

LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE MEETING

December 18, 1987
Commences at 9:00 a.m.

VOLUME II

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

Diversified Reporting Services, Inc.

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LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE MEETING

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

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

STATUS OF MEETING: Open

PRESENTATIONS BY:	PAGE
Joseph Meadows	115
Steven Tober	158
Alan Houseman	195

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1 OPERATIONS AND REGULATIONS COMMITTEE

2 CHAIRMAN WALLACE: The court reporter is ready. Let's
3 see if we can come to order. This is the meeting of the
4 Operations and Regulations Committee of the Board of Directors
5 in the Legal Services Corporation, having been recessed
6 yesterday morning, will reconvene at this hour.

7 The purpose of our meeting today is to take additional
8 testimony on proposed amendments, Part 1607 of our regulations.
9 We have several individuals who have asked to speak. In between
10 now and the time the board meets a little later this morning, we
11 should have time to hear from everybody who wants to address
12 the issue.

13 Mr. Houseman, I cut you off yesterday when we got into
14 the middle of the lunch hour. I would be happy to let you begin
15 this morning.

16 MR. HOUSEMAN: Why don't you just take the other
17 people first if they are here.

18 CHAIRMAN WALLACE: Fine, anyway we want to do it. The
19 first speaker on the list that has been given to me is Mr. Joe
20 Meadows of Gulf Port (phonetic); the president of the
21 Mississippi Bar Association.

22 Mr. Meadows, if you would come forward. It is good to

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1 see you again. Welcome to our meeting. We look forward to
2 hearing what you have to say.

3 PRESENTATION OF JOSEPH MEADOWS

4 MR. MEADOWS: Thank you. I do want to express my
5 sincere appreciation for the opportunity of appearing here
6 today on behalf of the Mississippi Bar Association in
7 participating in your deliberations.

8 At the outset, I would like to state that the
9 Mississippi Bar Association is very honored to claim Mr. Wallace
10 as one of our own. This fellow has had a distinguished legal
11 career in Mississippi. They share many characteristics, not the
12 least of which being that they have the courage of their
13 convictions. I assure you of that.

14 I am reminded of the meeting of the Mississippi board
15 of bar commissioners on December 11. At the beginning of my
16 presidency, I proposed five substantial changes in the
17 disciplinary process of the State Bar Association and appointed
18 a committee to consider these suggestions and report to the
19 board of bar commissioners for further action.

20 On December 11, the committee appeared, called up the
21 five proposals. I called the first proposal up. One of the
22 commissioners stood and said he had reviewed that entire package

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1 and had no intention of voting for any of the hair-brained
2 proposals.

3 I assure you that I do not consider your proposals
4 hair-brained today. I do have some different views, though. In
5 considering my remarks, it seemed to me that those who worked
6 with the recipients on a daily basis, such as the staff and even
7 the board members, can best address the proposals dealing with
8 how committees should function, the length of board service, and
9 the optimum number of board members.

10 My remarks would be directed to the proposals which
11 will most significantly affect the Mississippi Bar Association
12 participation in this very worthwhile program. Subsection (?)
13 requires that no more than 60 percent of a government body be
14 members of the same political party.

15 I suggested as one thing to seek bipartisan
16 participation on the board of the Legal Service Corporation with
17 11 members and quite another thing to seek bipartisan
18 participation in Mississippi with 90 board attorneys, not to
19 mention California which probably would number in the hundreds,
20 probably even a thousand.

21 I do not fault the aspirational goal which motivates
22 this proposal, but in reality, it simply will not work. Given

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1 the fact that it is often difficult to get attorneys to serve on
2 these boards in the first instance -- and speaking again from my
3 Mississippi experience -- can you imagine the reaction of the
4 attorney once you have the commitment to serve: Well, there is
5 one more thing. We need to check your political preference.

6 On a lighter note, there are areas in Mississippi and
7 Texas where you cannot find a Republican, as there are areas in
8 Ohio and New Hampshire where even the Whigs outnumber the
9 Democrats. I trust this proposal will be rejected.

10 Subsection C provides that all attorney board members
11 be appointed by a 9-member selection committee, established by
12 the State Bar Association where integrated or by the Voluntary
13 Bar having the largest membership in the state.

14 It goes on to provide for the appointment of the
15 member attorneys to the National Support Center by the ABA. As
16 the appointment to the National Support Center, I would simply
17 observe that I see no indication from the ABA that it is willing
18 to assume this responsibility.

19 Assuming that it would, I would remind you that
20 historically, attorneys from minority groups do not participate
21 in ABA activities for any number of reasons. Perhaps one of the
22 most significant is that they are involved in their own special

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1 interest bar groups.

2 As to the election of the 9-member state board, which
3 in turn will appoint local board members, I would share the
4 Mississippi experience which I suggest is not that different
5 from other states.

6 In Mississippi, one of the recipients is a North
7 Mississippi rural legal services. This surface area encompasses
8 approximately one half of the 82 counties in our state, which I
9 further suggest give a fair indication or a microcosm of a
10 statewide appointment system as here proposed.

11 Presently the State Bar Association appoints the
12 attorney members of this board. Today I cannot begin to take
13 the time to recount to you the difficulty involved in getting
14 attorneys to accept appointments to this board.

15 One past president needed a selection list of 46
16 attorneys to find four willing to serve. All three -- and I
17 think this is very significant for the board -- all three
18 immediate past presidents of our association have taken strong
19 positions against a statewide appointment system by the State
20 Bar Association; each believing that the local bar association
21 can and, in fact, does a better job.

22 Simply stating the obvious, the local bar associations

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1 best know local attorneys who are willing to serve. When I
2 return, I must fill five of the seven vacancies in the North
3 Mississippi rural Legal Services Corporation. Each of the five
4 vacancies stated they did not care to be reappointed nor did
5 they have any recommendation for someone to succeed.

6 Under this proposal, the Mississippi board would have
7 90 appointments. For any number of reasons, I suggest the local
8 bar associations can best make these appointments because the
9 local organizations will know which attorneys will serve the
10 board consistent with the purpose of stating the Legal Services
11 Corporation.

12 That is to guide a recipient in its efforts to provide
13 high quality legal assistance to those who otherwise would be
14 unable to obtain adequate legal counsel and to ensure that the
15 recipient is accountable to its clients.

