

# TRANSCRIPT OF PROCEEDINGS

## RETURN TO CORPORATION SECRETARY ARCHIVES FILE

LEGAL SERVICES CORPORATION  
OPERATIONS AND REGULATIONS COMMITTEE

January 30, 1987

10:05 a.m.

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

### A P P E A R A N C E S

Michael B. Wallace, Chairman  
LeaAnne Bernstein, Member  
Lorain Miller, Member  
Thomas F. Smegal, Member  
W. Clark Durant, III, ex officio

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P R O C E E D I N G S

1  
2 CHAIRMAN WALLACE: And, what I  
3 would like to do is call this meeting of the  
4 Operations and Regulations Committee to order.

5 The first item on the agenda is the approval of  
6 the agenda as printed in your Board Books. It ain't  
7 much of an agenda. We've got approval of agenda,  
8 approval of minutes and the lobbying regulation.

9 The Chair will ask unanimous consent to approve  
10 the agenda as written in the Board Book.

11 MRS. BERNSTEIN: So moved.

12 MRS. MILLER: Second.

13 CHAIRMAN WALLACE: All in  
14 favor?

15 (Chorus of Ayes.)

16 CHAIRMAN WALLACE: Opposed?  
17 Our agenda is approved.

18 I've got to be honest with everybody. I haven't  
19 read these minutes and I'm not prepared to vote on  
20 the minutes at this point. I would like to postpone  
21 those until the next meeting unless there is a crying  
22 need to get these minutes approved now.

23 MRS. BERNSTEIN: That's fine.

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1 with me. I did read them and they seem all right to  
2 me, but the only thing I'm confused about is  
3 according to the minutes we still have leftover  
4 minutes to approve again from the December...

5 CHAIRMAN WALLACE: We approved  
6 those leftover minutes in January.

7 MRS. BERNSTEIN: That's what I  
8 thought.

9 CHAIRMAN WALLACE: We don't  
10 have the January 8th or whatever it was, Committee  
11 minutes. They're not ready yet.

12 MRS. BERNSTEIN: Okay. That's  
13 what was confusing me. Okay.

14 CHAIRMAN WALLACE: On January  
15 8th, we did approve the leftover minutes.

16 MR. BAKER: Right.

17 MRS. BERNSTEIN: That's what I  
18 thought.

19 CHAIRMAN WALLACE: So the  
20 minutes left to go, are December 15th and January  
21 8th. And we'll do those next time.

22 All right, hearing no dissent, let's get right  
23 down to business.



1           Suzanne Glasow has been with the General  
2 Counsel's office since the past year and, in respect  
3 to the 1612 Regulation, has worked both with me and  
4 with Alan Houseman, most recently in going over the  
5 draft which will be before the Committee this  
6 morning.

7           I know her to be a competent and experienced  
8 attorney and I am sure she will be able to render  
9 you, Mr. Chairman, the services you expect to  
10 receive.

11                           CHAIRMAN WALLACE: I am  
12 satisfied of that, Mr. President. Miss Glasow,  
13 welcome. Mr. Houseman, you're well known to this  
14 Committee. Welcome again.

15           The procedure as it was at the last meeting, the  
16 basic document before this Committee is the  
17 regulation as it exists and as it has been  
18 republished. In order to amend the regulation it  
19 takes a majority vote. A tie does not go to runner  
20 in this circumstance and where we are is, on  
21 publicity and propaganda.

22           Miss Glasow, I'll ask you, if you would, to  
23 explain the discussions that you all have had over

1 the last couple of weeks about the publicity and  
2 propaganda section and what it is that this will  
3 entail?

4 MISS GLASOW: The use of the  
5 word indirect on Page 5, so if you read it, an  
6 indirect and change it to amounts to a direct  
7 question...

8 MRS. BERNSTEIN: Can't hear  
9 you.

10 MISS GLASOW: We've agreed to  
11 that change, amounts to a direct, be one of the  
12 recommendations...

13 CHAIRMAN WALLACE: Can you  
14 tell us the opinion of the General Counsel's office  
15 as to how much substantive difference that makes  
16 between indirect and amounts to a direct?

17 MISS GLASOW: It really would  
18 be a fine line difference because...is the mike on?

19 CHAIRMAN WALLACE: It's on,  
20 you're just going to have to shout at it.

21 MISS GLASOW: All right. It  
22 just doesn't make a significant difference so that we  
23 would really be concerned about it.

1 CHAIRMAN WALLACE: Okay.

2 MISS GLASOW: It would really  
3 be a fine line interpretation in a specific case.

4 CHAIRMAN WALLACE: Any  
5 questions from the Committee on that particular  
6 proposal at the top of Page 5.

7 MR. SMEGAL: Is it the top of  
8 Page 5, Mr. Wallace or the middle of Page 5?

9 CHAIRMAN WALLACE: No, the one  
10 I'm talking about is at the top of page...

11 MRS. BERNSTEIN: Because  
12 that's the wrong draft.

13 MISS GLASOW: It's Line 3 on  
14 Page 5.

15 MRS. BERNSTEIN: You're  
16 working from the Houseman draft rather than from our  
17 draft.

18 CHAIRMAN WALLACE: Oh, have we  
19 got a new draft? The last draft...oh, I see, wait a  
20 second.

21 MRS. BERNSTEIN: No, no, no.  
22 You work from the original, you make the amendment...

23 CHAIRMAN WALLACE: Well, I

1 understand that. The part that we are amending in  
2 the Board Book is publicity and propaganda. It's on  
3 Page 28 of the Board Book.

4 The amendment that we're considering is printed  
5 at the top of Page 5 of the draft that was sent to us  
6 earlier this week.

7 MR. SMEGAL: Completion of an  
8 indirect and substitution, therefore, of amounts to a  
9 directness?

10 CHAIRMAN WALLACE: That's  
11 right.

12 MR. SMEGAL: We're on just  
13 that?

14 CHAIRMAN WALLACE: That's it.  
15 And my question is whether any member of the  
16 Committee has questions of the panel before us on  
17 this proposed change?

18 Hearing no questions, I would ask unanimous  
19 consent that publicity or propaganda be amended as  
20 we've discussed, substituting amounts to a direct for  
21 an indirect.

22 Hearing no dissent, so ordered.

23 MRS. BERNSTEIN: Mike, before

1 you go on with something else, can I just ask...Mr.  
2 Bayly sent us a draft this last week that said,  
3 "Please find enclosed a draft of Part 1612 and the  
4 enclosed documents, the most recent draft submitted  
5 by Alan Houseman, incorporates the results of the  
6 latest discussions."

7 Since I didn't get this in time to spend any  
8 time with it and I was working with Mr. Houseman's  
9 earlier draft, could I just ask that whenever we get  
10 to places where there is a difference between Mr.  
11 Houseman's earlier draft and this draft that you  
12 point it out, because I'm going to try to follow all  
13 three drafts, but, you know, I would just appreciate  
14 knowing where the differences are, because I marked  
15 up the old one that I thought we were going to be  
16 using.

17 MR. SMEGAL: Are there some  
18 differences?

19 MR. HOUSEMAN: The differences  
20 are relatively minor word changes that we have  
21 described. They're not...

22 MRS. BERNSTEIN: All I ask is  
23 that when we come to them, rather than my trying to

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1 search each word...

2 MR. HOUSEMAN: The differences  
3 are relatively just editing word change differences,  
4 in my opinion, are minor.

5 MR. SMEGAL: Okay. Well, I  
6 would appreciate that, too, because I assumed  
7 LeaAnne, they were the same and I threw away the  
8 other one. I only have one.

9 MRS. BERNSTEIN: Yes. I  
10 marked up the one Alan had given us at the last  
11 meeting, so...

12 MISS GLASOW: It would just be  
13 a little minor change...

14 MRS. BERNSTEIN: I'm willing to  
15 try to find them, but I would appreciate help.

16 MR. SMEGAL: Mr. Chair, if we  
17 could go back then and let me see if I understand  
18 correctly that the document I have before me has an  
19 insertion at the top of Page 3. Have we discussed  
20 that?

21 CHAIRMAN WALLACE: We voted  
22 that one at the last meeting.

23 MR. SMEGAL: That's in.

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CHAIRMAN WALLACE: That's as far as we got...

MR. SMEGAL: As far as I can get now, is the next change is the one we just voted on?

CHAIRMAN WALLACE: That's right. Now, the next change is pending or proposed. Now, that is the language of the rider on publicity or propaganda and all we're doing with this is correcting the language of the rider, is that correct, Miss Glasow?

MISS GLASOW: That is correct. Inserting the word pending into the rider.

CHAIRMAN WALLACE: All right. I think pending is used and proposed isn't, but, they are more or less the same thing.

Any questions from members of Committee on that proposal?

Hearing none, I ask unanimous consent that pending or proposed be inserted as found in this discussion draft.

Hearing no dissent, so ordered.

Miss Glasow, I think the meat of this problem is

1 the sentence at the bottom of M and I'd appreciate it  
2 if you'd discuss it for the Committee.

3 MISS GLASOW: The addition of  
4 the very long sentence at the end basically just  
5 states what is allowed under the rider. It's kind of  
6 an affirmative statement saying what is allowed and  
7 what is not allowed and we really don't have any  
8 problems with adding this, directly in adding it.

9 MR. HOUSEMAN: There is one  
10 change here. Can I just jump in?

11 CHAIRMAN WALLACE: Yes,  
12 please, if there is a change...

13 MR. HOUSEMAN: The last draft  
14 said describing and the recommendation of the General  
15 Counsel's office and Fred Williams, be changed to  
16 neutral reporting of.

17 CHAIRMAN WALLACE: Okay.

18 MR. SMEGAL: So the language I  
19 see, neutral reporting of is what we're considering  
20 now?

21 CHAIRMAN WALLACE: That's what  
22 we're considering now.

23 The proviso at the end is something that I had

1 requested because I am...and we discussed this at the  
2 last meeting...we had seen newsletters that have gone  
3 out and they have what appears to be fairly neutral  
4 reporting and then at the end they tell you how to  
5 contact your Congressman and I don't think that's  
6 neutral, I think that's advocacy.

7 I would also note that I see in the paper up  
8 here that the IRS is proposing new regulations pretty  
9 much on this same subject, as to what constitutes  
10 neutral affording and what constitutes lobbying. And  
11 those are still proposals and I don't know enough  
12 about them to incorporate them here, but if the IRS  
13 makes some changes it may be that we will have to, at  
14 some point down the road, consider the benefit of  
15 their judgment.

16 Mrs. Bernstein?

17 MRS. BERNSTEIN: Could I make  
18 a suggested addition to this, which I don't think  
19 changes the tenure of what you're wanting in that  
20 last proviso.

21 To include, provided, however, that such  
22 communication may not provide information about who  
23 to contact.

1 CHAIRMAN WALLACE: Okay. Whom  
2 to contact, but otherwise...

3 MRS. BERNSTEIN: All right, I  
4 don't care...whom to contact, how to support or  
5 oppose, I guess it would be.

6 CHAIRMAN WALLACE: Well, we've  
7 got support or oppose in there.

8 MRS. BERNSTEIN: I'm just  
9 saying insert, whom to contact.

10 CHAIRMAN WALLACE: Or how to  
11 support or oppose. That's certainly consistent with  
12 my concern.

13 MRS. BERNSTEIN: In other  
14 words, you don't have to have a description about how  
15 do you go about filing your comments. It would be  
16 enough to violate this if you said that your  
17 representative is, or the, you know, the Committee  
18 that was going to be dealing with this is.

19 Because I think that is, in my mind, that is an  
20 indirect...which we took out indirect...but amounts  
21 to a direct invitation for someone to get involved on  
22 this issue.

23 CHAIRMAN WALLACE: That's

1 exactly the problem I was trying to address with this  
2 language and that clarifies it as far as I'm  
3 concerned.

4 Mr. Smegal, you...

5 MR. SMEGAL: I think that's an  
6 excellent suggestion and in order to save the Chair  
7 the embarrassment of seconding LeaAnne's proposal,  
8 I'll do it.

9 CHAIRMAN WALLACE: Okay. Let  
10 me ask unanimous consent that we amend this  
11 Subsection M with the language printed in this draft,  
12 including the language that Mrs. Bernstein has just  
13 inserted, whom to contact, how to support or oppose.

14 That is my unanimous consent request. Is there  
15 any dissent?

16 Hearing none, so ordered.

17 I don't have a proposal on 1612.2, but I want to  
18 make clear what I understand 1612.2 to mean.

19 When we're talking about acceptance hereinafter  
20 provided, what we're talking about is Section  
21 1612.13. That tells us what you can use private  
22 funds for and that's where you refer. I don't think  
23 there's any necessity to insert that in the language,

1 but if anybody is laboring under a different  
2 impression, please speak now or forever hold your  
3 peace.

4 No problem? No problem.

5 MRS. BERNSTEIN: Can I just  
6 ask when this is published as final then in the  
7 preamble that that be, you know, made clear and the  
8 reference to be made in the preamble then to the  
9 section.

10 CHAIRMAN WALLACE: All right.  
11 If you'll note of that, Miss Glasow, I guess you'll  
12 wind up with the job of preamble writing.

13 Let's go on to Page 6. Legislative activity in  
14 general.

15 Miss Glasow, if you can explain as best you can,  
16 the proposed deletion of, they will maintain separate  
17 offices.

18 MISS GLASOW: The deletion  
19 here basically was meant to satisfy a real concern in  
20 Senator Rudman's Office. He just really opposes this  
21 and we decided to go ahead with the deletion of it.  
22 We don't see it as a large enough issue. The general  
23 language would probably cover this, anyway,



1 is the purpose of regulation, that we ought to leave  
2 it in.

3 CHAIRMAN WALLACE: Mr.  
4 Houseman?

5 MR. HOUSEMAN: The  
6 old...you're got to separate out two things here.  
7 The new language, political or legislative activities  
8 is very broad language. It incorporates  
9 administrative representation. The political  
10 activities incorporates administrative  
11 representation.

12 CHAIRMAN WALLACE: In rule  
13 making.

14 MR. HOUSEMAN: Well...

15 CHAIRMAN WALLACE: Okay,  
16 didn't we delete adjudicatory proceedings from...

17 MR. HOUSEMAN: From  
18 legislative activities...

19 CHAIRMAN WALLACE: Right.

20 MR. HOUSEMAN: But not from  
21 political activities and some political activities  
22 may include administrative representations and that's  
23 the problem with this. As a practical matter there

1 are offices that may engage solely in administrative  
2 representation which may be technically covered by  
3 this which, clearly, none of this can be covered.  
4 That point, with the practical argument that it  
5 doesn't have any impact. It could have an impact  
6 because of the broad definition.

7 I thought what we were trying to get at was, we  
8 couldn't maintain an office solely for engaging in  
9 legislative activities...lobbying activities. There  
10 is no such office that engages solely in lobbying  
11 activities.

12 So, it seemed to me, when I proposed to strike  
13 it was, I don't think there's any prohibition in the  
14 writer of the act against this in the first place and  
15 that as a practical matter, what we're really  
16 concerned about isn't going to happen and hasn't  
17 happened, but there are problems with this language  
18 and, instead of going back and trying to amend the  
19 language, why don't we just strike the section.

