the board for the board's final
16 disposition. I don't think you need to move the committee
17 report.

18 MR. SMEGAL: I would move
19 its adoption. I think you have to do something with it.

20 MR. WALLACE: I move the
21 adoption of the committee report.

22 MRS. BERNSTEIN: As amended
23 by the board.

1 MR. WALLACE: As amended,
2 and I'll second.

3 MR. DURHAM: Any discussion?

4 MR. UDDO: Could I just ask
5 one question? Alan, what are your...I know we talked
6 about the compromise. You hadn't said much, though,
7 during the board meeting. Is this a pretty satisfactory
8 regulation to you?

9 MR. HAUSMAN: Yes, this
10 is...I think this is a fair compromise...we worked long
11 and hard to get deliberation from the committee and from
12 the staff, and I think this is a fair compromise in our
13 competing points of view. To the extent I have anything
14 to say about it, we can live with it.

15 MR. MENDEZ: In everyday
16 language, what he's saying, he's going to walk the extra
17 mile to make sure that this pass is caught.

18 MR. UDDO: Is that what
19 you're saying? You would recommend it to Congress?

20 MR. HAUSMAN: I don't think
21 we can...I can't speak for everyone...but if this is
22 adopted I don't think we're in a position to...

23 MR. WALLACE: Just so the

1 board understands, Congress doesn't have to pass this
2 thing; we're passing this thing.

3 MR. MENDEZ: We understand
4 that. I think that's very clear, but we also like to
5 make sure that we don't have the language come back to
6 haunt us.

7 MR. UDDO: The reason I ask
8 is, I'm interested in knowing what Mr. Hausman thinks
9 about it. It certainly was an awful lot of work. I take
10 it, whether you can speak for all your organizations or
11 not, you personally support this...

12 MR. HAUSMAN: I entered
13 into good faith negotiations in our major issues, and we
14 reached a compromise that I can live with, and I think my
15 clients can live with.

16 MR. MENDEZ: I'll take that
17 as a yes. That's a yes?

18 MR. HAUSMAN: That's all I
19 can say. We did this on 1630, and I can't see that this
20 would act any different. We reached a compromise and
21 we're stuck with that. I don't go back on a compromise...

22 MR. VALOIS: Would it be
23 fair to say that if the Chairman asked you to go up and

1 personally support it, you would do so?

2 MR. WALLACE: Give the man
3 a break.

4 MRS. SWAFFORD: I wanted to
5 hear Mr. Hausman say he would personally recommend it.

6 MR. HAUSMAN: I would
7 personally recommend it. I said that.

8 MRS. SWAFFORD: That's good.

9 MR. UDDO: I call the question.

10 MR. DURANT: Mr. Uddo, do
11 you mind if I let Mr. Smegal...

12 MR. SMEGAL: I happen to
13 agree with Senator Rudman that I don't believe this
14 particular regulation is necessary. I'm going to vote
15 for it, because I believe Mr. Wallace and Mr. Hausman
16 have gone the extra mile between them to work out their
17 differences. I am particularly impressed with the way
18 they did it.

19 MR. DURANT: The question
20 has been called. Mrs. Benavidez.

21 MRS. BENAVIDEZ: Yes.

22 MR. DURANT: Mrs. Miller?

23 MRS. SWAFFORD: I have one

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more question.

MR. DURANT: I'll come back

back to your question.

MRS. SWAFFORD: I'm sorry.

I'll withdraw it.

MR. DURANT: Mr. Uddo.

MR. UDDO: What?

MR. DURANT: You're voting,
yes or no.

MR. UDDO: Yes.

MR. DURANT: Mrs. Swafford.

MRS. SWAFFORD: Yes.

MR. DURANT: Mr. Mendez.

MR. MENDEZ: Yes.

MR. DURANT: Mrs. Bernstein.

MRS. BERNSTEIN: Yes.

MR. DURANT: The Chairman votes
yes. Mr. Valois.

MR. VALOIS: Yes.

MR. DURANT: Mr. Wallace.

MR. WALLACE: Yes.

MR. DURANT: Mr. Eaglin.

MR. EAGLIN: Yes.

1 MR. DURANT: Mr. Smegal.

2 MR. SMEGAL: Yes.

3 MR. DURANT: My God, it's
4 unanimous. The next item on the agenda is public comment.

5 MR. MENDEZ: About what?

6 MR. DURANT: I don't know.

7 MR. MENDEZ: Why don't we
8 reserve that for after the executive session?

9 MR. DURANT: Hearing none,
10 we will now go into executive session for personnel and
11 personal matters litigation and investigation matters.
12 Mr. Baker, where is that?

13 MR. BAKER: Room 334.

14 MR. DURANT: If we could
15 ask that the room...it would be a lot easier for the
16 court reporters if you could please leave and then they
17 can conduct the session in here.

18 (WHEREUPON, the proceedings were concluded at 4:15 p.m.)

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C A P T I O N

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The foregoing meeting came on before the Legal Services Corporation Board of Directors in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the meeting be taken by the reporter and that same be reduced to typewritten form.

C E R T I F I C A T E

STATE OF VIRGINIA:

AT LARGE:

I, GAIL W. TIMBERLAKE, Notary Public for the State of Virginia At Large, do hereby certify that the foregoing was reported by stenographic and mechanical means, which matter was held on the date and at the time and place set out on the title page hereof, and that the foregoing constitutes a true and accurate transcript of same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

GIVEN under my hand and seal this 4th day of February, 1987.

My Commission Expires:
February 21, 1989

Gail W. Timberlake
Notary Public

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