16 Thank you, Mr. Chairman.

17 CHAIRMAN WALLACE: Thank you, Mr. President. I
18 appreciate having you here with us today. I will have a few
19 questions, I suppose, based on my own experience in Mississippi.
20 Let me ask if any of the other board members or any of the other
21 committee members have any questions to Mr. Meadows.

22 MS. BERNSTEIN: Have you ever talked with any of the

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1 board members as to why they are unwilling or uninterested in
2 serving?

3 MR. MEADOWS: The ones that I have talked to are those
4 who perhaps were not as committed to this program as they should
5 have been in the first instance. I think you are looking for a
6 particular kind of individual to serve on this board. Perhaps
7 mistakes have been made in choosing those individuals.

8 I am speaking now of the North Mississippi rural legal
9 services. That does not seem to be the case on the other
10 boards. I have made no indepth study to be absolutely candid
11 with you.

12 I am speaking of the North Mississippi experience.
13 Perhaps mistakes have been made simply because we did not know
14 the type of commitment they had to this program.

15 MS. BERNSTEIN: Do you think there is a problem in
16 board members understanding what their responsibilities would be
17 on a board; and/or do you think there is a possibility there is
18 a problem in terms of it seeming to be a closed group when they
19 come into it?

20 MR. MEADOWS: In answer to your first question, I
21 think more information would be most helpful in learning people
22 to the existence of the program, how it operates. Many lawyers

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1 stating the obvious still have a bias against any sort of legal
2 services feeling that it will affect them economically.

3 I certainly think a public education program would be
4 good. Insofar as the other feeling, a closed society as it
5 were, I am unaware of that. I would not be able to speak to
6 that.

7 MS. BERNSTEIN: It seems to me that -- I am very
8 sympathetic with many of the proposals that Mike has put into
9 these proposed regulations, but it seems to me we do have
10 additional concerns in terms of why the general population of
11 the bar would not be interested in being involved.

12 I do not think all of those concerns are because they
13 are, as you say, not as sympathetic to the needs of the poor as
14 they should be. I think that there may be other dynamics that
15 are involved in terms of this -- you may or may not know the
16 history of -- some of the boards are self perpetuating.

17 I do not know if -- in continuing work with even
18 things like school boards and so forth. You come in as an
19 outsider, you can become very frustrated very quickly. Maybe
20 some of these things need to be addressed as well if we do not
21 have provisions for that in this regulation.

22 I do not know whether this would be the place for it.

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1 I am just questioning whether or not you have done any on hand
2 work as to whether or not any of the other impetus for board
3 training, board information maybe, at the national level.

4 MR. MEADOWS: I would just state generally that as
5 much information as could be provided would be very helpful I
6 would think. I do not think there are that many attorneys who
7 really understand what it is all about, the workings of the
8 Legal Services Corporation, what it does provide.

9 MR. VALOIS: Just following up on your last comment.
10 If, in fact, that is the case -- and I am sure you are right
11 about it; there are not that many attorneys in Mississippi who
12 are familiar with or with the operation of legal services
13 grantee programs -- would it not be beneficial to get a broader
14 cross section of attorneys through whatever method?

15 MR. MEADOWS: I have no quarrel with that. I do not
16 particularly agree with this proposal, but I have no quarrel
17 with broader participation; no.

18 MR. VALOIS: How many attorneys in Mississippi?

19 MR. MEADOWS: We have 4500 active attorneys within
20 state and probably 1000 on our out of state roster.

21 MR. VALOIS: Out of 4500 attorneys, you would need, I
22 believe your number was, 90 board attorneys to be selected; is

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1 that right?

2 MR. MEADOWS: Yes, sir.

3 MR. VALOIS: Of the 4500, approximately if you know,
4 how many are not Democrats?

5 MR. MEADOWS: I would say, sir, without having done an
6 independent poll, that we would have at least 51 percent
7 Democrats.

8 MR. VALOIS: You may find those numbers similar to
9 North Carolina. Actually we do not know how many Republican
10 lawyers there are unless my colleague here would care to hash a
11 guess.

12 Thank you.

13 CHAIRMAN WALLACE: Let me ask -- I am sorry, Tom, go
14 ahead.

15 MR. SMEGAL: I have a couple of follow-ups. You
16 mentioned you do have some experience and you mentioned too the
17 fact that you have five appointments and the circumstances where
18 the five who are currently serving have indicated to you they
19 care not to serve any further.

20 Is there a fixed (?) of that board that those
21 particular individuals are serving on?

22 MR. MEADOWS: We have 25 board members on the North

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1 Mississippi rural legal services. Of that number, 15 are
2 attorneys and that covers 39 counties, thirteen appointments by
3 the state bar and two by the Magnolia bar -- the Magnolia bar
4 being out black bar association of Mississippi.

5 MR. SMEGAL: Of those 13 --

6 MR. MEADOWS: Seven are up for re-election. Two have
7 indicated that they would accept reappointment, five said no.

8 MR. SMEGAL: How long is a term?

9 MR. MEADOWS: I would have to check. I do not know
10 that.

11 MR. SMEGAL: Do you happen to know whether those five
12 that have chosen not to continue to serve, have served more than
13 one term or not?

14 MR. MEADOWS: I do not know that. What I intend to
15 do, sir, is to find out. I think it would be helpful rather
16 than just accept at face value that they do not want a
17 reappointment.

18 I think it would be incumbent upon me to find out why
19 they are not serving and convey this to the group. I think we
20 need to that.

21 MR. SMEGAL: I think it is particularly important
22 because it is Mississippi and Mr. Wallace has been telling us

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1 now for several weeks and maybe several years his experience
2 with Mississippi.

3 I think what you are going to find or what you may be
4 able to share with us -- I would appreciate very much possibly a
5 letter explaining to us -- what is happening to that particular
6 board and why lawyers in Mississippi who have been on the board
7 are not going to continue.

8 It is certainly -- as Mr. Wallace has explained to us,
9 at least in Philadelphia -- the reason we are having this
10 discussion and the reason we are having these particular
11 proposed regulations before us -- Mr. Wallace's experiences in
12 Mississippi and certainly your experiences in Mississippi would
13 be very relevant to, I would hope, the board's consideration of
14 any of these particular provisions.

15 I would appreciate very much if you would do that.
16 Give us any additional information: how many board members, how
17 long they have been serving, and, if possible, their political
18 affiliation.

19 MR. MENDEZ: Just to set the record straight, a lot of
20 these proposals are not Mr. Wallace's. They arise out of my
21 concerns.