20 That's how we got to this in the first place.

21 CHAIRMAN WALLACE: Well, Mrs.  
22 Bernstein, while I appreciate your confidence in my  
23 persuasive abilities, I'm afraid that this is a fight

1 I don't particularly care to get into. I'm going to  
2 have some fights that I'll get into on this later on  
3 and I'll think I'll keep my powder dry for that.

4 Mr. Smegal?

5 MR. SMEGAL: Well, I was going  
6 to say that, Mr. Wallace, exactly as you said it. It  
7 seems to me that where Senator Rudman has spoken and  
8 the matter is, as Counsel points out, relatively  
9 inconsequential, it seems to me we ought to save our  
10 resources with Senator Rudman for issues that really  
11 have a meaningful impact on our activities as a Board  
12 and this is not one of them, clearly.

13 MR. WALLACE: I think we will  
14 want a roll call vote on this, so I will not ask for  
15 unanimous consent.

16 I will move to delete A, maintain separate  
17 offices. Is there a second?

18 MR. SMEGAL: Second.

19 MR. WALLACE: Is there further  
20 debate?

21 All right. Mr. Smegal, how do you vote?

22 MR. SMEGAL: I vote Aye.

23 CHAIRMAN WALLACE: The Chair

1 votes Aye. Mrs. Bernstein?

2 MRS. BERNSTEIN: No.

3 CHAIRMAN WALLACE: Mrs.

4 Miller?

5 MRS. MILLER: Yes.

6 CHAIRMAN WALLACE: All right,  
7 by a vote of 3 to 1, A is deleted.

8 Former B, now A, Miss Glasow, would you explain  
9 what we're trying to do here.

10 MISS GLASOW: Basically, we're  
11 trying to restrict the language that was already  
12 there, basically saying that dues can be paid to an  
13 organization, as long as the money is not used by  
14 that organization to engage in legislative activities  
15 for which LSC funds can't be used and they were  
16 putting the burden on the recipient to show that they  
17 have not violated the restriction.

18 There is the argument that it would free up  
19 other funds, but we, after a long discussion decided  
20 to agree to this additional language and there's just  
21 a lot of problems in trying to...

22 CHAIRMAN WALLACE: This is  
23 basically program specificity. I call this the Grove

1 City Amendment.

2 Mr. Houseman?

3 MR. HOUSEMAN: There was a  
4 change from the last draft. We changed the word  
5 certification to documentation and we added...we  
6 cleaned up the last phrase which, after subparagraph  
7 used to read, are not applicable and we said now, and  
8 not been violated.

9 MR. SMEGAL: You've also  
10 misspelled appropriate.

11 MISS GLASOW: Yes, I was just  
12 going to note that.

13 MR. HOUSEMAN: There are, I'm  
14 sure, given the speed with which we worked on this  
15 and the secretarial problem that both of us face,  
16 some typos and minor little things like that.

17 CHAIRMAN WALLACE: I have told  
18 my fellow Board members who haven't had the pleasure  
19 of living in Washington lately, what this place is  
20 like when it snows and we appreciate the efforts made  
21 by everybody to get as far as we've gotten.

22 The reason for documentation instead of  
23 certification, in response to a concern I expressed

1 three weeks ago, I don't...certification could  
2 include a project director taking an oath that he's  
3 never done anything wrong. That's not quite enough  
4 for me. Documentation is a little more solid. We  
5 would like to see some paperwork on this.

6 Miss Glasow, we have had some discussion and Mr.  
7 Houseman, we've had some discussion on what  
8 constitutes a bar association in this language.

9 I think when Mr. Bayly and I...I think you were  
10 in on the call, Miss Glasow...talked about this, we  
11 had some concerns about what a bar association was  
12 and wasn't.

13 Are you in a position to tell us your  
14 understanding of what you're going to put in the  
15 preamble on what a bar association is and isn't?

16 MISS GLASOW: We discussed,  
17 and Mr. Houseman may want to address this, too,  
18 speaking of the preamble, trying to clarify what a  
19 bar association is and it would basically include the  
20 national bars, the American Bar Association, state  
21 bars, the local bars and, I think it was addressed  
22 later in the grand tour and I have it written down  
23 somewhere else.

1 Do you know of any other bars that we agreed on?

2 MR. HOUSEMAN: Well, I think  
3 in reflecting about group organizations like the  
4 American Bar Association, the regular state bar  
5 association, like the Mississippi Bar Association,  
6 the Michigan Bar Association, and the local bar  
7 associations, like the Detroit Bar and the San  
8 Francisco Bar and...

9 CHAIRMAN WALLACE: Yes. What  
10 I would exclude from this language is organizations  
11 which I would describe as special interest bar  
12 associations. Assuming we get out of here by  
13 supertime tonight, I'm going to go over to the  
14 Banquet of the Federalist's Society this evening. It  
15 is a group of lawyers, but I would not consider it a  
16 bar association.

17 I would not consider the Republican National  
18 Lawyer's Association, on which I sit, as a bar  
19 association, and specifically, Mr. Houseman, I  
20 wouldn't consider NLADA to be a bar association.

21 I'm looking for general purpose, general  
22 membership bar associations with this language. And  
23 Miss Glasow, if you'll address that in the preamble,

1 I think that's probably going to be sufficient for  
2 everybody's needs.

3 Are there any other questions from members of  
4 the Committee about the proposed amendment to the  
5 dues paying association.

6 Before my quorum leaves the room, I will ask  
7 unanimous consent that we amend Subsection A on dues  
8 printed in the draft before us.

9 MR. VALOIS: Mr. Chairman,  
10 Mrs. Bernstein had to leave the room and asked me to  
11 convey to you that this one is okay, to quote her,  
12 but that she would prefer that you wait for her  
13 return on the next one.

14 CHAIRMAN WALLACE: Oh, on the  
15 next one. All right. Well, hearing...yes, he says  
16 yes.

17 Hearing no dissent, so ordered. I see Mr.  
18 Durant in the back, so my quorum is still here.

19 That's been done. Let us skip over  
20 transportation, if we can, in deference...tell you  
21 what.

22 Miss Glasow, what I'd like to do is skip over  
23 the rest of 3 until Mrs. Bernstein gets back because

1 I think she may have some questions about F. I'm  
2 going to go on to what I hope is relatively  
3 noncontroversial on Page 8, which is 5B and would you  
4 describe the purpose of the deletion in Subsection B?

5 MISS GLASOW: Basically the  
6 purpose was never...one, it's not required in the  
7 rider and it's...the documentation is covered later  
8 in the rule anyway and it was just felt that this was  
9 something we could compromise on that wasn't  
10 absolutely necessary. There is a lot of other...the  
11 Corporation already has the ability to require  
12 documentation for any time that a recipient is not  
13 following the rule. We can go in and find the  
14 documentation.

15 CHAIRMAN WALLACE: My sense of  
16 this is extra paperwork. Mr. Houseman, have you got  
17 anything to add on it?

18 MR. HOUSEMAN: No.

19 CHAIRMAN WALLACE: Are there  
20 any questions from any members of the Committee on  
21 this proposal? Hearing none, I ask unanimous consent  
22 that the deletion listed on Page 8 in Section 5B be  
23 approved.

1           Hearing no dissent, so ordered.

2           Let's go on to C, Miss Glasow.

3                       MISS GLASOW: On C there was  
4           some discussion of taking out, current eligible  
5           client. After further discussion we decided to keep  
6           in the entire language or current eligible client or  
7           clients. So we recommend using current eligible  
8           client in every basic pertinent part of the rule and  
9           we also added the language, bringing that client's  
10          specific and distinct legal problems to the attention  
11          of such officials.

12                       CHAIRMAN WALLACE: Well, let  
13          me talk about the next change at the bottom of the  
14          B...and I think I'm likely to ask for these in  
15          block...testimony before pertinent legislative  
16          committees relating to the legal problems of the  
17          client, and taking out specific legal problems of the  
18          client.

19                       That amendment is basically an accommodation to  
20          reality. When anybody testifies before a Legislative  
21          Committee, you testify about what the Committee wants  
22          you to testify about. And a regulation that says I  
23          can't talk about anything but the specific legal

1 problem of my client, is probably a little  
2 unenforceable. I think relating keeps it in the  
3 ballpark, but when you're in front of the  
4 Legislature, the Legislature, you know, it's their  
5 ball, they make the rules.

6 This is nothing more than a recognition of that  
7 reality, as far as I'm concerned.

8 Are there any other comments by anybody, just on  
9 this part of C on Page 8? Are there any questions  
10 from the Committee about these proposals on Page 8 on  
11 C?

12 All right. I will ask unanimous consent that the  
13 amendments to Subsection 5C, printed at the bottom of  
14 Page 8 of our discussion draft be accepted as  
15 printed.

16 Hearing no dissent, so ordered.

17 Let's go over to Page 9. Miss Glasow, we're  
18 still in C here, but there's been some rearrangement  
19 of documentation requirements and you might want to  
20 talk about C and E jointly, because we're explaining  
21 what is required and what isn't required.

22 MISS GLASOW: Okay. Here it  
23 says such communications may be made only if the

1 Project Director or Chief Executive Officer of such  
2 recipient...can we just change the word to Chairman?  
3 We said has given prior written approval for, instead  
4 of to, such communication after having been  
5 determined.

6 This is basically tracking the wording of the  
7 rider and the change in the wording there is just  
8 style changing of the sentence.

9 CHAIRMAN WALLACE: All right.  
10 What seems to have been done here, for the benefit of  
11 Mrs. Bernstein who has returned, we skipped over the  
12 rest of Subsection 3 and we're doing what I think are  
13 relatively noncontroversial.

14 We have moved up into Section 5C, the  
15 requirement that such communications not be the  
16 result of a participation of a coordinated effort.  
17 That's basically been moved up from E to C and it  
18 doesn't make a whole lot of substantive difference.

19 MRS. BERNSTEIN: Okay.

20 CHAIRMAN WALLACE: The changes  
21 in E, other than moving that from C...I'm sorry, from  
22 E to C, is that we have, I would say, cut back upon  
23 the documentation requirements. We have said that

1 you have to keep your written approval, you have to  
2 keep any written communications in writing and you  
3 have to have a retainer and that's all the  
4 documentation you have to have.

5 We'll talk about the form of the retainer in a  
6 little bit, that that is basically the rearrangement  
7 of C and E. Now, that's what we've done here. I  
8 think we may vote on these various amendments  
9 separately because there may be some discussion about  
10 one as opposed to the other, but let me ask at this  
11 point, whether there are any questions from members  
12 of the Committee on either C or E.

13 I think we ought to discuss them together,  
14 although we may vote on parts of them separately.

15 MRS. BERNSTEIN: Mike, I  
16 apologize for having to take a phone call. Did Bob  
17 ask you not to vote on Page 6, B?

18 CHAIRMAN WALLACE: That's  
19 right. We did not vote on anything else on  
20 Subsection 3 while you were gone.

21 MRS. BERNSTEIN: Okay.

22 CHAIRMAN WALLACE: And we'll  
23 come back to that. We moved onto things...in order

1 to keep moving...

2 MRS. BERNSTEIN: I appreciate  
3 that and I apologize again.

4 CHAIRMAN WALLACE: Let us  
5 finish where we are on Pages 9 and 10 and then we'll  
6 go back to 3...to Subsection 3 and pick those up.

7 So, what I'm trying to do now is to take  
8 questions, discussion and debate on everything in C  
9 and E, which is on Pages 9 and 10. As I say, we may  
10 vote on pieces of it separately, but let's discuss it  
11 together, because I think it's logically connected.

12 Do we have any questions on C and E? We haven't  
13 got any questions on them? Let me start with C then.

14 I would ask unanimous consent that C be amended  
15 as we see it at the top of Page 9 of the Discussion  
16 Draft and what I am including is the preliminary  
17 language on written approval after having determined  
18 and the addition of 3 at the bottom.

19 I'm asking that as one unanimous consent request  
20 to make that amendment.

21 Is there any dissent?

22 Hearing no dissent, so ordered.

23 Let's get down to E. We have made...we've

1 deleted some things and made a couple of additions.  
2 Let me talk about retainer for just a second.

3 This has been a major concern of the ABA. It  
4 is, frankly, a major concern that I have never  
5 understood Why in the world clients can't put their  
6 concerns in their own words, but it's there and it  
7 keeps coming back at us.

8 I have asked our staff whether these retainers  
9 have been particularly useful, in any way, in the  
10 course of monitoring. We were a year or so into a  
11 major monitoring effort. We have been told that  
12 we're caught up and the response I got from the staff  
13 is, these retainers don't amount to much. And I am  
14 satisfied, since the retainers don't amount to much  
15 anyway, to grease the squeaking wheel, which is why I  
16 am prepared to accept the language found at the top  
17 of 10. It's about that simple, as far as I'm  
18 concerned.

19 Does anybody on the Committee have any thoughts,  
20 comments or questions on that particular part of  
21 E...E3 now, I guess it is.

22 MRS. BERNSTEIN: I guess my  
23 only question would be to ask the General Counsel's

1 representative how it might be interpreted, as  
2 identified by the client? Is this going to be that  
3 the attorney drafts up the retainer and the attorney  
4 reads the retainer to the client and the client  
5 signs?

6 MISS GLASOW: Hopefully, the  
7 specific legal interest would be something that both  
8 the client and...the very first time that the client  
9 comes in and starts to speak to his lawyer.

10 We felt it wasn't necessary to state that with  
11 this language because a lawyer could lead a client  
12 into making a statement anyway. I mean, the client  
13 is relying on his lawyer to write down the legal  
14 reading for whatever that interest happens to be and  
15 it would be almost unenforceable.

16 I mean; it would be the kind of thing you would  
17 say well, does the client have to just sit down and  
18 write out in his own words what his legal interest is  
19 and the client really helps determine that with his  
20 lawyer, so it's kind of a client/lawyer relationship  
21 and, therefore, we didn't see a real problem with  
22 deleting it. And it does satisfy the...

23 MRS. BERNSTEIN: Okay, my

1 concern with this has been that clients may see,  
2 as their interest, the securing of a Social Security  
3 payment. And I think that's something that, you  
4 know, they can verbalize and the attorney can write  
5 down and say I want my Social Security payment that I  
6 feel I'm entitled to. Okay?

7 Now, the ways of getting that Social Security  
8 payment could include a class action to change the  
9 law, could include all sorts of things that the  
10 attorney then later relies on that may, in fact, keep  
11 that client from getting their Social Security  
12 payment for several years

13 And I think that our concern is to identify  
14 exactly what the client wanted at the beginning  
15 before we start getting lawyers of interpretations of  
16 the greater good that will be accomplished by  
17 combining lawsuits or...and not to say whether or not  
18 those things are good or bad...but to have some  
19 record at the beginning of what the problem was.