22 MR. SMEGAL: Certainly I would want to give Mr. Mendez

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1 as much credit as he would like.

2 MR. MENDEZ: Thank you, Mr. Smegal. I will further
3 state that it is based on the experiences that I encountered in
4 my experience since I have been on the board. It is the reason
5 why I brought some of these issues to the floor.

6 MR. SMEGAL: Is it an integrated bar you have in
7 Mississippi?

8 MR. MEADOWS: Yes.

9 MR. SMEGAL: How large is your governing board?

10 MR. MEADOWS: We have 22 on the board of bar
11 commissioners. They are elected from each circuit district.
12 Then you have -- the president of the state bar serves, the
13 president elect, then the chairman of the young lawyers of the
14 state serves, the two immediate past presidents being a total to
15 31.

16 MR. SMEGAL: How often do you meet?

17 MR. MEADOWS: We have, at minimum, four meetings per
18 year.

19 MR. SMEGAL: How is your attendance?

20 MR. MEADOWS: Excellent.

21 MR. SMEGAL: Roughly 100 percent?

22 MR. MEADOWS: Very near 100 percent. Very rare an

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1 absence -- sickness or trial that our people do not attend those
2 meetings. We have a very active bar in Mississippi. We have
3 the first young lawyers -- the second young lawyers section of
4 American Bar Association was formed in 1936.

5 We have just made our first -- tooting our horn a
6 minute now since we are on the record -- we just made our first
7 grants under our IOLTA program, \$260,000 of the \$300,000 we
8 collected the first year of the program.

9 Each one of the -- with one exception -- each one of
10 the legal services groups in Mississippi received a grant. We
11 are very proud of that. It has been an excellent program. It
12 is going to grow, we anticipate, a half million dollars a year.

13 MR. SMEGAL: How long have you been president?

14 MR. MEADOWS: I came in office in June.

15 MR. SMEGAL: So you have had several of these board
16 meetings with your 31 member board?

17 MR. MEADOWS: Yes, sir.

18 MR. SMEGAL: Do you find having that many members of
19 the board unwieldy? Do you have difficulty running these
20 meetings?

21 MR. MEADOWS: We have a very good group. We are well
22 prepared before we get there.

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1 MR. SMEGAL: Thank you very much.

2 CHAIRMAN WALLACE: Let me ask you a couple of
3 questions based on some of the things I have learned since I
4 came back home four years ago.

5 The IOLTA program that you have just discussed, it is
6 true that you all have now given grants to all six of the
7 regular delivery programs in Mississippi. You all had some
8 problems with one of those programs, did you not?

9 MR. MEADOWS: Yes, sir. That was southwest
10 Mississippi legal services. I might say that I met with a group
11 in Malcomb about two months ago. We welcomed them back in the
12 fold.

13 CHAIRMAN WALLACE: They came back into the fold after
14 you originally denied them their share of the IOLTA money; is
15 that not right?

16 MR. MEADOWS: I would agree with your timeframe. I do
17 not necessarily agree with your implication as to why they came
18 back into the fold. I am certain it did help.

19 CHAIRMAN WALLACE: I am absolutely certain it helped.
20 I mean, that is one reason that I would like to see more state
21 bar responsibility because you have some weapons we do not. We
22 cannot just tell people we are not going to give them any money

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1 because then we have a whole ton of CFR regulations to go
2 through.

3 I got some regular complaints about southwest
4 Mississippi quite some time that we were not able to do anything
5 to solve. Lo and behold when the state bar has got some extra
6 money to hand out, it is amazing how well south Mississippi and
7 the southwest Mississippi manage to mend its fences with the
8 organized bar.

9 MR. MEADOWS: Let me get the record straight. First
10 of all, the state bar association had nothing to do with it.
11 IOLTA is administered exclusively by the Mississippi bar
12 complex. It has nothing to do with the state bar association
13 other than lawyers are members of it.

14 CHAIRMAN WALLACE: Housed in the same building now; is
15 it not?

16 MR. MEADOWS: They own the building.

17 CHAIRMAN WALLACE: That is what I thought. Let me ask
18 about north Mississippi for just a minute. Is it not possible--
19 first of all, let me ask how you pick the members for north
20 Mississippi. Do you or do you not consult with the local bar
21 associations in the 40 counties up there?

22 MR. MEADOWS: Surely.

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1 CHAIRMAN WALLACE: What reason is there to believe
2 that after you have consulted with all those people that they
3 acting individually would have more power to persuade than you
4 and they acting together?

5 Certainly you illicit their support in your efforts to
6 recruit members. How would it help if the state bar was not
7 involved in this selection of board members in north
8 Mississippi?

9 MR. MEADOWS: First of all, as tough as the situation
10 is at times in getting those people to serve, I could imagine it
11 could be doubly tough if the appointing group came from the
12 state level only from a 9-member group.

13 So I think what that says to us is this, that even
14 now, utilizing local bar associations and letting the state bar
15 make the appointment which is sort of a hybrid here, that we
16 still are missing the boat in getting information to these
17 attorneys about what this program is about, how they can be of
18 service to those who need the help of the poor in the community
19 as they suggested.

20 So I think what we have got to do is concentrate on
21 getting the message to the attorneys as to the opportunities for
22 service, their responsibilities. I do not think it is going to

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1 make a lot -- until we do that, I really do not think it is
2 going to make a lot of difference whether you have a statewide
3 board or whether you continue to rely on local associations
4 because we are trying that now and having a difficult time.

5 CHAIRMAN WALLACE: Is it possible that part of the
6 problem in north Mississippi versus the other five programs in
7 the state has to do with not with who the appointing authority
8 is but with the history of the north Mississippi program as
9 compared to the rest of the programs in the state.

10 You will agree that north Mississippi has been one of
11 the more controversial legal services programs in the country
12 not just in Mississippi.

13 MR. MEADOWS: Well stated.

14 CHAIRMAN WALLACE: Let me ask you one other question
15 about state support centers. One of the provisions of this
16 regulation would require that the board of directors of state
17 support centers be selected by the state bar association.

18 Is there any -- we do not do that in Mississippi and
19 that is not Mississippi's fault; that is Legal Services
20 Corporation's fault. We have got a subgrant program which is
21 bizarre. Louis Armstrong has asked us to end it. I have asked
22 the staff to end it. Nothing seems to happen.

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1 Assuming you have got a free standing state support
2 center and some bar association has to appoint the lawyer
3 members because that is what the law requires -- is the bar
4 association covering the service area of the program make the
5 appointments to the board -- is there any problem with the state
6 bar association appointing the bar members of the state support
7 center?

8 MR. MEADOWS: Mr. Wallace, are you speaking of the
9 coalition?

10 CHAIRMAN WALLACE: Sure. The legal services coalition
11 in Mississippi is a subgrantee of south Mississippi legal
12 services for some odd reason that goes back into the myths of
13 time. They do not like it. I do not like it.

14 The way it works is that the appointing authority, the
15 ultimate governing authority for legal services coalition is the
16 bars of Harrison and Jackson counties because those are the bars
17 that appoint the board of south Mississippi.

18 Assuming we can get it straightened out so that legal
19 services coalition is no longer basically a subsidiary of south
20 Mississippi, there is not any reason why Harrison and Jackson
21 counties should continue to control that board.

22 Does it not make sense if you have got a state support

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1 center with a state bar to be the people responsible for
2 choosing the membership of that board?

3 MR. MEADOWS: I would say that reasoning probably
4 would be sound, yes.

5 CHAIRMAN WALLACE: I have said -- Lewis has asked to
6 get his own grant. I have asked to get him his own grant. It
7 never seems to happen. Maybe next year we can get something
8 done on that.

9 Does anyone else have any questions for Mr. Meadows?

10 (No response.)

11 CHAIRMAN WALLACE: I appreciate you coming over here.
12 Thank you so much for visiting with us. Have a safe trip home.

13 MR. MEADOWS: Thank you.

14 CHAIRMAN WALLACE: We have, if I can find my list, Mr.
15 William Ide of the American Bar Association Board of Governors
16 from Atlanta.

17 Mr. Ide, have a seat, please, sir. Glad to have you
18 with us today.

19 MR. IDE: It is a pleasure to be in the palameadow
20 (phonetic) state. I am from South Carolina originally, so there
21 is nothing like coming home.

22 CHAIRMAN WALLACE: Please proceed.

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1 MR. IDE: Thank you, Mr. Chairman.

2 I am Bill Ide, member of the Board of Governors of the
3 American Bar Association. I appear before you today on behalf
4 of the American Bar Association. We ask that the proposed
5 regulations dealing with selection and composition of the
6 governing boards not be adopted.

7 You received written comments from our legal aid
8 committee. You received many written comments from state and
9 local bars. I have reviewed them. The reason set forth in
10 those written documents and our position of these regulations--
11 I would like to make one other point from my perspective and
12 listening to our board talk about the board of governors talk
13 about this issue.

14 In today's environment, whether it be government or
15 business, it has become increasingly clear that fewer layers of
16 management is in while distant removed management is out.
17 Whatever the functions, whether selling widgets, funding
18 infrastructure programs, or delivering legal services, the
19 people of this country want to know who they are dealing with.

20 They want to be able to get answers right there from
21 somebody at the local level where they can have them redressed.
22 It appears to us, in the case of legal services, the clients of

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1 legal services and those who are affected by such representation
2 -- be it someone who has been sued or suing such a client--
3 have redress at the local level through the local bar
4 association and locally appointed boards.

5 Local bars tend to be conservative. They are more
6 tied into grass root feelings than their lawyers and tied into
7 grass root feeling in the community. As a member of the board
8 of governors of the state board of Georgia and of the American
9 Bar, I can assure you we are not as close to common man as the
10 local bars are. It is just the nature of the beast.

11 We are a couple of layers off. We think that things
12 are working rather well overall. It is not perfect.
13 Admittedly, you may have some people lobbying harder to get on
14 the board. You may have some foreign shopping. You may not
15 have enough French blood coming in every time.

16 Possibly some boards are allowing too much discretion
17 on policy matters. In the vast majority situations, it works.
18 When it does not work, it needs to be battled out at the local
19 level as painful as that is.

20 In the 70s, I happened to be on board at (?) at the
21 time in the Georgia legal services program. We had out
22 problems. It was not fun. I thought the Savannah bar was going

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1 to roast them.

2 We went to the local level. We talked to the issues.
3 Pressure can come very easily at the local level to get it in
4 the line of what the community wants. Such tensions are more
5 healthy to be at the local level because the people then see it
6 in action; not upstream, not in D.C., not in some federal
7 regulation, not at the American Bar, not at the Georgia Bar.

8 It has been suggested that the recipient governing
9 bodies should more closely reflect the structure and procedures
10 pertaining to the corporations governing body. We strongly
11 disagree. You have been tainted by Congress. They did what
12 they did you to.

13 In general, good lawyering does not have anything to
14 do with political representation on the board. What we see is,
15 in most of the programs, well meaning lawyers who care getting
16 on boards to serve. It does not make any difference what party
17 they are from.

18 It is not there for any ideological debate about
19 politics. It is there about what is going on in our community,
20 who needs the help, how do we do it. If somebody is getting a
21 toe stepped on wrongly in servicing, what do we do to try and
22 correct the situation.

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1 How bars select board members? How many members
2 should be on the board? Things like that are best left to the
3 local situation. People at the local level are as our former
4 governor Lester Maddox calls them the little people. Let the
5 little people at the local level try and figure that out.

6 One other observation overall is the suggestion that
7 we should drop from the regulations a requirement concerning the
8 involvement of minorities and women in the governing board. I
9 submit to you that we feel strongly the day has passed on such a
10 debate.

11 Clearly there should be such representation. Clearly
12 the regulation speaks where we are in today's society. Efforts
13 to drop it now bring on a debate that is long passed. In
14 summary, there may be problems at the board level.

15 Foreign shopping, self perpetuation -- people can go
16 either way, but we feel very strongly that in the vast majority
17 of situations, those problems get worked out at the local level
18 by the people that are closely involved.

19 For that reason, we ask you to don the old saying that
20 comes around South Carolina: If it ain't broke, don't fix it.
21 We very much appreciate what you are going through. We
22 recognize the importance of your mission on behalf of the legal

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1 services.

2 We know it is not an easy job up there; a lot of
3 difficulties; there are inherent clashes. As long as the
4 adversary system survives, you are going to run on to those
5 kinds of things. Our presence today is intended to be one of
6 helpful support.

7 We hope that our views on this are taken on that
8 light. We feel very strongly that our involvement goes back t
9 the early 60s, that we do have some expertise and we do have
10 some compassion for the problems you face.