20 MR. HOUSEMAN: But, this  
21 language does that.

22 CHAIRMAN WALLACE: It will  
23 rise as before...

1 MR. HOUSEMAN: As identified  
2 by the client. I don't...

3 CHAIRMAN WALLACE: It relies  
4 as before on the good faith of the lawyer. If a  
5 lawyer wants to say, what you really need is a class  
6 action suit to prove that the Reagan Administration  
7 is full of mean, nasty, heartless individuals who are  
8 stealing food from your mouths, then the lawyer can  
9 dictate that if he wants to.

10 Any way we do this language it relies on the  
11 good faith of the lawyer and I don't see any way to  
12 get around that.

13 MRS. BERNSTEIN: Well, why  
14 couldn't we, instead of saying as identified by the  
15 client, as verbalized by the client. That certainly  
16 relies on the good faith of the lawyer, but you don't  
17 ask the...what I'm saying is that the lawyer could  
18 easily write down and say okay, as I am interpreting  
19 what you're saying, you want me to pursue the best  
20 legal remedy, in my view, for getting your Social  
21 Security payment back and the interest of the client,  
22 at the beginning, may have been an immediate...I'm  
23 just saying, I don't see any problem.

1           You know, there are secretaries, you know, an  
2 attorney can take down what the client says and then  
3 the client signs that. I don't see any problem with  
4 the client verbalizing it, rather than the client  
5 signing onto what...identified by the client...if you  
6 think that's the same thing and we can enter that  
7 into the preamble, fine.

8                       MISS GLASGOW: I basically see  
9 really, we're talking about two different things.  
10 The interest of the client and the way that interest  
11 is pursued are really two different things and, if  
12 you wanted to address how the interest is pursued,  
13 you would really need separate language.

14           But whether the client verbalized it...the  
15 interest...or identifies it, I don't see a difference  
16 in using that word would be a problem, because he can  
17 identify it verbally or by sitting down and writing  
18 it out and probably the lawyer is going to be the one  
19 that's filling out the form.

20                       CHAIRMAN WALLACE: And our  
21 concern with this language is, we want to know what  
22 the client says he wants and how you...if a lawyer  
23 doesn't want to tell you what the client says he

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1 wants, I don't see how we can make them.

2 I presume that most lawyers are going to tell  
3 you what the client says he wants and in that case  
4 the particular form of words chosen here are not all  
5 that big a deal. Not worth fighting over any  
6 further, it seems to me.

7 Mr. Smegal?

8 MR. SMEGAL: Well, it seems to  
9 me what Suzanne has said is most relevant. The word  
10 identified, in my view is broader than verbalize.

11 As she's pointed out, you may have a client  
12 who's unable to speak and maybe he can't write  
13 either. Identify covers all the circumstances.

14 CHAIRMAN WALLACE We  
15 considered that problem with the earlier language  
16 about the client's inability to communicate. I think  
17 identify covers any means of identification.

18 MRS. BERNSTEIN: Make your  
19 motion.

20 CHAIRMAN WALLACE: Let me take  
21 these separately. I don't see...I haven't heard any  
22 concern about the amendments to E set forth on Page  
23 9. So I'll take these separately.

1 I would ask unanimous consent to adopt the  
2 amendments to E set forth on Page 9 of the draft.

3 Hearing no dissent, so ordered.

4 Let's go on to 10. I will go ahead and move  
5 that we amend what was formerly Subsection 4. It is  
6 now Subsection 3 as set forth in the draft at the top  
7 of Page 10.

8 Is there a second?

9 MR. SMEGAL: Second.

10 CHAIRMAN WALLACE: Any further  
11 discussion on that issue?

12 Let's go ahead and vote on it.

13 MR. SMEGAL: Aye.

14 CHAIRMAN WALLACE: Chair votes  
15 Aye. Mrs. Bernstein?

16 MRS. BERNSTEIN: No.

17 CHAIRMAN WALLACE: Mrs.

18 Miller?

19 MRS. MILLER: Yea.

20 CHAIRMAN WALLACE: All right.  
21 That change is made and I will ask unanimous consent  
22 that we delete the Subsection 5 provision, because  
23 we've already moved that up to C on the earlier page.

1           Is there any dissent? So ordered.

2           All right. Let's back it up to Page 6, the part  
3           that Mrs. Bernstein asked us to skip over and come  
4           back to.

5           We are on Subsection 3, now B, used to be C,  
6           about paying for transportation. Miss Glasow, I'll  
7           ask you to explain this language to us and then we'll  
8           open the Committee for discussion.

9                   MISS GLASOW: I'd like to go  
10           back to the earlier draft, too.

11                   CHAIRMAN WALLACE: There have  
12           been some changes, that's correct.

13                   MISS GLASOW: There was a  
14           suggestion that we include law students or lay  
15           advocates under the paid for transportation to  
16           legislative or administrative proceedings occurring,  
17           other than employee and we have...the newest draft  
18           says law students and it should be, or law students  
19           engaged in activities.

20                   After discussion we decided to delete the  
21           suggestion and we included lay advocates here because  
22           we just...that was not fully defined and we felt it  
23           could open the door to too many people having their

1 transportation paid for, but we did include law  
2 students because most often, they are considered to  
3 be employees, anyway, under the programs, so we have  
4 no problem with that, the inclusion of law students.

5 CHAIRMAN WALLACE: Let's take  
6 it all in a block. What's the purpose of the next  
7 amendment other than stylistic?

8 MISS GLASOW: Basically, the  
9 one on the family is not prohibiting transportation  
10 to the client and the client's family. Basically  
11 just to make sure that the client is able to have his  
12 interest taken care of and if he has to take a family  
13 member in order to get there, then he would be taken  
14 care of.

15 CHAIRMAN WALLACE: Let me let  
16 you explain the last change and then I'll open the  
17 floor for comments. Let's do it all at once.

18 By the way, there is a spelling problem here.  
19 We need to strike the a-n and we'll have, handle  
20 administrative adjudicatory proceedings.

21 Now, what's that all about?

22 MISS GLASOW: It's really just  
23 a restatement of a basic period in this whole rule is

1 that it does not include adjudicatory proceedings and  
2 it just makes it clear that unless the employees are  
3 being trained in how to handle administrative  
4 adjudicatory proceedings, then it doesn't fall under  
5 the research and added funds used for transportation.

6 CHAIRMAN WALLACE: Well, let  
7 me modify that. I think the administrative  
8 adjudicatory proceedings were included some places  
9 and they're not included in others because of the way  
10 we've written this thing.

11 The main point here is that we do want to permit  
12 programs to take young lawyers and paralegals to  
13 hearings to learn what's going on, even if they're  
14 not actively involved.

15 That's my main concern here, I think lawyers  
16 would meet to the hearings and I think every law  
17 office does, so they get a sense of what's going on  
18 in the practice of law.

19 Now, having gone through all of the amendments  
20 to be, I will ask members of the Committee for  
21 comments and questions.

22 Mrs. Bernstein.

23 MRS. BERNSTEIN: Okay, I've

1 worked on this section quite a bit and I didn't  
2 have...I'm understanding lay advocates is taken out.

3 CHAIRMAN WALLACE: Out.

4 MISS GLASOW: That is correct.

5 MRS. BERNSTEIN: Okay. That's  
6 solves part of the problem in terms of the vagueness  
7 of it. But I would simply suggest, from the  
8 discussion that I've heard, I think that the two  
9 suggestions on making...that would be consistent with  
10 the changes...and that would be to insert after law  
11 students a word, and maybe the word I'm choosing is  
12 not the best one, but something to reflect the fact  
13 that they're officially engaged.

14 In other words, that they're not just engaged in  
15 some other activity or that they are, you know,  
16 interested in the proceeding, but this particular  
17 section they're accompanying them is because they are  
18 a part of the ones that are handling the activity.

19 And I would want some word in there to indicate  
20 that they are...professionally it's a problem because  
21 law students aren't professionals yet and officially  
22 have a...that's the best word I could come up with.  
23 I'd be pleased to have another word that conveys my

1 concern there.

2 The other change is to change the word family,  
3 from the client's family to the clients dependents,  
4 because as I understand the discussion, that's what  
5 we're talking about. If a client has an elderly  
6 mother that they can't leave at home, if they have  
7 children that they're to be caring for, that that's  
8 the concern, for them to be able to, without hiring a  
9 child care situation and, believe me, I've been there  
10 before, that they would be allowed to take that  
11 dependent along and rather than saying children I'd  
12 put dependents, because that would take care of a  
13 situation in which there was an elderly person in the  
14 home or someone else for whom they are responsible in  
15 care and dependents would, I think, cover the concern  
16 that we have in terms of clients not having to cancel  
17 court appearances because of other obligations.

18 And those would be the only two changes that I  
19 would suggest.

20 CHAIRMAN WALLACE: Let's talk  
21 about dependents first. I think that is the primary  
22 concern here. Mr. Houseman, this was your proposed  
23 language, so let me ask you if that largely meets

1 your concern or whether dependents would not entirely  
2 meet your concern?

3 MR. HOUSEMAN: To get into a  
4 definition of dependents. First of all, you may have  
5 a husband who wants the wife present, you may a wife  
6 who wants the husband present, so I don't know if  
7 that's a dependent or not. I've had that happen many  
8 times in administrative hearings when one is really  
9 disabled, one is in the nursing home and they want  
10 their spouse who is not in the nursing home to be  
11 present. In a technical sense they may not be a  
12 dependent.

13 There are other situations where it could be a  
14 brother and a sister. Someone is very scared.  
15 Frankly, I think family is sufficient. It's narrow.  
16 I don't think you can drive a truck through it. I  
17 don't think it opens anything up. I think...

18 CHAIRMAN WALLACE: You might  
19 drive a mini van.

20 MR. HOUSEMAN: And it  
21 precludes some real situations and I hate to see a  
22 program get in trouble because they drive the family,  
23 a brother of someone who wants the brother at the

1 hearing, down there and that's what we're talking  
2 about.

3 CHAIRMAN WALLACE: Have you  
4 anything to add?

5 MR. HOUSEMAN: No. I just  
6 wanted to point out that on many occasions in a lot  
7 of hearings you're going to have a stable person who  
8 may want another family member to drive them to this  
9 thing. I mean, there are a number of situations that  
10 can come up in the real world.

11 All I'm trying to see is what's in the real  
12 world.

13 MRS. BERNSTEIN: Okay, my  
14 concern with family is that we all, you know, there  
15 could be very extended family. And I think that  
16 people necessary for the hearing might be different  
17 than people that would, you know, that they'd just  
18 like to have along.

19 MR. HOUSEMAN: You want  
20 the person stable. They want their brother or  
21 sisters.

22 MR. BERNSTEIN: But  
23 that's not what it says, Alan.

1 MR. HOUSEMAN: They's  
2 scared. They want somebody to help them. That's  
3 what we're talking about.

4 MRS. BERNSTEIN: Okay  
5 Alan. You know, just a second. If dependents  
6 doesn't cover everything that you're talking about,  
7 then how about adding the clients dependents or  
8 persons specifically needed for support.

9 CHAIRMAN WALLACE: Mrs.  
10 Bernstein, we've already got that language following.  
11 Where necessary and appropriate. I realize necessary  
12 and appropriate permits things like the Bank of the  
13 United States and God knows what all, but I think  
14 this does convey, the language as put here, does  
15 convey the sense that we're trying to get at.

16 We are not supposed to bring every fifth cousin  
17 you can dredge up out of your family tree, but that  
18 you are entitled to bring people you're akin to when  
19 it's necessary and appropriate for the proceedings.

20 And I don't know how to...I don't know how to  
21 draft language any more specific than that. That  
22 tells people what they ought to do and we've got the  
23 authority to enforce it if we think they're

1 chartering two or three Greyhound buses to bring  
2 unnecessary and inappropriate people to hearings.

3 MR. SMEGAL: Mike, if I might  
4 add. I don't think...LeaAnne, I don't think the word  
5 dependents helps you in what you're seeking here. If  
6 we change family to dependents and somebody has 13  
7 kids and none of them are needed for the hearing,  
8 they take them along. What is that helping?

9 MRS. BERNSTEIN: Well, I think  
10 that there are reasons for a person not having to,  
11 you know, to suffer the financial...I mean, we're  
12 dealing with people that have a problem with finances  
13 and trying to raise the child care is, I think, a  
14 valid concern and that's the reason I was concerned  
15 about the dependents. That they may need to...if  
16 they're the caretakers of the individuals, I think  
17 that there's a real reason for our allowing them to  
18 come along.

19 CHAIRMAN WALLACE: I think  
20 that is the most common necessary and appropriate  
21 reason. I think Mr. Houseman has stated some other  
22 necessary and appropriate reasons and, if people try  
23 to push reasons that are not necessary and

1 appropriate, then, assuming we can find out about  
2 them and prove them, we've got authority to do  
3 something about them.

4 I don't think necessary and appropriate is that  
5 wide open a problem.

6 Mrs. Miller?

7 MRS. MILLER: Can we use the  
8 word qualified persons?

9 CHAIRMAN WALLACE: I don't  
10 know...you know, I don't know that qualified gets you  
11 any farther than necessary and appropriate. You're  
12 really saying, you want to have family there that you  
13 really need, that really ought to be there.

14 MRS. BERNSTEIN: All right. I  
15 will withdraw the suggestion because you have  
16 convinced me that necessary and appropriate can be  
17 sufficient, you know, appropriately used for limiting  
18 it.

19 My main concern was to identify those situations  
20 that we were really talking about and perhaps that  
21 could be handled by some illustrations in the  
22 preamble.

23 CHAIRMAN WALLACE: We've had a

1           slew of them suggested, Miss Glasow, and go ahead and  
2           write them in.

3                     Has anybody got a better word than officially?  
4           Mrs. Bernstein's other concern. I understand that...

5                     MRS. BERNSTEIN: Directly was  
6           the other word that I considered, but we have an  
7           aversion to the word directly so...

8                     MR. HOUSEMAN: That's fine  
9           with me.

10                    CHAIRMAN WALLACE: Directly is  
11           okay?

12                    MR. HOUSEMAN: Sure.

13                    CHAIRMAN WALLACE: All right.  
14           Let's insert directly after law students.

15                    Now...

16                    MRS. BERNSTEIN: Could I make  
17           another suggestion? When I considered directly I had  
18           inserted a "the" before activities so that it would  
19           read, students directly engaged in the activities.

20                    So that it's, you know, they're not just  
21           directly engaged in the general scope of the  
22           activities, but the ones that are going to visit the  
23           legislature.

1 CHAIRMAN WALLACE: All right.  
2 Now, with those changes...I'm going to read this  
3 thing because we've got a couple of words added in  
4 here...pay for transportation to legislative or  
5 administrative proceedings for persons other than  
6 employees or law students directly engaged in the  
7 activities permitted under this section and then on  
8 to the end of the proposed B, as printed on Page 6 of  
9 our Discussion Draft.

10 I ask unanimous consent that that amendment be  
11 adopted?

12 Hearing no dissent, so ordered.

13 Now, the next concern...and I'll identify this  
14 is, there have been substantial changes in what used  
15 to be G and what is now F from the earlier Discussion  
16 Draft.