11 We also feel like these regulations will not take us
12 where we want to be. For that reason, we ask you not to adopt
13 the regulations. I thank you for your time and would be glad to
14 answer any questions.

15 CHAIRMAN WALLACE: Thank you, Mr. Ide.

16 MR. VALOIS: Does the American Bar Association have
17 any program policy or anything concerning discussions about the
18 merger with some of the -- Mr. Wallace used the term last time.
19 I had not heard it before -- "boutique" bar associations or
20 black bar associations?

21 Is there any effort or movement in the ABA to merge
22 any of those organizations into the ABA?

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1 MR. IDE: Let me see if I can respond. I am going to
2 have to wander a little bit. We are voluntary. We operate
3 through our House of Delegates is where all bars are
4 represented, whether it be state bar or local bar.

5 Then, in turn, the board of governors is chosen from
6 that group. We have groups like the National Bar Association--
7 that would be the kind of thing you are talking about -- has
8 representation in our House of Delegates.

9 We are, to my knowledge, there is no effort to merge
10 those. There is tremendous effort to make sure we work
11 together. I am not aware of anything that is coming from the
12 board level.

13 We have all kinds of -- our House of Delegates is very
14 interesting. We have people coming from Maritime Mindset, the
15 National Bar Mindset, the state bars and local bars. So it is
16 interesting.

17 I do not know if I am being responsive. I am not
18 aware of anything.

19 MR. VALOIS: You have answered part of my question.
20 You said that the national bar has representation in the
21 delegate section.

22 MR. IDE: Yes, it does.

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1 CHAIRMAN WALLACE: Other questions for Mr. Ide?

2 MR. MENDEZ: I have one that he said that always sort
3 of tickles my ear. You said that local bars are more
4 conservative than the ABA. Do you have any studies to reflect
5 that or was that just a rhetorical comment?

6 MR. IDE: It is all in the eye of the beholder, I
7 know, but I have been through many debates in the House of
8 Delegates.

9 I think it is fair to say that the type of
10 accountability that we have at the American Bar level is
11 sometimes more theoretical and less practical than when you face
12 -- when you walk out the door every day of your life and you
13 face the people you are dealing with.

14 MR. MENDEZ: I understand the American Bar
15 Association objects to the political representation. One of
16 the major comments that we have gotten, especially from the
17 conservatives, is that the legal services are not focusing or
18 representing the broad spectrum.

19 The choices of what legal actions that are brought are
20 not representative or not those that ought to be brought. For
21 instance, some object to the fact that some of the programs do
22 not bring domestic cases to this aspect.

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1 If we put a political picture in there, that argument
2 would seem to disappear immediately because you could then just
3 point to them and say, We will talk to you -- like mindset on
4 the board.

5 Given that factor, tell me why the ABA thinks that
6 political representation is such a bad idea.

7 MR. IDE: We have been through a lot of history. If
8 you think it is a little bit rocky now, in the 60s it was
9 terrible. We had such strife in this field all the way back to
10 the California rural legal association and then Governor Reagan
11 and the American Bar between a veto of programs, et cetera.

12 What we have learned is -- I think we all agree that
13 we are interested in the output to a client of service. That is
14 what it is all about. Different people have different -- in the
15 60s it was to bring impact litigation that will cut away the
16 binds of poverty and then everyone would be freed.

17 That is the most efficient way to spend your
18 resources. We went through that era. Then we went through the
19 Judicare (phonetic) examination. Then in the American Bar led
20 the charge to move toward private involvement.

21 It is such an evolutionary thing that if people in
22 good faith will keep looking -- for dollar spent -- what is

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1 going to ultimately be the best way -- what our concern is, you
2 start putting political labels and philosophical concerns in
3 there, we do not think that is where you want -- that is a red
4 herring taking the wrong way.

5 We may all argue about what is the best way to spend
6 money to do the best for clients, but traditional--
7 interestingly, you cannot find a instance where everybody is
8 happy because you say, Well, let's do more traditional stuff.
9 Then some private practitioner says you are taking my business,
10 even though truthfully if he took a hard look, he would not want
11 it, he or she.

12 We are concerned the labeling of the party idea will
13 just take it too far the wrong way. Those people will not be
14 satisfied. They will then go on and -- that is not going to
15 solve the problem.

16 The problem is going to be solved by the Atlanta Bar
17 deciding in its community with the people what is appropriate
18 for delivery. What kind of litigation are they going to live
19 with.

20 My problem in the 60s and 70s, when I was too bored,
21 was impact litigation. In other words, test suits were brought
22 by mad. It was very tough on the community. They put the plant

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1 down under.

2 If test suits in Berkeley California are in, that is
3 up for the people in Berkeley California.

4 MR. VALOIS: I am a member of the North Carolina Bar
5 and also the Florida Bar. I live in North Carolina. There is
6 practice which goes back as far as I know and longer in North
7 Carolina that the presidency is slopped from east to west
8 because of the geographic distribution of our state.

9 It has changed year after year after year. It has
10 been that way always. I am listening to what you say and I do
11 not think it applies in our state. Every lawyer who is on any
12 of the boards or has been active in the bar, an office of the
13 bar or whatever, it comes from someplace in our state.

14 To that extent, you do have different communities
15 represented at the state bar. I do not see how permitting them
16 or requiring them, as the proposed seems, to be the people who
17 select people in the community where the particular program is
18 located.

19 I do not see how that changes, really, because all of
20 them come from some place. If I was the president of the bar
21 from Asheville and I needed to appoint somebody in Wake County,
22 which is the country I am from at the other end of the state, I

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1 bet you I know somebody in Asheville or Wake County -- I could
2 pick up the phone and say give me some ideas or talk to the
3 president of the Wake County Bar Association.

4 I do not think any of that is prohibited. I am
5 having trouble understanding how we go from a purely
6 representative selection process as has been argued to us to
7 some process which is so isolated as to be ineffective in the
8 selection process.

9 I think that the arguments are coming to us -- that
10 extreme. I really do not think that they will stand up to close
11 scrutiny.

12 MR. IDE: I would like to make one point because I
13 went to the North Carolina Bar and spoke in favor of the
14 founding of the legal services program. Thorton Grable
15 (phonetic) is from Winston-Salem and he had a federally funded
16 one. This is dating myself.

17 I spent some time with them. That state is different.
18 As you know, back there in the revolution they split.
19 Culturally they are still that way. What we found in Georgia
20 and I think what the people found in North Carolina is the
21 Charlotte lawyers want to deal with their problem in Charlotte.

22 That is a lot different than -- you have two bar

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1 associations up there anyway; one voluntary and one integrated.
2 Those people that come together at Myrtle Beach -- I always
3 thought it was funny they went to South Carolina for their bar
4 needs -- are not with it.

5 If somebody on the board of the Charlotte Legal Aid
6 Program has a crisis, he has to go face everybody. The person
7 from Derrick County does not, quite frankly. We have this
8 problem all the time in the Georgia bar when we have certain
9 debates that really are more appropriate for the home bar to
10 work out.

11 It is easy for me to debate when I do not have the
12 citizens sitting there. It is a lot harder to deal with a
13 problem if you are the real person. So I think -- and we feel
14 strongly -- you start bringing it upstream and you are really
15 taking accountability of the program away from the community
16 that is affected the most.

17 CHAIRMAN WALLACE: We keep talking about North
18 Carolina. North Carolina already runs its program, I think,
19 although I am not completely understanding of their federation
20 system, but state bar is in charge of all -- the bar association
21 if I get my terminology straight -- the voluntary bar in North
22 Carolina is in charge of the whole program in the whole state.

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1 They have a little sort of subcorporation system that
2 has boards at the local level, but the money, I think, goes
3 directly to Raleigh and then is subgranted out to the
4 confederation system that is set up.

5 I do not see anything wrong with that. We can deal
6 with Raleigh. Raleigh can deal with whoever else. Alan is
7 shaking his head, so maybe I do not understand how it works. I
8 am doggoned if I see how a system like that is in any way
9 inconsistent with what we have got in this regulation.

10 We deal with the people at the state level. The state
11 people, who are ultimately responsible to us, get whatever input
12 they need. They set up a federation system. They set up a
13 unified system.

14 I do not care what kind of system they set up, my main
15 concern is I only want to audit 50 sets of books every year
16 instead of 330 or whatever it is we are doing right now. Is it
17 really impossible for 50 states to be responsible for their own
18 affairs statewide and to subdivide it any way they like for
19 local convenience?

20 MR. IDE: Well, nothing is impossible. Frankly, the
21 regulations are not coming across to us that way. What our
22 major concern is, as I tried to explain to Mr. Mendez, there is

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1 a long history here.

2 A lot of pain and suffering and blood along the way.
3 Some of these are not the most logical.

4 CHAIRMAN WALLACE: No, they are not.

5 MR. IDE: The first grant we got in Georgia, we got
6 through HEW. It went through the Department of Human Services
7 and then down. There is a concern, quite frankly, of our local
8 bars, et cetera, that is not going to work that way.

9 You start pulling it up and say we are just going to
10 put it through the local bar, and you are putting burdens on us
11 in a way -- if you want to sit down with our bars and talk it
12 through and if it makes sense, we will do it, that is fine.

13 The notion of the federal regulation comes down to
14 saying handcuffs, this is the way we operate, is very
15 disturbing.

16 CHAIRMAN WALLACE: We have gotten used to that in the
17 south over the last 25 years. If you are ready to succeed
18 again, so am I. I thought that we lost that one.

19 Let me ask this. In light of all the blook and
20 history that you are talking about over the last 25 years, you
21 are not really here to tell us that legal services is
22 nonpolitical; are you?

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1 MR. IDE: My desire in life is that it not be
2 political. I can tell you sincerely that I believe the lawyers
3 who support legal services do it on the thought that everyone
4 must be served and politics are not on their minds. That is my
5 belief.

6 CHAIRMAN WALLACE: Because when you say we are all
7 here after the same thing, which is the best service to the
8 clients, I think the history shows we are not after the same
9 thing.

10 It is nice to be accommodating in trying to reach a
11 consensus, but there is a difference between representing the
12 legal needs of the client who walks in off the street and impact
13 litigation on behalf of the client community or client
14 population.

15 All you have got to do is read the literature of the
16 foundation of the Legal Services Corporation to know that a
17 great deal of the founding philosophy of this whole enterprise
18 was we specifically do not want to represent the untutored
19 individual needs of the clients.

20 We want to represent the impact litigation for the
21 client community. We read yesterday a bylaw of one of the
22 corporations we still give money to. A lawyer is not eligible

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1 to sit on that board unless he wants to revamp the economic
2 structure of society to do all the usual things you say in
3 documents like that.

4 I do not know anybody who enforces that anymore. You
5 cannot really sit here and tell me that we all believe in the
6 same thing. We have got 25 years of history behind it that
7 shows we do not.

8 MR. IDE: I do not think I spoke very well then. What
9 I was saying is I know the reality of the problem, of the
10 conflict. You are talking to someone that -- some of my friends
11 back here strongly disagree. I was a conservative bar type. I
12 was not active enough.

13 The major cause of providing legal services to people
14 who cannot afford it, I think, is a nonpolitical question. In
15 my mind, it should be. The strategy is where it breaks down.
16 We both recognize that.

17 The point I am making is -- what we are concerned
18 about is you have got to ride through the tough times both ways.
19 Sometimes there was an era when OEO, back then -- they were on a
20 roll. They were pushing and there was not much for bars to do
21 for a period of time. We just kept chipping away and chipping
22 away.

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1 It switched the other way. We are in the middle. We
2 are not really abdicating one or the other, but I can tell you
3 impact litigation does not sell well at the local level.
4 Programs have to modify their ways.

5 Impact litigation coming from some other place that
6 really is not accountable of the local level can probably get
7 away with more. That strategy one way or the other -- we are
8 more interested in saying money is being spent for legal
9 services and let's debate the heck out of whether or not you
10 want to deliver.

11 Whether or not that is political, obviously there has
12 been a heck of a lot of lobbying, a lot of people from Congress.
13 That is political. I will grant you that. For a cause and as
14 far as people on the board saying I am a democrat and dixiecrat,
15 republican or whatever, I just do not see it.

16 CHAIRMAN WALLACE: -- as political, that the solution
17 to it is not to require partisan appointments on boards.

18 MR. IDE: I like those words. You did a good job for
19 me.

20 CHAIRMAN WALLACE: I just want to get something we all
21 understand. Mr. Mendez was trying to jump in.

22 MR. MENDEZ: I think that your paraphrasing this

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1 cleared up my concerns.