17 Miss Glasow, would you explain what we're trying  
18 to do here?

19 MISS GLASOW: Well, basically  
20 we changed the wording from...the suggested  
21 additional wording...from if a principal purpose of  
22 the coalition to...if a principal purpose of the  
23 meeting is to discuss or engage. We decided to

1 focus on the meeting, itself. If the meeting was to  
2 be held for the derivative activities, then it would  
3 not be allowed...funding would not be allowed.

4 CHAIRMAN WALLACE: All right.

5 MISS GLASOW: I think we also  
6 added some language, if the principal purpose of the  
7 meeting is to discuss or engage in legislative  
8 or...activities.

9 CHAIRMAN WALLACE: All right,  
10 so you've narrowed the focus in one sense and  
11 broadened it in another?

12 MISS GLASOW: That's correct.

13 CHAIRMAN WALLACE: Okay. Are  
14 there any questions from members of the Committee  
15 about the amendment to what is now Subsection F  
16 composed on Page 7 of this Discussion Draft?

17 Hearing no questions, I will ask unanimous  
18 consent that F be adopted as printed on Page 7.

19 Hearing no dissent, so ordered.

20 All right. Let's go back to Page 10 and the  
21 deletion in F, Sub 1. Miss Glasow, would you explain  
22 that, please?

23 She's catching her breath.

1 MR. HOUSEMAN: No. Some of  
2 this we haven't discussed in great detail because  
3 we...

4 MISS GLASOW: Right. We  
5 just...

6 CHAIRMAN WALLACE: Well, I'll  
7 tell you what is it, because I talked to Mr. Houseman  
8 about it. It is basically cutting down on the  
9 paperwork requirements. It is required by the rider  
10 and by the regulation that appropriate judicial and  
11 administrative relief be explored and exhausted and  
12 if we, in our monitoring, ever come to the conclusion  
13 that there is a question about it, we're certainly  
14 entitled to ask for proof that that's been carried  
15 out.

16 But what we're not doing is requiring the  
17 paperwork be kept in every case. Basically, if we  
18 raise a question, you've got to show us what you did  
19 and you don't have to keep tons of boilerplate  
20 paperwork on matters that are never going to be  
21 controversial anyway.

22 This is a simple elimination of paperwork  
23 requirements which will usually be redundant. It

1 does not eliminate the substantive requirement that  
2 judicial and administrative relief be explored and  
3 exhausted.

4 MRS. BERNSTEIN: Why is it  
5 difficult to make a record of that in the case file?

6 MR. HOUSEMAN: This doesn't  
7 deal with the record in the case file. This is a  
8 report to the governing body.

9 MRS. BERNSTEIN: Okay. I  
10 guess I'm just not saying that that's all that  
11 difficult to, you know, when the governing body is  
12 going through it for the project director to simply  
13 say, in the following cases administrative relief was  
14 exhausted before we proceeded.

15 See, the problem is the governing body obviously  
16 has the option of asking for that information from  
17 the project director anyway. The concern that I  
18 have in putting it...I appreciate your comments,  
19 Alan, but I try to be quiet when you're talking...the  
20 concern that I have in terms of regulations is, that  
21 governing bodies look to the regulations that we have  
22 for them to understand what concerns that we think  
23 are appropriate for them to be concerned with.

1 CHAIRMAN WALLACE: Excuse me.  
2 Could we get a little order in the back? Thank you.

3 Okay, continue.

4 MRS. BERNSTEIN: And because  
5 regulations are for the purpose of clarifying the  
6 statutes and clarifying what we consider to be the  
7 fiduciary responsibilities of the governing body, I  
8 see no harm in clarifying that this kind of concern  
9 is a concern that they should have.

10 If you don't like the fact that there is a  
11 periodic statement on the exhaustion of...you know,  
12 maybe you need to state that the governing body shall  
13 periodically inquire into the exhaustion.

14 I mean, if you don't want to have it as part of  
15 the formal report...I just don't see it as that big a  
16 deal. Boards of Directors, you know, can establish  
17 procedures in which these kinds of things are handled  
18 very expeditiously, but the concern that we have as  
19 fiduciaries for the entire program is to help guide  
20 the local programs on what kind of things they should  
21 be inquiring into.

22 So I think that there's a very strong policy for  
23 leaving it in and a very small or almost nonexistent

1 cost.

2 I would oppose taking that out.

3 CHAIRMAN WALLACE: Any further  
4 comments from members of the Committee?

5 Since this will not be a unanimous consent item,  
6 I will move that we amend Section F1 by deleting the  
7 language at the end of that subsection as shown on  
8 Page 10 of the draft. And the language we're  
9 deleting is, which shall include a report on the  
10 exhaustion of appropriate judicial and administrative  
11 relief.

12 Is there a second to that motion?

13 MR. SMEGAL: Second.

14 CHAIRMAN WALLACE: Mr. Smegal,  
15 how do you vote?

16 MR. SMEGAL: I vote yes.

17 CHAIRMAN WALLACE: Chair votes  
18 Aye.

19 Mrs. Bernstein?

20 MRS. BERNSTEIN: No, because I  
21 think we're just not serving the program as a whole.

22 CHAIRMAN WALLACE: Mrs.  
23 Miller, how do you vote?

1 MRS. MILLER: No.

2 CHAIRMAN WALLACE: On a 2 to 2  
3 vote, deletion fails. F1 stands as is.

4 Let's go to Page 11 and we're talking about G.  
5 Now this is a concern of Senator Rudman's staff.  
6 Would you explain, Miss Glasow what we tried to do  
7 here?

8 MISS GLASOW: Well, basically,  
9 there was a concern that, up on the Hill, perhaps  
10 Private Relief Bill is defined differently in some  
11 situations and we tried to address that in the  
12 additional language as defined by the legislative  
13 body to which this is addressed, or if not defined,  
14 basically our definition.

15 Okay, we also added language, for the purposes  
16 of this part, meaning bills allowing specifically  
17 named persons or groups germane or to be compensated  
18 for claims against government for which there is no  
19 other remedy. And that again, or to be compensated  
20 for is to fall more fully in line with what is  
21 considered to be a private relief bill.

22 CHAIRMAN WALLACE: Let me  
23 reveal my discussions with Mr. Bayly on this last

1 language. I think there are some bills...I think  
2 especially in the state legislatures...which just say  
3 Joe Smith shall be compensated X thousand dollars.

4 There are other bills that say, we waive  
5 sovereign immunity so that Joe Smith can take his  
6 case to court. This language would do both. It  
7 covers a direct compensation bill, it covers an  
8 allowance for him to make his claim.

9 But that's what we considered to be a private  
10 relief bill and in deference to concerns from Senator  
11 Rudman's staff and in deference to the local  
12 legislative bodies. If they've got a different  
13 definition of what a private relief bill is, then  
14 let's use it.

15 And if there is no definition of what a private  
16 relief bill is, we've got our own definition so  
17 nobody is going to be confused. That's all this is  
18 about.

19 Are there any questions or comments from the  
20 Committee about this proposal?

21 Hearing none, I ask unanimous consent that G be  
22 amended as shown on Page 11 of the Discussion Draft.

23 Hearing no dissent, so ordered.

1 At the top of Page 12 there are two additions to  
2 Subsection H which are before us for discussion.

3 Will you explain the first one, Miss Glasow?

4 MISS GLASOW: The first one is  
5 the participation in meetings or serving on  
6 committees or bar associations or informing a client  
7 of the client's right to communicate directly with an  
8 elected official.

9 CHAIRMAN WALLACE: Let's stay  
10 with bar associations for now.

11 MISS GLASOW: Right. Number 4  
12 is basically to allow lawyers in the recipient groups  
13 to participate with their local bar associations of  
14 the American Bar Association.

15 CHAIRMAN WALLACE: And this  
16 goes back to our earlier discussion about what a bar  
17 association is and isn't.

18 MISS GLASOW: Right. And the  
19 preamble would define what we mean by a bar  
20 association. So, hopefully, it would be a very  
21 limited participation.

22 MRS. BERNSTEIN: Could I ask,  
23 would you encompass within this that an individual

1 from a program could go to a bar association and say  
2 those rascals in Washington are putting forth  
3 something detrimental to legal services and we want  
4 the bar to mobilize and send letters to Congress and  
5 to the Board trying to keep them from doing what  
6 they're doing or try and encourage them to do  
7 something else.

8 In other words, can we...is this really an  
9 opportunity for the individuals involved...assuming  
10 that they're doing this, you know, as part of the  
11 program activities, the individuals involved to  
12 organize or participate in grassroots lobbying, as  
13 long as the bar association serves as the conduit?

14 CHAIRMAN WALLACE: Oh, I  
15 understand...

16 MRS. BERNSTEIN: Because bar  
17 associations do an awful lot of lobbying.

18 CHAIRMAN WALLACE: Oh,  
19 absolutely. I mean, I had not thought about the  
20 grassroots lobbying problem, quite frankly. I had  
21 considered...and I assume there are people that work  
22 for Legal Services recipients who are on various bar  
23 committees and bar associations are, you know, as

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1 political as anything else I can think of and more  
2 political than most things.

3 But I don't see as a practical matter how we can  
4 really prohibit people from serving on bar  
5 committees. I think we'll get our heads handed to us  
6 on that one, but it does seem to me that we might be  
7 able to restrict grassroots lobbying.

8 I do share your concern, as I expressed to Mr.  
9 Ross last night. I don't like people running around  
10 the bar associations lying about me and if they're  
11 spending our money to do it, I like it even less.

12 So I would, you know, maybe there's a way to cut  
13 grassroots lobbying out here without getting into the  
14 meat and potatoes of ordinary bar committee work.

15 Mr. Houseman, you've heard the tenor of the  
16 discussion...

17 MRS. BERNSTEIN: How about  
18 recusing themselves from all issues relating to legal  
19 services on those committees. In other words, they  
20 serve on committees for the purposes of the general  
21 judicial, you know, and concerns of the bar, but  
22 they, as a matter of propriety and ethics, recuse  
23 themselves because they are intimately involved with

1 legal services, they recuse themselves from issues  
2 that deal with legal services.

3 CHAIRMAN WALLACE: I have a  
4 problem with that because people who work for us  
5 presumably know something about legal services and  
6 have information that the bar could benefit from.

7 My concern is not the neutral reporting, as much  
8 as it is the active stirring up of political pressure  
9 on Capitol Hill.

10 I don't want to tell people they can't go to  
11 their bar association and talk about legal services  
12 or even serve on a committee that concerns legal  
13 services.

14 I do have a problem with the program of  
15 character assassination this Board's been subjected  
16 to lately. And I don't know exactly how to write  
17 language to distinguish between those two situations.

18 So, Mr. Houseman, you've heard our concern on  
19 that. Do you think we should just have thicker skin  
20 or have you got a response?

21 MR. HOUSEMAN: Well, I'm  
22 not...

23 MRS. BERNSTEIN: Well, it's

1 not just a matter of thicker skin, because it goes to  
2 all sorts of other things.

3 CHAIRMAN WALLACE: I know.

4 MRS. BERNSTEIN: You know, I  
5 personally don't care, you know, what Mr. Ross says  
6 about me, but I am concerned that there is a  
7 diversion of the funds...the scarce funds that are to  
8 be used for clients and participation in bar  
9 activities and those bar activities may, in the long  
10 run, although people have had sincere and I think  
11 very personal and devoted differences of opinion as  
12 to how best to serve clients, but in my opinion, some  
13 of the activities may be actually a disservice to our  
14 clients in the long run with this lobbying activity  
15 and I am just concerned that we are carving a huge  
16 niche as long as we launder it through a bar  
17 association.

18 CHAIRMAN WALLACE: All right,  
19 Mr. Houseman, we'll hear from you.

20 MR. HOUSEMAN: I'm not sure  
21 I've got much to say, frankly.

22 The problem, I can't...I've been trying to  
23 figure out a way to...sort of off the top of my

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1 head...address this grassroots lobbying concern and  
2 I'm not sure I can in a way that...I'm not even sure  
3 you will understand what it is.

4 What this says is you can participate in a  
5 meeting of a bar association, you can serve on a  
6 committee of a bar association. It certainly doesn't  
7 permit you to communicate outside of the bar  
8 association or to engage in stirring up people that  
9 aren't part of that committee or meeting.

10 If you're participating in a meeting and  
11 something comes up, I'd certainly want you to be able  
12 to talk about something. I mean, I don't...this  
13 doesn't seem to me to open up very much. I'm just  
14 trying to draw your distinction without essentially  
15 cutting out participation in the meetings. That's  
16 the problem I'm having.

17 CHAIRMAN WALLACE: I'm not as  
18 concerned about participating in meetings. I mean,  
19 people who go to their local bar association and say  
20 that President Reagan ought to be impeached and the  
21 Board of Directors ought to be shot at sunrise  
22 doesn't bother me a whole lot.

23 I am concerned about getting outside of that

1 meeting. Whether participation on a bar committee  
2 would permit you to make the luncheon circuit of  
3 Rotary and Kiwanis and everybody else and say please  
4 write your Congressman and ask to have the Board of  
5 Directors shot.

6 That's more my concern. That is grassroots  
7 lobbying, it seems to me, but it could also be  
8 considered serving on a committee of a bar  
9 association. Part of your committee duties is to run  
10 around and talk to the Kiwanis Club and that...I  
11 share Mrs. Bernstein's concern on that and I'm not  
12 sure how to address it.

13 MR. HOUSEMAN: Well, maybe  
14 there's...the problem I'm having with language off  
15 the top of my head is, to put language in here, I'm  
16 not sure...I'm a little uneasy about the  
17 consequences.

18 I can agree with what you said, that is that you  
19 can participate in a meeting, serve on a committee,  
20 but he can't go outside of that context into the work  
21 that you do and I'm perfectly willing to try to work  
22 something out for the preamble that says that, but  
23 I'm just not sure there's any language that...

1 CHAIRMAN WALLACE: I'm not  
2 real happy with the preamble language and let me tell  
3 you what I propose at this point.

4 This has got to come back to the full Board this  
5 afternoon. It is my intention at this point, not to  
6 move the adoption of this language as is. I want to  
7 skip over 4 and get on to 5 with the understanding on  
8 everybody's part that, you know, you've got a couple  
9 hours between now and the Board meeting to try to  
10 come up with some language that permits attendance at  
11 committee meetings and doesn't permit running around  
12 the country beating up on us.

13 MRS. BERNSTEIN: Mike, could I  
14 make one comment, because I'm not really so sure that  
15 we actually need this language, because we have  
16 specifically provided that people can pay bar dues,  
17 which, you know, is an implicit assumption that they  
18 would then be a member of the bar and we have also  
19 said that they are prohibited from grassroots  
20 lobbying.

21 The combination is that they can ethically,  
22 without participating in grassroots lobbying be a  
23 part of the bar. I don't think you even need this.

1 CHAIRMAN WALLACE: The problem  
2 with that, Mrs. Bernstein and the problem with  
3 preamble language is the opening sentence of H which  
4 is, nothing in this section is intended to prohibit  
5 an employee from.

6 This is, I mean Subsection H is a safe harbor.  
7 It carves...it just eliminates the regulation,  
8 including the grassroots lobbying regulation as to  
9 these particular activities and I'm not sure I want  
10 to eliminate grassroots lobbying of these particular  
11 activities.

12 MRS. BERNSTEIN: You don't  
13 think you want to eliminate...

14 CHAIRMAN WALLACE: I want to  
15 enforce grassroots lobbying.

16 MRS. BERNSTEIN: Well, that's  
17 what I'm saying is that there is no reason to carve a  
18 safe harbor for the activities that would be here  
19 because the activities that would be involved in  
20 being a part of the bar association and we have  
21 specifically said that they can pay dues...

22 MR. HOUSEMAN: But you don't  
23 say you can participate in the meeting or serve on a

1 committee. That's all this is saying. The  
2 changes...you can go to a meeting, you can be on a  
3 committee of the bar.

4 CHAIRMAN WALLACE: Let me ask  
5 at this point that we do what the Chair has  
6 suggested, which is...

7 MR. HOUSEMAN: I will work on  
8 drafting...

9 CHAIRMAN WALLACE: ...to come  
10 to this at the Board because I have reservations  
11 about the language.

12 Miss Glasow, let's talk about informing a  
13 client, #5. This is different, by the way, from what  
14 was on Mr. Houseman's draft three weeks ago.

15 MISS GLASOW: Right. The  
16 earlier draft said that advising a client with  
17 respect to the client's own communications to  
18 officials and we felt that that was too broad and  
19 opened the way to the lawyer what was prohibited in  
20 the Act, so we changed it to, informing the client of  
21 the client's right to communicate directly with an  
22 elected official.

23 CHAIRMAN WALLACE: What is

1 prohibited under the Act is any personal service that  
2 influences Congress or that results in an influence  
3 of Congress. I can't quote the language, but  
4 personal service is right and it is my concern that  
5 advising a client to go write his Congressman is a  
6 personal service just like the lawyer writing the  
7 Congressman. And I think it's prohibited within the  
8 language of the Act.

9 What I am satisfied that we should permit,  
10 because I just don't see how a lawyer can deal with a  
11 client and keep his mouth shut altogether on the  
12 subject, is to say, that even though I may not be  
13 able to do this, you have a right to communicate  
14 yourself with your elected official and that's it.

15 That's all that's permitted is to say, I can't  
16 take care of this for you, you've got a right to take  
17 care of it, yourself.

18 Now, that's what I understand this language to  
19 say and I don't think that's a personal service and,  
20 therefore, I don't think that would be prohibited by  
21 the language of the rider.

22 MRS. BERNSTEIN: That's fine.  
23 Acquiesce.

1 CHAIRMAN WALLACE: Acquiesce.  
2 Any further comments from members of the Committee?

3 Ask unanimous consent that 5 be adopted as  
4 printed at the top of Page 12 of the draft?

5 Hearing no dissent, so ordered and a five-  
6 minute recess declared.

7 (WHEREUPON, a brief recess was taken.)

8 CHAIRMAN WALLACE: As our  
9 General Counsel's officer makes her way up front, we  
10 are looking at A and B of Section 6 on Page 12.

11 Let me talk about the sentence that's in B and  
12 it has an asterisk by it because I'm still undecided  
13 about exactly what we're trying to do here.

14 This is an attempt to respond to Mr. Houseman's  
15 concern that offices who come into contact with  
16 public officials ought to be able to describe to  
17 public officials the services they provide.

18 I don't have any problem with that. I think I  
19 would have...you know, if a public service calls you  
20 up and says we've got this particular problem, can  
21 you help, I think you can say, yes, this is how we  
22 can help. This is what we do here. Here are the  
23 services we provide.

1 I think that kind of discussion is perfectly  
2 appropriate. I would have more trouble with sending  
3 out a blanket mailing to the whole Legislature that  
4 says, here we are and this is what we can do for you  
5 and why don't you call us up any time you need our  
6 help.

7 I have a lot of concern about that, but I don't  
8 have a lot of concern about common contact with  
9 particular public officials and letting them know  
10 this is what this office does and this is how we can  
11 help you.

12 I don't know...I think what I want to permit is  
13 already permitted in A. This is in response to a  
14 request from a government agency or an elected  
15 official. You can respond to that official. You can  
16 tell him what it is you do.

17 And I think what I want to permit is probably  
18 permitted under A. I'm a little concerned that the  
19 language proposed in B would permit blanket mailing  
20 to public officials all over the state to say this is  
21 what we can do for you and why don't you take  
22 advantage of our services.

23 Now, that's my concern on these two issues. Mr.

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1 Houseman, this is a concern that you brought to my  
2 attention. Let me ask you to respond and tell me  
3 what it is that you're trying to permit and let's  
4 see...you know, let's see what we can do about it.

5 MR. HOUSEMAN: Well, all that  
6 we're trying to do is to permit a program to inform a  
7 specific public official about its services. Now, in  
8 the course of work in the program you may not get a  
9 specific request. Or it may be in the context of a  
10 meeting where there is a number of public officials  
11 and only one asking what you do.

12 Technically, according to the way we've got  
13 this, you can respond to him, but you couldn't  
14 respond to anybody else. I'm just trying to make it  
15 clear that this doesn't prohibit you from trying to  
16 inform public officials. This is not meant to permit  
17 blanket mailings or any of the kinds of things that  
18 you're talking about.

19 I'm not sure how to draft it in a way, other  
20 than to say that, which I'm perfectly prepared to say  
21 in it or put it in the preamble. But I would put it  
22 in the regulation, as far as I'm concerned, that  
23 says, you know, at the end of that, that this should

1 not be construed to...this does not permit blanket  
2 mailings...I'm not sure what language we'd use, but  
3 something along those lines.

4 That's not what I'm trying to do. What I'm  
5 trying to do is make it clear that when you're  
6 dealing with a number of different kinds of, quote,  
7 public officials, agencies and personalities, it may  
8 not be that they specifically request you to do  
9 something. They may ask you, they may make some  
10 assumptions, they may send clients over to you...I  
11 mean, I used to sit and get clients coming up to my  
12 door. Where are you coming from? Well, the Welfare  
13 Department sent them over and we don't take that kind  
14 of case or this is not, you know, you're supposed to  
15 go to this office and not this office and all I want  
16 to be able to say is I can call up the person and say  
17 hey, don't send me this case. The Domestic Relations  
18 Office is here. The Welfare Benefits Office is here.  
19 The Landlord Tenant Clinic is here and this is what  
20 we do. This is where you go from this office.

21 That's what I'm concerned about, is that  
22 practical nitty-gritty down to earth communications  
23 back and forth. And I'm thinking you can prohibit

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1 that and I just want to make sure...

2 CHAIRMAN WALLACE: I will tell  
3 you, I don't mean to prohibit that, but I do mean to  
4 prohibit what I just earlier discussed and I don't  
5 know where we go on the language of that.

6 MRS. BERNSTEIN: Well, I'm  
7 just going to...I'm looking at where this falls in  
8 the paragraph and, frankly, I just don't even see  
9 that it fits in this paragraph if that is the concern  
10 because this paragraph deals with directly or  
11 indirectly soliciting or arranging a request from any  
12 official to testify or otherwise make representations  
13 in connection with legislation.

14 And what Alan just described has nothing to do  
15 with legislation or requests to testify or anything  
16 and, therefore, I don't see that this, one, would be  
17 the place to put that concern and second, I don't  
18 think that there's any question but that someone can  
19 have the pamphlet that tells what the program does.

20 And so I just think it's a non-issue and if Alan  
21 would feel better in terms of having some sort of  
22 discussion in the preamble that the programs may  
23 respond regarding their priorities and whether or not

1 the persons are eligible and whether they provide  
2 that kind of service to persons who ask, fine.

3 MR. HOUSEMAN: Not just  
4 persons who ask. That doesn't deal with my example  
5 that I just gave, which is an official may not ask  
6 you, but they may take action that you have to  
7 respond to and you...

8 MRS. BERNSTEIN: Well, but  
9 sending them a pamphlet about what you do, as long as  
10 it doesn't say well, we really wish we could do that,  
11 but we can't do that. I mean, simply stating what  
12 you do do and that another office provides another  
13 service in response to an official is covered in A  
14 and I think that this is an unnecessary confusion.

15 CHAIRMAN WALLACE: If it  
16 belongs anywhere, it belongs in A. I mean, it  
17 doesn't belong in the solicitation provision. It  
18 does belong up here in what you say you can and can't  
19 do.

20 And I had thought about using upon request and I  
21 realize it's a broader concern, Mr. Houseman. People  
22 do dump clients on you and they don't request  
23 information they just keep sending the people to you

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1 would be a neutral place for it. I'm a little  
2 worried that...I think that this is a real problem  
3 that's come to my attention from a number of programs  
4 that I've dealt with and I don't want to get someone  
5 hung up doing a perfectly legitimate thing because of  
6 some language in this regulation and that's all I'm  
7 trying to do.

8 CHAIRMAN WALLACE: You know, I  
9 think putting it in H is the right place to put it,  
10 to tell you the truth, because I can't think of  
11 anywhere in here that we actually prohibit telling  
12 officials, these are the services we provide.

13 There may be some language in here that makes  
14 people think they get in trouble every time they talk  
15 to a public official and I can understand why that  
16 concern would be there. I don't know how to take it  
17 out when I don't think it's in here anywhere and H, I  
18 guess, is the place where we're resolving things we  
19 really shouldn't be afraid of.

20 Let me ask you to do...I mean, we've got one  
21 other thing on H, let's put this one under H and see  
22 if you can get some language that let's you contact  
23 officials without, you know, blanket mailings on

1 let's all get together and do good things for the  
2 world.

3 MRS. BERNSTEIN: Okay. Alan,  
4 when you're working on that language, would you try  
5 to include something to the effect without any sort  
6 of...so long as it does not have any sort of  
7 representation about desired, you know, desires to  
8 provide certain services.

9 MR. HOUSEMAN: I understand.  
10 I agree with your concern.

11 CHAIRMAN WALLACE: Let me go  
12 to the top of the third page. We have inserted  
13 matter...or we propose to insert matter which states  
14 the type of representations requested by the official  
15 and identifies the matter, regulation, legislation.

16 Mr. Houseman has brought to my attention that a  
17 public official may not identify a regulation,  
18 legislation or order, but he does generally talk  
19 about a subject matter.

20 The first word we talked about was issue and I  
21 thought that was too broad, because it's the issue of  
22 how to help the poor. I mean that is way too broad.  
23 Matter is a little broader than regulation,

1           legislation or order, but it's narrower than all the  
2           good things we could ever do for poor people.

3           I think this does...we need some kind of word  
4           here to address that problem without creating other  
5           problems and matter is the best word that we were  
6           able to come up with.

7           Mrs. Bernstein?

8                           MRS. BERNSTEIN: I would  
9           rather have something more specific than matter and  
10          I'm not sure that the words specific concern would  
11          handle it, but I think matter is just as broad as  
12          issue.

13                          CHAIRMAN WALLACE: Maybe it  
14          is.

15                          MRS. BERNSTEIN: And, I think  
16          issue just...the point is that we can't have a  
17          situation in which there is just kind of an unlimited  
18          use of this because we are not staffing for  
19          legislatures or city councils...

20                          CHAIRMAN WALLACE: Now what  
21          I'm concerned about is what I think you're concerned  
22          about which is a letter from a legislator that says,  
23          I solicit your assistance on all matters relating to

1 the welfare of poor people. That ain't a request, as  
2 far as I'm concerned.

3 But, at the same time, there are a lot of public  
4 officials who can tell you, I've got a problem with  
5 food stamps and they don't know what regulation, they  
6 don't know what legislation, but they do know with  
7 some specificity the problem area that they want to  
8 address and I do consider that to be a request and I  
9 do consider we ought to be able to respond to it.

10 And I'm as stumped for good language on that as  
11 anybody else.

12 MR. HOUSEMAN: I'm not quite  
13 sure what's wrong with matter, but I agree...I mean,  
14 I understand what you're trying to do and I assume  
15 what you're trying to do. Maybe specific concern  
16 will do it. I want to point out the rider has a  
17 blanket statement. Nothing in this proviso shall  
18 prohibit communications made in response to a request  
19 from a federal, state or local official. And  
20 specific concern is a better word. I'm not sure it's  
21 any better than matter. I'm not quite sure I  
22 understand the difference between the two, but...

23 CHAIRMAN WALLACE: Let me

1 propose this. There's no perfect way to do this,  
2 Mrs. Bernstein, but what I would propose is that we  
3 use the two words, specific concern and that Miss  
4 Glasow have the horrible task of trying to summarize  
5 this discussion for preamble purposes and talk about  
6 what we do mean and what we don't mean.

7 We know there is going to be a big gray area  
8 between, but I don't know any other way to deal with  
9 it.

10 MRS. BERNSTEIN: Just in terms  
11 of the record, I understand what the  
12 Legislature...what Congress thought they were doing  
13 in the rider, but by the same token, we have a  
14 specific purpose here in the Corporation, which is  
15 not to staff all the legislative offices that may  
16 need assistance with different research.

17 CHAIRMAN WALLACE: Let me ask  
18 unanimous consent that at the top of Page 13 that we  
19 strike the word matter, add specific concern, that  
20 the regulation be so amended and that we summarize  
21 this discussion in some detail in the preamble.

22 Hearing no dissent so ordered.

23 Miss Glasow, at the bottom of Page 13 we get

1 into the question of newsletters. You will probably  
2 need to discuss this section at the bottom of Page 13  
3 in conjunction with the proposal on Page 21, which is  
4 private funds in newsletters and at this point, go  
5 ahead.

6 MISS GLASOW: First of all, a  
7 small thing. We changed the word incident to  
8 allocable. We felt it was a better accounting term.  
9 So, such funds are used only for costs allocable to  
10 the present, et cetera.

11 But the big change comes where we said  
12 basically, this subsection treats to whom you can  
13 send the newsletter for publication and we're saying  
14 that...it basically says you can only send it  
15 to...private attorneys, et cetera.

16 Then we added the language, we changed it from  
17 the earlier suggested language and we changed it to,  
18 but if the recipient circulates the publication to  
19 the public at large or eligible clients generally,  
20 any reference to pending or proposed legislation must  
21 be incidental to the topic of the publication.

22 So it's basically a restriction on the  
23 restriction which says that we can't send it out to

1 the public at large, but if you do so, then the  
2 reference to pending or proposed legislation must be  
3 incidental.

4 CHAIRMAN WALLACE: Let me  
5 explain with reference to specific examples what I  
6 mean by incidental.

7 Several meetings back we got this stack of  
8 newsletters, the first newsletter we got is from the  
9 Center on Welfare Policy and Law and it talks about  
10 proposed Social Security regulations and it goes on  
11 for five pages describing that proposal. That is not  
12 incidental to the topic of the publication. It's not  
13 publicity and propaganda either, I want to make that  
14 clear, as long as you don't add Page 6 about how to  
15 contact appropriate people.

16 But, we would prohibit...we would prohibit the  
17 circulation to the world at large of this Tab 1, five  
18 pages on proposed legislation. If you do circulate  
19 something to the world at large, then reference to  
20 proposed legislation must be incidental.