2 CHAIRMAN WALLACE: Let me ask you this and it is not
3 something that fills me with joy. We have got -- let's talk
4 about national support centers because that is the one that the
5 ABA is most concerned with or should be most concerned with
6 under this regulation.

7 Set aside the method of selection for a minute,
8 whether we make the ABA conduct an election or whether we want
9 the board of governors just pick people. We are looking at an
10 amendment in the legislation that tells us that our recipients
11 must have governing boards selected by the bar association
12 representing a majority of lawyers in the service area.

13 The service area for a national support center,
14 whether it is the Consumer Law Center, the Education Center, the
15 Health Center, the Food Research and Action Center, is the
16 United States of America.

17 Is there any good reason -- how is it consistent with
18 the legislation for anybody other than the ABA to select those
19 boards? I mean, we have got the Boston Bar Association picking
20 the consumer law board.

21 We have got the Massachusetts Bar Association picking
22 the Education Law Board and the D.C. picking a whole bunch of

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1 them. How can that possibly be consistent with the McCollum
2 Amendment? I am sure the ABA does not want the responsibility;
3 but consistent with the law, who else is there?

4 MR. IDE: Before I respond to that, that is in all
5 these functional things flowing around us. We feel very
6 strongly by having all the state and local bars in our House of
7 Delegates that we are vitally interested in every aspect of this
8 regulation.

9 Don't misconstrue our comments about, "It cost a lot
10 of money to have an election," and, "This is a job that we did
11 not ask for" as being our -- that is not why we are here. The
12 most important thing is we think we have got something working.

13 As far as the point you raised, I understand your
14 concern. I think we might have done better if we could have
15 talked before the regulation came to be thrown in our face
16 saying this is what we are going to do.

17 It might have been helpful -- and I cannot speak for
18 Jack Curtain who is the head of our committee -- but we want to
19 be helpful. That regulation sort of sets us up without a heck
20 of a lot of input from us. We don't think ahead of the game.

21 We will be glad to sit down and talk it through and
22 see if --

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1 CHAIRMAN WALLACE: I will tell you what I told the
2 Mississippi bar two days ago when Mr. Meadows' staff came to see
3 me is that I consider notice and comment to be the consultation
4 process that is set up by the administrative procedure act.

5 Maybe I am not a very good politician, but I do not do
6 -- I do not think any members of this board do a whole lot of
7 negotiations informally. I believe the way you negotiate and
8 you consult on things when public money is involved is in public
9 with the doors open and microphones running.

10 So as far as I am concerned, we are consulting now.
11 That is why we are here. That is what I would like to hear.
12 Maybe the ABA will be in a position to give us further
13 consultation on this subject before we vote, which may be in
14 January or may be in March.

15 I am not thrilled about turning this job over to the
16 ABA. I got libeled in the ABA journal this month. I got a
17 thick skin; I can live with it. I can think of a lot of people
18 I would rather have running these things than the ABA, but I got
19 a law to live with.

20 It says, National support centers ought to be
21 controlled by bar associations representing the majority of
22 people in the service area. I do not know any other way to--

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1 that is the way I read it, Alan.

2 You will get to talk and tell me why I read it wrong
3 in a minute. I do not know any way to live with that other than
4 giving you all a responsibility that you all do not want. If
5 you all are willing to consult further about that, I would love
6 to hear from you.

7 That is a real problem. I do not know of any answer
8 to it other than to throw that ball in your court.

9 MR. VALOIS: Let me say it a different way. I have
10 not noticed any reluctance on the part of the ABA to give us
11 advice. (Laughter.) Now we are giving you a real opportunity
12 to participate.

13 MR. IDE: It is easy for me to volunteer because Jack
14 Curtain is not here. I will say this, I am most appreciative of
15 what you are saying. Even I can follow the logic of the
16 problem.

17 The solution -- and let me just say I would like to
18 put you on notice -- I will ask Mr. Curtain to the microphones
19 or wherever. I was not thinking of the old TV program, Let's
20 Make A Deal, on the side; I was just saying that you have given
21 us a bed to lie in that looks pretty uncomfortable.

22 If there is another way to spruce it up that

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1 accomplishes your purposes and allows us to be helpful, Jack
2 ought to do it. I will call Jack.

3 MR. MENDEZ: I do not know about the rest of the
4 board, but I am willing to make it a feather bed.

5 MR. IDE: As far as the ABA journal, we all suffer.
6 They do have their own independence. I am not ready to be at
7 say, but they get after the governor sometimes.

8 CHAIRMAN WALLACE: If I sued everybody that had (?)
9 since I came up for this board, I would not have anything else
10 to do. It does not cause me a lot of pain.

11 Anybody else got any questions for Mr. Ide?

12 (No response.)

13 CHAIRMAN WALLACE: I thank you for coming over today.
14 Have a safe trip home.

15 MR. IDE: Thank you. It is nice to be with you all.

16 MR. SMEGAL: You may want to stay because we are going
17 to make this issue much bigger, but I heard you say something.
18 I do not want to put words in your mouth, Mike, but I heard you
19 say a few minutes ago that we would rather examine 50 sets of
20 books than 325.

21 CHAIRMAN WALLACE: I would.

22 MR. SMEGAL: I thought we were here to discuss

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1 government boards.

2 CHAIRMAN WALLACE: We are.

3 MR. SMEGAL: What I am hearing you say now, Mike, is
4 we are talking about state block grants. Is that what we are
5 talking about?

6 CHAIRMAN WALLACE: No, no.

7 MR. SMEGAL: Is this the nose of the camel --

8 CHAIRMAN WALLACE: I hope so, but that is not what
9 this regulation does.

10 MR. SMEGAL: Is that where we are going?

11 CHAIRMAN WALLACE: That is where I would love to go. I
12 have made no secret of that for a couple of years now. I mean,
13 if a state bar tells me I cannot find 90 people to serve on 17
14 different programs, I would tell them I think it would be hunky-
15 dory if you all would unite those 17 programs and find 12 people
16 to serve.

17 Then we will deal with one board and one set of books.
18 I like the way they do it in North Carolina. I would love to
19 see that happen. This regulation does not force it.

20 MR. SMEGAL: I just want to know -- Mr. Durant has
21 just walked in and I have talked a lot -- written a lot on
22 hidden agendas with Mr. Durant. I just want to know if we are

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1 hitting on a letter of hidden agenda with Mr. Wallace. Are we
2 going to have another proposed regulation --

3 CHAIRMAN WALLACE: I have not got -- if I could think
4 of a way to get that through, I would be delighted to do it.
5 That is not what this regulation does. I do not think anybody
6 ever has any -- should have any doubt as to the way I would like
7 to see this program run.