21 If you have a publication on how to conduct  
22 Social Security hearings going, you know, step one to  
23 step last how you do it, you can put in a paragraph

1 and say, by the way, this may change next week.  
2 There is a proposed regulation that would do the  
3 following. That seems to me to be incidental.

4 A five-page layout on a proposed regulation is  
5 not incidental. Now, the five-page layout can go to  
6 your limited mailing list. The broader description  
7 with only an incidental discussion can go to the  
8 public at large or eligible clients generally.

9 That is what I understand this language to mean  
10 and before we get to the question of whether or not  
11 it's a good idea, does anybody disagree with me on  
12 what we understand this language to mean?

13 MR. HOUSEMAN: I agree with  
14 you.

15 CHAIRMAN WALLACE: Okay. Now,  
16 I will ask for comments from the Committee on whether  
17 or not the language as proposed is a good idea?

18 MRS. BERNSTEIN: I think it's  
19 a bad idea because I think that the inference here  
20 that could easily be drawn is that it's all right to  
21 refer to pending or proposed legislation and I think  
22 that you get very close through inference to an  
23 encouragement of grassroots lobbying by the inference

1 here and I think the old language you had is much  
2 stronger.

3 CHAIRMAN WALLACE: It is much  
4 stronger, I grant you that, but remember, publicity  
5 or propaganda as we have now agreed to define it,  
6 cannot be circulated to the world at large and that's  
7 always going to be a judgment call as to, A, whether  
8 it's incidental and, B, whether it constitutes  
9 publicity or propaganda.

10 MRS. BERNSTEIN: Yes, but I  
11 think you're setting up a contradiction here that is  
12 going to need more interpretation than is necessary  
13 and I think that what you want to do and what you  
14 want to be able to do is permissible, but this sets  
15 up an unnecessary conflict and an inference that it's  
16 okay to tell people about where they can write and  
17 the things that are coming up and this kind of thing.

18 As long as it's just in one little line at the  
19 bottom, it's okay. And I think that's not what  
20 you're really wanting, Mike.

21 CHAIRMAN WALLACE: And I have  
22 specifically prohibited telling people where they can  
23 write. There may be other things I'd like to

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1 prohibit if I could think of them and as this  
2 regulation gets out we may see some more examples of  
3 things that are permitted that I'd rather not permit  
4 and I'll come back and do this regulation again, if I  
5 have to.

6 MRS. BERNSTEIN: Okay. I'm  
7 not going to prolong the discussion. We know where  
8 we stand and you can make your motion and we'll go  
9 forward.

10 CHAIRMAN WALLACE: All right.  
11 Mr. Houseman looks around for his votes.

12 Let me say, there is also a proposal when we get  
13 to E to permit private funds to send something like  
14 Tab 1 to the world at large.

15 Now, that's what the private fund proposal would  
16 do when we get there to consider it and I want you to  
17 understand that we're saying that with our funds you  
18 can't send Tab 1 to the world at large, although you  
19 can send it to your limited group.

20 There is a proposal on Page 21 to permit the use  
21 of private funds to send Tab 1 to the world at large,  
22 but private funds could not be used to send publicity  
23 and propaganda to the world at large.

1           So, having explained the interrelationship of  
2           the two proposals, I will now move that we amend  
3           Section 75...7B5 as printed on Pages 13 and 14 of the  
4           draft. Is there a second?

5                       MR. SMEGAL: Your amendment  
6           would be deleting incident and substituting  
7           allocable...

8                       CHAIRMAN WALLACE: That's an  
9           accounting problem and on the top of Page 14, would  
10          permit a broader circulation of newsletters, so long  
11          as there's no publicity and propaganda.

12                      MR. SMEGAL: Second it.

13                      CHAIRMAN WALLACE: All right.  
14          We have discussed it and at this point we're ready to  
15          vote. Mr. Smegal, how do you vote?

16                      MR. SMEGAL: Yes.

17                      CHAIRMAN WALLACE: Chair votes  
18          Aye. Mrs. Bernstein?

19                      MRS. BERNSTEIN: No.

20                      CHAIRMAN WALLACE: Mrs.  
21          Miller?

22                      MRS. MILLER: Yes.

23                      CHAIRMAN WALLACE: All right.

1 Oh, Mr. Durant, welcome. Would you like to vote on  
2 this?

3 MR. DURANT: I support the  
4 Chair.

5 CHAIRMAN WALLACE: Passed by a  
6 vote of 4 to 1.

7 MR. DURANT: I always support  
8 the Chair.

9 MR. SMEGAL: With that  
10 comment, Mike, can we go back to a section where we  
11 tied on?

12 CHAIRMAN WALLACE: Mr. Durant  
13 will have his chance to vote on that at his meeting.

14 There are no changes on Subsection 8 or 9.  
15 There are changes proposed on Subsection 10, 10A at  
16 the top of Page 17.

17 Miss Glasow, would you try to describe for us  
18 what this addition is all about.

19 MISS GLASOW: This is  
20 basically, again, certifying what is not prohibited.  
21 Or another way of saying it, what is allowed, since  
22 this paragraph shall not be construed to apply  
23 informational needs continued primarily by persons

1 engaged in the delivery of legal services at which  
2 information about new developments in the poverty  
3 laws, pending cases or matters are discussed and  
4 shall not apply to organizations composed exclusively  
5 of eligible clients formed to advise the legal  
6 services program about the delivery of legal  
7 services.

8 After discussion of this addition we decided not  
9 to oppose it and we don't have a real large problem  
10 with language and basically letting the recipients  
11 meet with their clients and with each other and talk  
12 about changes involving...

13 CHAIRMAN WALLACE: There are  
14 really two parts to this. The second part permits  
15 the assistance in organizing client's council,  
16 essentially. The Act does prohibit organizing. On  
17 the other hand, it makes plain that programs should  
18 have client input.

19 I am sure there are circumstances where clients  
20 organize themselves and say we'd like to give you  
21 some input. I'm sure there are also circumstances  
22 where the program needs to take some initiative to  
23 get a client's council organized and given the Act's

1 emphasis on client input, I think that this is a  
2 reasonable accommodation to permit.

3 The first part of the amendment discusses  
4 meetings, basically of staff attorneys to talk about  
5 common problems. I don't consider an informational  
6 meeting to be an organization at all.

7 Now, Mr. Houseman has suggested that the  
8 language might somehow inhibit programs from letting  
9 their lawyers get together to talk about new  
10 developments in income maintenance or family law or  
11 what have you.

12 I certainly don't intend to prohibit that kind  
13 of informational discussion. I think people need to  
14 do it. I don't think it even is an organization and  
15 I want to make plain that I don't think it was  
16 prohibited by this before.

17 But if there was some concern, I am happy to say  
18 that organizing does not prohibit staff people from  
19 different programs from getting together to talk  
20 about new developments in poverty laws, in pending  
21 cases or matters.

22 Now, that's what I understand this to permit and  
23 I don't think it is organizing and I think we can

1 safely go ahead and say so.

2 That's my understanding of this language. Any  
3 comments, concerns, questions from members of the  
4 Committee?

5 MRS. BERNSTEIN: If that's  
6 your understanding of the language I have to oppose  
7 it because, although I would be able to vote for the  
8 language that's here, what you said goes far beyond  
9 the language.

10 What you said was, that we could not only meet  
11 with organizations that the clients have formed  
12 themselves, but that we could have a meeting and  
13 encourage them to organize and I do not believe that  
14 that is permitted in the LSC Act because I think  
15 there is an explicit prohibition against organizing.

16 CHAIRMAN WALLACE: I grant you  
17 that that is what the Act says, but I think that the  
18 Act also says that we want to deal with clients,  
19 client's councils have...recipients have participated  
20 in organizing client's councils for years and years  
21 and I think that by practical application of the Act  
22 it's not the kind of organizing Congress was  
23 concerned about, although I readily admit, Mrs.

1 Bernstein that organizing anything seems to be  
2 prohibited by the language of the Act.

3 This is a narrow exception which I think is  
4 consistent with practice under the Act for years and  
5 years and that's why I would support it.

6 MRS. BERNSTEIN: Well, I'm  
7 still confused though, Mike, and I'm not trying to be  
8 troublesome, but the language that we've got here  
9 doesn't say that you can help them organize. It  
10 simply says that you can meet with organizations.

11 CHAIRMAN WALLACE: Well, it  
12 says that the paragraph shall not apply to  
13 organizations. And what the paragraph does is to say  
14 that we can't initiate the formation or act as an  
15 organizer of any association.

16 So, when it says this paragraph don't apply to  
17 organizations of eligible clients, then we're saying  
18 that the prohibition farther up in the paragraph does  
19 not apply. You can initiate the formation and act as  
20 an organizer of a client's council.

21 MRS. BERNSTEIN: Well, how are  
22 you going to draw the line? Is a welfare rights  
23 group going to be...if it's composed entirely of

1 clients and they're advising them about legal  
2 services programs, is a group that is a tenant's  
3 union, that's a legal services...that's a concern  
4 with legal services...can you try to organize a group  
5 that would encourage students to walk out of a junior  
6 high school. Is that a...that's a concern about  
7 their legal rights in terms of freedom of speech.

8 What kind of organizing would not be, then,  
9 permitted, as long as it had some sort of  
10 relationship to what kind of legal services might  
11 possibly be offered?

12 CHAIRMAN WALLACE: I can draw  
13 the line this way. I can say exclusively of eligible  
14 clients formed for the sole purpose of advising a  
15 legal services program.

16 Now, there may be a little give in that  
17 language, but I don't think there's enough give in  
18 that language to authorize tenant's unions and school  
19 boycott organizations and the examples that you've  
20 described.

21 MRS. BERNSTEIN: Okay. What  
22 about if that organization then, which is composed  
23 entirely of clients, is advising a legal services

1 program and that organization, which we helped  
2 organize, had as one of its main functions grassroots  
3 lobbying?

4 CHAIRMAN WALLACE: It's not  
5 then the sole purpose of advising a legal services  
6 program. It's going on to another purpose.

7 MRS. BERNSTEIN: But how do  
8 we...we have now organized the group and we've spent  
9 federal dollars to do it and, having organized them,  
10 they go on to other purposes and we have no control  
11 over that group.

12 CHAIRMAN WALLACE: You're  
13 right, we don't have any control over that group and  
14 I don't know...

15 MRS. BERNSTEIN: I think  
16 that's why Congress said, don't get involved in  
17 organizing groups because that's not the business  
18 you're in. You're in the business of representing  
19 clients. I don't disagree regarding the fact that we  
20 should not be in somehow...we should not somehow by  
21 these clarifications of what the Act means, promote  
22 an interpretation that would say well, you can't  
23 communicate with a group that's composed of clients.

1           If they're concerned about legal services, you  
2 should be able to communicate with them. I do not  
3 believe that we should be in the business of  
4 organizing.

5           MR. HOUSEMAN: Let me just  
6 say, I agree with you, we should not be in the  
7 business of organizing client groups. I don't think  
8 that's the appropriate role for a legal services  
9 program.

10           What we're talking about here, and if there's  
11 some way to narrow it, and Mike's was an effort at  
12 it, a client's council is formed to give input into  
13 the program and in a practical sense it may be the  
14 only way you're going to have such an entity or such  
15 serious client input is if you help them get going.

16           And that's all this is trying to do and, I mean,  
17 I agree with you completely about all of the examples  
18 you gave us and if, for the sole purpose helps,  
19 that's fine with me.

20           This is a very narrow exception in trying to  
21 deal with a practical problem that the programs have  
22 faced when you require programs to have input with  
23 client organizations, client councils and there may

1 be no such organizations in the area and the only way  
2 you could get such an organization is to help them  
3 form.

4 That's the practical problem we are trying to  
5 deal with and I don't think this opens anything up.  
6 I don't think this can be read in the way you're  
7 reading it and if we can narrow it and it seems to me  
8 we can...

9 MRS. BERNSTEIN: Well, I  
10 didn't think...when I read it, that wasn't the way I  
11 read it, either, but Mike's legislative history that  
12 he's provided for us basically says you can organize  
13 them and he doesn't say for...

14 MR. HOUSEMAN: A client's  
15 council, for the sole purpose.

16 MRS. BERNSTEIN: I'm still  
17 concerned with it and I think it opens the door to  
18 too much misuse of energies and funds. The Congress  
19 specifically said, don't do.

20 CHAIRMAN WALLACE: Let me  
21 divide the question since...even though it's one  
22 sentence.

23 Are there any concerns about the first part of

1 the sentence, informational meetings?

2 All right. Let me ask unanimous consent that we  
3 adopt this language at the end of A. This paragraph  
4 shall not be construed to apply to informational  
5 meetings attended primarily by persons engaged in the  
6 delivery of legal services at which information about  
7 new developments and poverty law and pending cases or  
8 matters are discussed.

9 Let me ask unanimous consent to that amendment.  
10 Hearing no dissent, so ordered.

11 We have debated the rest of this sentence. I  
12 now move the adoption of the following additional  
13 language at the end of 10A, and shall not apply to  
14 organizations composed exclusively of eligible  
15 clients formed for the sole purpose of advising the  
16 legal services program about the delivery of legal  
17 services.

18 Is there a second?

19 MR. SMEGAL: Second.

20 CHAIRMAN WALLACE: Any further  
21 debate on the subject?

22 Mr. Smegal, how do you vote?

23 MR. SMEGAL: Yes.

1 CHAIRMAN WALLACE: The Chair  
2 votes Aye.

3 Mrs. Bernstein?

4 MRS. BERNSTEIN: No.

5 CHAIRMAN WALLACE: Mrs.  
6 Miller?

7 MRS. MILLER: Yes.

8 CHAIRMAN WALLACE: And Mr.  
9 Durant?

10 MR. DURANT: With the Chair.

11 CHAIRMAN WALLACE: Mr. Durant  
12 abstains.

13 On 11, I have discussed this, I think with most  
14 people and I'll just summarize it briefly as lunch  
15 arrives.

16 What we have done in response to complaints from  
17 the Hill is eliminate timekeeping. We are still  
18 requiring people to document the expenditure of  
19 funds. We are requiring financial record keeping on  
20 legislative activities, but we are not requiring  
21 timekeeping.

22 There is a separate proposal, a separate  
23 decision that this Board has made to require

1 timekeeping on all aspects of programs. When and if  
2 that decision is implemented we will get timekeeping  
3 on legislative activities the way we get timekeeping  
4 on everything else. But all we are requiring here in  
5 this regulation is financial reporting on legislative  
6 activities. Now, that's all we do in A.

7 Is there any discussion from members of the  
8 Board...members of the Committee?

9 MRS. BERNSTEIN: I still  
10 support the concept that we should keep track of it  
11 because there's no other way than to keep track of it  
12 and the fact that a particular Congress, which is not  
13 formed of the same people this next year, disagreed  
14 with us, is no reason for us to abandon the policy  
15 which I still hear articulated by a number of people  
16 on the Board, that we should know exactly what the  
17 money is spent for and that in an area in which  
18 Congress has specifically said, thou shalt not in  
19 certain cases, we should do what we can as  
20 fiduciaries to provide the documentation and to  
21 separate out those accounts.

22 And I would suggest that we can be as humble as  
23 you like in terms of sending this up to Congress and

1 saying we would like you to consider this again  
2 because we are trying to do your will as we see it  
3 and would you please consider this and it does not  
4 need to be offensive because these are not the same  
5 members of Congress.

6 CHAIRMAN WALLACE: I agree  
7 that we need to have timekeeping and since the  
8 Chairman and the President are here, this Board  
9 decided we ought to have timekeeping across the board  
10 a long time ago and, as far as I'm concerned, I don't  
11 see any need to wait on GAO reports or anything else.  
12 I think the President has full authority to require  
13 timekeeping in every program on every issue as this  
14 Board have voted.

15 But I ain't going to fall on this sword until  
16 we're ready to fall on the big sword and, you know,  
17 if our President wants to make that kamikaze march,  
18 I'll go right with him.

19 MRS. BERNSTEIN: Well, the  
20 difference, of course, is that lobbying is a  
21 prohibited and regulated activity and, therefore, we  
22 have a greater fiduciary duty to require timekeeping  
23 for lobbying than we do for every other activity,



1 CHAIRMAN WALLACE: Mr. Durant?

2 MR. DURANT: Yes.

3 CHAIRMAN WALLACE: Mrs.

4 Miller?

5 MRS. MILLER: No.

6 CHAIRMAN WALLACE: All right,

7 3 to 2, yes.

8 There's a change in B that I never have quite  
9 understood, but Mr. Houseman has suggested that we  
10 should change required by...the supporting  
11 documentation as required by the Corporation to,  
12 supporting documentation as specified by the  
13 Corporation and I don't see...

14 MRS. BERNSTEIN: That's  
15 fine. That's fine.

16 Ask unanimous consent to amend B as shown on 18?  
17 Hearing no dissent, so ordered.

18 Let's go to the top of 19 on enforcement. Miss  
19 Glasow, I know we've added 1630 and we've deleted  
20 authority to recover costs and I assume that's just  
21 technical because we have authority to recover costs  
22 in 1630.

23 MISS GLASOW: Instead of

1 having the last sentence, we just inserted 1630 up  
2 there with the other.

3 CHAIRMAN WALLACE: And 1630  
4 permits us to recover costs?

5 MISS GLASOW: Right.

6 CHAIRMAN WALLACE: So that's  
7 all we've done and I don't think there's any  
8 substantive change here.

9 Are there any questions from members of the  
10 Committee?

11 All right, ask unanimous consent to adopt  
12 12...I'm sorry, 11B as printed on the top of 19.

13 Hearing no dissent, so ordered. And actually,  
14 that's not 11B, that's 12B.

15 MR. HOUSEMAN: I had a  
16 typo...there's a typo. Failing to correct them...

17 CHAIRMAN WALLACE: All right.  
18 Now, we go over to 13 on private funds. 13A has  
19 already...that's the law as it is now. The regulation  
20 as it is now.

21 13B...let me just go ahead and explain this,  
22 Miss Glasow, because I have explained it on several  
23 occasions, what I think it means.

1 I have distinguished for quite some time on this  
2 lobbying regulation the difference between bringing  
3 the matter to a public official's attention and a  
4 full court press and what this permits is the use of  
5 private funds to engage in a full court press, as  
6 long as there's no grassroots lobbying involved.

7 This permits you, not only to bring the matter  
8 to a politician's attention, but to tell him...but to  
9 go into more explicit detail about what ought to be  
10 done about it, permits you to write more speeches for  
11 him if you need to, to work on committee reports if  
12 you need to, to do the kind of full court press  
13 lobbying that lawyers will engage in if they engage  
14 in lobbying.

15 What it does not permit are two things. One,  
16 solicitation of clients. You cannot go out and  
17 solicit a client to engage in this kind of full court  
18 press. But if you've got an unsolicited current  
19 eligible client who needs more than simply bringing  
20 the matter to an official's attention, if you've got  
21 private funds to satisfy that greater need, you may  
22 do so.

23 You may not engage in grassroots lobbying. You

1 may not run around trying to get people to beat up on  
2 public officials in order to do what you want done,  
3 but you may go to the official and participate in all  
4 of the in-house sort of lobbying that a lawyer would  
5 be ethically permitted to conduct. As long as you  
6 got private funds, as long as you didn't solicit the  
7 client.

8 Now, that's what B does and before we open it to  
9 comments, does anybody disagree with my understanding  
10 of this language?

11 All right. Now, we will open it to comments and  
12 questions from members of the Committee at this time.

13 MRS. BERNSTEIN: Mike, I don't  
14 believe we need to be...the concern and...Alan and I  
15 have disagreed for a long time about whether 1010C  
16 does apply to riders and whether or not we, as a  
17 corporation have a right to restrict it even if the  
18 rider doesn't specifically say that this means that  
19 we're going to still stick with 1010C, even though we  
20 adopted the whole Act in this rider, we're going to  
21 specifically say that the 1010C provisos apply to  
22 this, as well.

23 I am again concerned that whenever you say that

1 certain private funds can be freed up for certain  
2 things that you limit the amount of activities that  
3 we are supposed to be doing, that can be done with  
4 those auxiliary private funds.

5 It has been the philosophy of this Board, as far  
6 as I know, to try to augment as much support,  
7 financial and otherwise, for private resources for  
8 the benefit of our clients. And our clients are  
9 easily defined in the Act as those persons who would  
10 be eligible for the services that our Act says that  
11 we can provide and if we are freeing up private funds  
12 for services that would not be permitted with our  
13 funds, then we're doing a disservice to our client.

14 And I think the analogies would be that, you  
15 know, a school system when they take federal funds  
16 have to abide by certain rules that go with those  
17 funds, that a health care organization that takes  
18 private funds...takes public funds has to abide by  
19 certain rules and we are simply saying that if you,  
20 under the auspices of the organization that you have  
21 formed to take LSC funds, want to do certain things,  
22 you will have to do those things only and not do  
23 things with the private funds that you solicit that

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1 you might otherwise be able to do.

2 And in other words if...why not have a different  
3 organization to take the private funds so that this  
4 question of our monitoring and whether or not we're  
5 doing the best for our clients by, you know, paying  
6 the overhead and so forth, eliminate that question by  
7 not having the same organization.

8 And I'm not talking about mirror corporations or  
9 anything like that, I'm simply saying, let's make it  
10 clear exactly what our purpose is here and our  
11 purpose is to further the things that Congress said  
12 we should be doing and to not further other things.

13 And when you spend money that is freeing up  
14 money for nonpermitted activities, then we are not  
15 doing the best for our clients under the Act. And I  
16 just see that there is no point in expanding this any  
17 further.

18 CHAIRMAN WALLACE: Mrs.  
19 Bernstein, I agreed with you last year, I agree with  
20 you this year. I am selling out. I'm looking for a  
21 deal I can sell.

22 MRS. BERNSTEIN: Well, as long  
23 as that's clear.

1 CHAIRMAN WALLACE: I've got,  
2 you know, I claim no debility on this one. I'm  
3 looking for one that will fly.

4 MRS. BERNSTEIN: You're just  
5 trying to avoid one of those union buttons that says  
6 stop Bernstein now. They'll sell you one, I think.

7 MR. HOUSEMAN: Just to make  
8 the record complete, it's clear to me that the  
9 Corporation is going to consistently interpret an  
10 appropriate rider will not apply to private funds.

11 Second, Congress I think, clearly agrees with  
12 that.

13 Third, I don't think...(inaudible).

14 Fourth, the time period of what Mrs. Bernstein  
15 said. There are...questions. The Supreme Court has  
16 recently affirmed this decision...that you could not  
17 affect health...private funds in a certain way  
18 (inaudible).

19 So, it seems to me for all of those reasons and  
20 for one final reason, which is, this is a major issue  
21 for us in terms of our working and efforts to reach a  
22 compromise, I urge the Board to support...

23 CHAIRMAN WALLACE: I haven't

1 made a motion yet, but I...

2 MR. HOUSEMAN: I urge the  
3 Board to do whatever...if there is a motion made to  
4 support it.

5 CHAIRMAN WALLACE: Having  
6 discussed the principles and the politics are there  
7 any further points from the Committee?

8 This will not be a unanimous consent request.  
9 This will be a motion and it may die for lack of a  
10 second, but I move the adoption of 13B as printed on  
11 Page 20 of the draft before us. Is there a second?  
12 Mr. Durant's going to have to work a little harder  
13 this afternoon. 13B dies.

14 MR. DURANT: Just a second.

15 CHAIRMAN WALLACE: Oh, oh,  
16 okay. I didn't even know you were here.

17 MR. DURANT: Just wait a  
18 second. I'm reading.

19 CHAIRMAN WALLACE: It does not  
20 yet die, but it's breathing hard.

21 MR. SMEGAL: Second.

22 CHAIRMAN WALLACE: We will let  
23 Mr. Durant finish reading the regulation and we will

1 open it further for discussion.

2 MR. DURANT: I'll second your  
3 motion.

4 MRS. BERNSTEIN: Why, Tom came  
5 in and seconded it without knowing what it was.

6 MR. SMEGAL: You're on B. I  
7 know what you're talking about.

8 CHAIRMAN WALLACE: Do any of  
9 the Committee members who have rejoined us have  
10 anything to say about 13B which is the motion before  
11 the Committee.

12 Mrs. Bernstein, Mr. Houseman and I have  
13 discussed it thoroughly and we are ready to vote.

14 Mr. Smegal, how do you vote?

15 MR. SMEGAL: I vote yes.

16 CHAIRMAN WALLACE: The Chair  
17 votes Aye.

18 Mrs. Bernstein?

19 MRS. BERNSTEIN: No.

20 CHAIRMAN WALLACE: No.

21 MRS. MILLER: No.

22 CHAIRMAN WALLACE: And Mr.

23 Durant?

1 MR. DURANT: Aye.

2 CHAIRMAN WALLACE: Adopted 3

3 to 2.

4 I'm going to talk about C, myself on use for  
5 private...on dues for private funds.

6 I do not consider this to be a rider issue.  
7 I've thought about this a whole lot. I consider it  
8 to be a 100785 issue, which says we have an  
9 obligation to ensure that no funds made available to  
10 recipients shall be used at any time directly or  
11 indirectly to influence the issuance of legislation.  
12 That is made applicable to private funds by 1010C, as  
13 I understand it.

14 Now I believe that because 1010C does apply,  
15 because 1007A does apply that we have no  
16 authorization to permit the use of private funds for  
17 dues to organizations that we have determined to  
18 engage in prohibited legislative activities.

19 What we have done in our amendment to 3A is to  
20 permit the segregation of funds so that our  
21 funds...so that funds derived from our recipients,  
22 although they may be used to lobby this Board because  
23 we've specifically said so, may not be used to lobby

1 Congress. An organization which wishes to lobby  
2 Congress or other public officials is going to have  
3 to get its funds from someplace other than our  
4 recipients, whether our recipients use public or  
5 private funds to pay those dues.

6 Now, I have given this a lot of thought and I do  
7 believe that you cannot take private funds that our  
8 recipients could not use to lobby Congress, turn them  
9 into dues to an organization and let the organization  
10 use those dues to lobby Congress and I think you have  
11 1007A5 problems and 1010C problems and based on that  
12 understanding of the law, I cannot propose the  
13 adoption of C, although Mr. Houseman and I have  
14 discussed it at some length and I've given very  
15 careful consideration to it.

16 What you do permit in the amendment we've  
17 already adopted, is essentially separate books which,  
18 in deference to the Supreme Court decisions that  
19 you've been discussing with us, we restrict the use  
20 of funds from our recipients. But if you can get  
21 other funds from other places, you can use those to  
22 engage in legislative activities. These  
23 organizations can.

1           That's my reasoning for not proposing C. I have  
2 a feeling we may get a motion to propose C and at  
3 this point I'll let Mr. Houseman explain his view as  
4 to why this is a necessary provision.

5           MR. HOUSEMAN: Well, first, it  
6 is a technical matter. If you don't propose this,  
7 you still do not allow private funds to go to an  
8 organization that uses those private funds in a way  
9 that you can use private funds for. Because the  
10 restriction on LSC funds because of the rider is  
11 greater.

12           So that if you permit private funds in A and B  
13 above, you at least ought to be able to permit the  
14 use of private funds to pay dues to organizations  
15 that engage in A and B above in the section.

16           So this is a technical problem that you're  
17 arguing. Aside from the 1010 issue and it seems to  
18 me that at a minimum you ought to be able to use  
19 private funds to pay the organization that uses those  
20 private funds consistent with A and B above. If you  
21 just limit it to what we've already got in 1612.3 it  
22 doesn't do that.

23           CHAIRMAN WALLACE: I consider

1 that to be a reasonable conclusion for the legal  
2 argument that I've made and let me see, as I sit here  
3 if I...

4 MR. HOUSEMAN: Well, you can  
5 say what you want, something along the lines, so long  
6 as those funds are used consistent with Section  
7 1612.13A and B or something.

8 CHAIRMAN WALLACE: I mean, I  
9 think what we do is say provided, however that such  
10 funds...

11 MRS. BERNSTEIN: What you're  
12 saying, Alan, to understand it right, is that if  
13 there were an organization that were for abortion  
14 rights and it was a 501C3 organization, that there  
15 were private funds, we would be allowing our programs  
16 to pay dues to that organization...

17 MR. HOUSEMAN: No.

18 MRS. BERNSTEIN: ...even  
19 though abortion is one of the prohibited activities  
20 in the Act.

21 MR. HOUSEMAN: No, it couldn't  
22 be used for that organization.

23 MRS. BERNSTEIN: Why?

1 MR. HOUSEMAN: You can't use  
2 private funds to represent people in abortion cases  
3 under the Act, that's why.

4 MRS. BERNSTEIN: But this just  
5 says to pay dues to them.

6 MR. HOUSEMAN: No, I know.  
7 I'm playing off Mike's position.

8 MRS. BERNSTEIN: But see,  
9 nothing in A...

10 MR. HOUSEMAN: If you can use  
11 private funds directly, you ought to be able to pay  
12 dues to an organization that uses those private funds  
13 for that purpose. That's all I propose.

14 MRS. BERNSTEIN: Okay, but I  
15 don't see anything in A or B that would prohibit it.

16 MR. HOUSEMAN: Well, we can  
17 work on the language, but what I'm saying is if you  
18 can do A and B with private funds, you ought to be  
19 able to pay dues to an organization that does A  
20 and B.

21 CHAIRMAN WALLACE: I was  
22 drafting proposed language, Mrs. Bernstein, and I'm  
23 not sure I heard all of your abortion example and I'd

1 like you to repeat it for me.

2 MRS. BERNSTEIN: Well, I just  
3 chose that because the Act specifically prohibits  
4 dealing with...

5 MR. HOUSEMAN: If you can't  
6 use private funds for that, you can't pay dues to an  
7 organization that does. I agree with that. Under  
8 this interpretation of Mike's of the Act.

9 I don't agree with it, but right now we're  
10 trying to work out something.

11 MRS. BERNSTEIN: Adopting his  
12 interpretation which you don't agree with, you're  
13 going to...

14 MR. HOUSEMAN: Sure. We've  
15 got a compromise. Sure.

16 MRS. BERNSTEIN: I'm just  
17 saying that A and B though don't deal with that issue  
18 at all. They don't deal with the question of whether  
19 or not something is prohibited under the Act, they  
20 talk about doing the things that are prohibited, not  
21 the subject matter.

22 MR. HOUSEMAN: I mean, we can  
23 write...what I'm trying to say is, if you can use

1 private funds to do it, we can write it. Just get  
2 the intent down that you ought to be able to use  
3 private funds to pay for an organization that does.

4 MRS. BERNSTEIN: Is there  
5 going to be an upper limit as to how much of a  
6 program's operating budget is used for dues?

7 CHAIRMAN WALLACE: We have a  
8 separate regulation on dues which requires that they  
9 be rationally related in a reasonable amount. I  
10 don't remember what it says. Mr. Bayly, Miss Glasow  
11 and I have talked about that.

12 MRS. BERNSTEIN: And that  
13 includes private funds?

14 MR. HOUSEMAN: Well, I'm not  
15 sure. I'm not sure it addresses private funds.

16 MRS. BERNSTEIN: I'm not sure  
17 it does, either.

18 MR. HOUSEMAN: What I'm  
19 starting with is, write the language, that's not the  
20 problem. I can go...Mike's drafting. I'm not trying  
21 to draft right now. It's easy to write the language  
22 to do what I'm going to do and not do what you want  
23 to do.

1 CHAIRMAN WALLACE: Here's the  
2 language and don't tell me what's wrong with it.

3 A recipient may use private funds to pay  
4 reasonable annual dues. I mean it's  
5 already...reasonable annual dues is already in here,  
6 as well as in the other part...to organizations which  
7 are tax exempt under Section 501C3 of the Internal  
8 Revenue Code provided, however, that such funds may  
9 be used only for purposes otherwise permitted by the  
10 Act and all regulations adopted pursuant thereto.

11 If we've got a prohibition...

12 MR. DURANT: Are you saying  
13 the funds, the dues funds for the organization for  
14 which...

15 CHAIRMAN WALLACE: The dues  
16 funds. We've got...I mean, we've already determined  
17 in 3A that we're going to let people segregate their  
18 accounts. But the funds received from our  
19 recipients, whether LSC funds or private funds, may  
20 be used only for purposes otherwise permitted by the  
21 Act and all regulations adopted pursuant thereto.

22 Now, that I think is not only consistent with,  
23 but is mandated by 1007A5 and 1010C and it's horrible

1 Code of Federal Regulations language, but I think it  
2 means what it says.

3 Now, having debated the subject, I will move the  
4 adoption of the language I just read. Well, I'm  
5 sorry...

6 MR. HOUSEMAN: I'm not sure I  
7 got it. Otherwise...

8 CHAIRMAN WALLACE: Provided,  
9 however, that such funds may be used only for  
10 purposes otherwise permitted by the Act and all  
11 regulations adopted pursuant thereto.

12 MRS. BERNSTEIN: How are we  
13 going to control those other organizations, once the  
14 dues are paid?

15 CHAIRMAN WALLACE: The burden  
16 is on our recipients to demonstrate compliance and  
17 can we, you know, can we prove it? No, of course we  
18 can't.

19 MR. HOUSEMAN: Yes. There's  
20 some problems with drafting. I know what we're  
21 trying to do here. There's a problem here. It's a  
22 1010C problem. I'll show you the way the problem  
23 comes up with this language.

1           The problem is that you can use private funds  
2 for some activities that are prohibited by the Act,  
3 but are not a prohibited purpose.

4           For example, you can use private funds to  
5 represent clients who wouldn't be eligible under the  
6 Act. Aliens is one, but say over income clients,  
7 we've historically programs to represent...with  
8 private funds...particularly because a lot of grants  
9 give money for certain kind of clients, like the  
10 elderly, the stable clients and they may be  
11 technically over income and that's historically been  
12 done under 1010C.

13           And there's legislative history that there is a  
14 distinction between eligibility kinds of issues and  
15 prohibitions like abortion, et cetera.

16           We'll worry about the language...

17                           CHAIRMAN WALLACE: It only  
18 becomes a problem if some organization you're paying  
19 dues to wants to represent somebody who's over the  
20 eligibility limit and I don't know any organizations  
21 that we'd be paying dues to that that comes up.

22           I realize that it's a practical problem and I  
23 don't know how to resolve it here, but I will keep an

1 open mind if you want to come back with new language  
2 after lunch, if we get it.

3 MR. HOUSEMAN: Well, I  
4 understand what you're trying to do. I mean, we  
5 agree...we don't agree on your presentation...

6 CHAIRMAN WALLACE: I know.

7 MR. HOUSEMAN: ...we agree on  
8 what you're trying to do here in response to my  
9 response to you. So why don't we vote this and I'll  
10 see if I can come up with something that will do the  
11 same thing to meet my concern.

12 CHAIRMAN WALLACE: I've moved  
13 it, is there a second.

14 MR. SMEGAL: Second.

15 CHAIRMAN WALLACE: Further  
16 debate?

17 Mr. Smegal, how do you vote?

18 MR. SMEGAL: Yes.,

19 CHAIRMAN WALLACE: The Chair  
20 votes Aye.

21 Mrs. Bernstein?

22 MRS. BERNSTEIN: No.

23 CHAIRMAN WALLACE: Mrs.

1 Miller?

2 MRS. MILLER: No.

3 CHAIRMAN WALLACE: Mr.

4 Durant?

5 MR. DURANT: Aye.

6 CHAIRMAN WALLACE: All right.

7 Now...

8 MRS. BERNSTEIN: Could  
9 somebody explain to me why it's important to pay dues  
10 to these 501C3 organizations, rather than just  
11 cooperating with them and getting their literature  
12 and...I mean, the 501C3 organizations traditionally,  
13 I mean, if they're in a service capacity, if they are  
14 an information capacity...I guess I'm just troubled  
15 with this concept of, it says reasonable dues...I  
16 know that we already voted on this and I'm just  
17 trying to understand the importance of this to the  
18 efficacy of legal services programs.

19 Reasonable dues, I would interpret to be toward  
20 an individual organization, but to organizations and  
21 there's a limitless number. I mean, there is a  
22 three-inch thick book that the IRS puts out on a  
23 regular basis of 501C3 organizations and the number

1 of different worthy organizations that could  
2 conceivable get dues with program funds that would be  
3 better spent on legal services for clients is just  
4 amazing. And there's no limitations. Right now  
5 we've voted on no limitations.

6 MR. HOUSEMAN: Using private  
7 funds, first. Second of all, the number of  
8 organizations, you can't get newsletters or  
9 information they put out unless you join. For  
10 example, you can't get the American Bar Association  
11 Journal unless you join.

12 MRS. BERNSTEIN: That's  
13 already taken care of in another section.

14 MR. HOUSEMAN: No, there's  
15 other organizations that aren't bar associations that  
16 fall within this category.

17 MRS. BERNSTEIN: What ones?

18 MR. HOUSEMAN: Well, there's a  
19 group called the National Association of Social  
20 Security Claimants which puts out very important and  
21 relevant information about Social Security. You have  
22 to join it in order to get the information.

23 It's a commonly accepted practice in the

1 nonprofit world.

2 CHAIRMAN WALLACE: With regard  
3 to D, I don't want to dwell on it. I already did  
4 everything I want to do with regard to coalition back  
5 in Section 3, but I'll be happy to let Mr. Houseman  
6 explain why his language here ought to be adopted by  
7 the Board.

8 MR. HOUSEMAN: Well, this is  
9 a...the problem with the earlier language is the same  
10 problem that I raised above. This earlier language  
11 doesn't cover situations that are different for  
12 private funds than public funds with regard to  
13 coalition meetings.

14 So that all this is attempting to do is the same  
15 thing you just did above. If it doesn't do it, fine.  
16 But all it says is that you can use private funds to  
17 attend the meeting of the coalition. You could have  
18 otherwise, you know, done something directly.

19 CHAIRMAN WALLACE: Well, let's  
20 look...I mean, looking back at 3F on Page 7. We have  
21 said you may use our money to attend meetings of  
22 coalitions for these purposes. And if you can use  
23 our money to attend meetings of coalitions for those

1 purposes, you can also use private funds...

2 MR. HOUSEMAN: We agree with  
3 that.

4 CHAIRMAN WALLACE: Now, I  
5 don't wish to broaden that and this gets to whether  
6 or not we have authority not to broaden it, but I was  
7 satisfied a year ago that we did have the authority  
8 to put further restrictions on private funds. I'm  
9 still satisfied we have the authority and I'm not  
10 satisfied that there is any reason that we shouldn't  
11 use it.

12 I mean, that's...I think these are meetings I  
13 want to let people go to and other meetings I don't  
14 want to let people go to and it doesn't matter much  
15 to me whose funds they use if I've got the authority  
16 to stop it.

17 MR. HOUSEMAN: All I'm saying  
18 is...and this is first a political issue...which is,  
19 if you can use private funds directly, why can't you  
20 go to a meeting where you can use those private...all  
21 you're doing is using private funds in the same  
22 way.

23 And because you can do more with private funds

1 under what we just passed, than with LSC funds, what  
2 you're saying is you can use private funds directly,  
3 but you can't go to a meeting where you can use those  
4 private funds, but you could use LSC funds for that  
5 purpose of the meeting.

6 And so, what this language did...it's very  
7 narrow...it said, go to a meeting with private funds,  
8 a coalition meeting, as long as you could do directly  
9 with private funds under essentially 1612.13A and B.

10 Now, that's the technical argument.

11 The broader argument...I'm not sure you want to  
12 get into it, is simple...and that is, you're talking  
13 about private funds here, you're talking about  
14 regulations of private funds by the Corporation. It  
15 seems to me that private funds should not be used the  
16 same as LSC funds for both constitutional purposes,  
17 because the Act doesn't do it. And I disagree, of  
18 course, with your assumption that you have the  
19 authority to do this.

20 CHAIRMAN WALLACE: All right.  
21 I've got no motion to make about D. Does anybody  
22 have a motion to make about D?

23 MR. SMEGAL: I move Subsection

1 D as set forth on Pages 20 and 21.

2 CHAIRMAN WALLACE: Is there a  
3 second?

4 Proposal dies for lack of a second.

5 As we discussed before on E, what this  
6 does...I'm sorry.

7 MR. SMEGAL: Excuse me, Mike,  
8 let me go back and propose another alternative, if I  
9 may.

10 CHAIRMAN WALLACE: Certainly.

11 MR. SMEGAL: We've been  
12 discussing, I believe, Subsection F of 1612.3. The  
13 context of this which says attend meetings of  
14 coalitions and I would propose a substitute that  
15 would read as follows: A recipient may use private  
16 funds as provided for in Subsection 1612.3F.

17 CHAIRMAN WALLACE: That's  
18 already, I think...yes, that's permitted. You can  
19 use our money for it or you can use private money for  
20 it.

21 All right, what I said earlier about E and I  
22 explained this effect earlier, this would permit the  
23 use of private funds to send Tab 1, which is the

1 explanation of a proposed Social Security change to a  
2 broad mailing list of eligible clients generally in  
3 the public at large, as long as there is no publicity  
4 or propaganda in it.

5 I mean, that's a borderline call, but the world  
6 is full of Xerox machines. Things can be done. If  
7 they can be created they'll get distributed and I  
8 don't see any point in telling our people they can't  
9 go ahead and use private funds to do what somebody is  
10 going to do anyway. It's not our money.

11 MRS. BERNSTEIN: So we pay for  
12 the overhead of getting it prepared for a client to  
13 whom it may be applicable and allowable and the  
14 duplication costs are all that allocable...the  
15 duplication and mailing costs are all that's  
16 allocable for the world.

17 CHAIRMAN WALLACE: We  
18 discussed this in December, Mr. Houseman and I think  
19 you told us at that time that you realized that there  
20 needed to be some appropriate allocation. Now, I may  
21 be wrong.

22 MR. HOUSEMAN: My view is that  
23 1630 covers that situation. You cannot use...the

1 1630 would require you to cover the indirect and  
2 overhead costs to the same degree that you would  
3 cover the direct costs. That's what 1630 was all  
4 about.

5 That's my understanding of it and I think that's  
6 the staff's understanding.

7 CHAIRMAN WALLACE: I believe  
8 that's right and while we don't have our audit  
9 experts here, it is not my intention to say you  
10 allocate all of our money to the overhead and the  
11 production and you use private funds to pay for a 22  
12 cent stamp and a Xerox machine.

13 I believe Part 1630 requires and permits the  
14 appropriate allocation of production costs.

15 Miss Glasow, I would appreciate it if you would  
16 say so in the preamble and if, upon further  
17 examination of 1630 that ain't correct, then I will  
18 be prepared to propose a one-shot amendment to make  
19 that clear. But I think it's clear.

20 So, that's what we're doing. And I am prepared  
21 to move the adoption of this language as 13D, since  
22 we didn't adopt another 13D.

23 MR. SMEGAL: Second.

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1 CHAIRMAN WALLACE: Further  
2 debate?

3 Mr. Smegal, how do you vote?

4 MR. SMEGAL: Yes.

5 CHAIRMAN WALLACE: The Chair  
6 votes Aye.

7 Mrs. Bernstein?

8 MRS. BERNSTEIN: No.

9 CHAIRMAN WALLACE: Mrs.  
10 Miller?

11 MRS. MILLER: No.

12 MR. DURANT: I'm right here.  
13 I vote Aye.

14 CHAIRMAN WALLACE: All right,  
15 3 to 2. That's adopted.

16 There is no...does any member of the Committee  
17 have any further amendments to propose to Part 1612  
18 or our regulations?

19 With that, and I imagine this will take a role  
20 call vote, I move that the draft as amended be  
21 reported to the Board with the recommendation that it  
22 pass.

23 Is there a second?

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MR. SMEGAL: Second.

CHAIRMAN WALLACE: Any further discussion?

Mr. Smegal, how do you vote?

MR. SMEGAL: I vote yes.

CHAIRMAN WALLACE: The Chair votes Aye.

Mrs. Bernstein?

MRS. BERNSTEIN: No.

CHAIRMAN WALLACE: Mrs. Miller?

MRS. MILLER: Yes.

CHAIRMAN WALLACE: Mr. Durant?

MR. DURANT: Yes.

CHAIRMAN WALLACE: The amendment regulation will be proposed to the Board this afternoon.

I thank everyone for their hard work and patience in a three-year job that I hope doesn't turn into a four-year job.

Is there any further business to come before the Committee?

If not, I ask unanimous consent that the

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Committee stand adjourned.

Hearing no dissent, so ordered.

(WHEREUPON, the proceedings were concluded at 12:45  
p.m.)

C A P T I O N

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The foregoing Committee Meeting came on in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the hearing 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, Sandra A. Moser, 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:

December 3, 1989

  
Notary Public