8 I would like to give the money to 50 bar associations
9 and hold them responsible for it. That ain't what this
10 regulation mandates. It is what this regulation might make
11 possible if the bars wanted to respond to it that way.

12 Thank you, Mr. Ide.

13 MR. IDE: My pleasure.

14 CHAIRMAN WALLACE: We love to get secret agendas out
15 on the table here. The next witness -- if I can find my list--
16 is the new president or the president elect of the New
17 Hampshire Bar Association Mr. Steven Tober.

18 Mr. Tober, welcome.

19 MR. TOBER: Thank you, Mr. Chairman.

20 CHAIRMAN WALLACE: Excuse me while I refill my coffee,
21 but I can hear you. It is good to have you with us. Please
22 proceed.

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1 MR. TOBER: Thank you, sir.

2 PRESENTATION OF STEVEN TOBER

3 MR. TOBER: Mr. Chairman, Mr. Durant, members of the
4 committee, it is a pleasure to be here. My name is Steven
5 Tober. I am from New Hampshire, president elect of the state
6 bar. I apologize for bringing the New England chill with us.
7 Presumably it will leave when I go.

8 I am here to speak on behalf of the entire integrated
9 New Hampshire Bar Association as well as other concerned bar
10 leaders on the very important issue that is before you with this
11 proposed regulation.

12 I am the president elect. I will take office in June,
13 but in New Hampshire, given the size of our bar, the presidency
14 elect is a very active and important part of our full bar
15 association.

16 I want to tell you a little bit about how I got there
17 because it reflects on this issue that I am going to discuss
18 with you today. I was elected in probably the most open and
19 notorious democratic with a small "d" process that has ever
20 occurred in our state bar association.

21 We are 114 years old. I had an opportunity to run in
22 a challenged contest to become a bar leader. I visited 7 of the

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1 10 counties that covers our state. I wrote probably 3,000
2 letters. I made hundreds of phone calls. One of the issues
3 that was discussed and was a referendum item in the vote that
4 was taken was dignified and proper legal services for the poor.

5 I take my election as a referendum and a mandate on
6 that issue. I am very proud to be before you to discuss that
7 matter with you. We are here clearly in strong opposition to
8 the new regulation as proposed that would do a variety of things
9 to the present process and the way the legal services are
10 delivered to the poor, the disadvantaged and the oppressed.

11 We will embrace but need not echo the position paper
12 drafted by Alan Houseman, the things that he has said to you and
13 will say. We will again embrace what Mr. Meadows and Mr. Ide
14 have said to you this morning as well as to the affirmative of
15 this proposed regulation.

16 Our additions to the debate is this, we are a very
17 small state. We are a conservative state. Everyone of our
18 federal delegation members is a conservative republican.
19 Everyone of our elected statewide officers in government is a
20 republican.

21 Yet we also have something else going for ourselves in
22 New Hampshire. This perhaps explains the mystique of the New

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1 Hampshire presidential primary. We put aside politics and raw
2 power and value principle and good judgment of the people we
3 deal with more than we do the political affiliations or the
4 power judgments that those people might make.

5 New Hampshire was not the first nor the last to be
6 that way. The esteemed Senator from South Carolina over 100
7 years ago, John C. Calhoun while perhaps locked in history on
8 some other issues that were wrong and unfortunate, nevertheless
9 is still an illuminating light on the issue of state rights.

10 He said over 100 years ago, "Irresponsible power is
11 inconsistent with liberty and must corrupt those who exercise
12 it." We say to you in the words of Senator Calhoun that this
13 proposed regulation is irresponsible power.

14 It attempts to place political bias and power
15 judgments over the pure and simple need for legal services for
16 the poor; services to be delivered, in our opinion and in New
17 Hampshire and in this country, with dignity and with
18 deliberation.

19 This proposed regulation, again in the words of
20 Senator Calhoun, is inconsistent with liberty because it invades
21 fundamental and constitutional rights and principles of those
22 involved in the delivery process.

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1 You are objecting to fashion, a political bias litmus
2 test that will somehow or other make this process, in your
3 opinion, better. That political bias litmus test violates at
4 least three longstanding and traditional notions of fairness and
5 legitimacy in government.

6 The first is free association, governed in the first
7 amendment. The second is equal protection. I ask you what
8 rational basis is there for singling out people and asking them
9 their political affiliation in the remotest parts of this
10 program and politicizing the delivery of legal services.

11 By your so doing, you have created a suspect
12 classification of people. You have taken away rights from
13 certain people who might wish to serve you. In our opinion, you
14 are violating the equal protection notion of both the federal
15 and state constitutions.

16 Thirdly by your litmus paper test, you are doing
17 violence to the state of right issue that Senator Calhoun fought
18 for and others still talk about. In New Hampshire, we Yankees
19 call it home rule. Down here in the south, I guess it is still
20 called state rights.

21 What right does this board or the federal government
22 have to tell an integrated bar such as New Hampshire, that is

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1 governed by the state of New Hampshire's Supreme Court, to
2 change what we do because somebody else somewhere either within
3 the beltway or outside of the beltway thinks we are not doing it
4 well enough.

5 Show me the supremacy clause argument. Show me it
6 strongly before we are going to listen very carefully to this
7 proposed regulation. This proposed regulation, again in the
8 language of Senator Calhoun, corrupts those who exercise it
9 because, quite frankly, it is infirm and ill-conceived law.

10 Infirm and ill-conceived laws dishonor all. They
11 dishonor the people who must enforce it. They dishonor the
12 people who must live by it. Unfortunately, and perhaps most
13 importantly, they dishonor the people who promulgate it because
14 the light that is passed from a dimly lit and dimly considered
15 law reflects upon all those around it.

16 I have a message to deliver from New Hampshire. We
17 had a board meeting of the board of governors yesterday, 21 of
18 us. They were told by the president that I was coming down
19 here.

20 Everyone of those men and women said to me, "Give 'em
21 hell. You tell them something for us. You tell them that we
22 are not going to live by this regulation." So I will tell you

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1 that; we will not.

2 If this regulation passes, we will not honor it. We
3 will either see you in court or we will ignore it. We are not
4 the first northerner to talk like that. Over 100 years ago, if
5 I may, Henry David Thoreau had similar thoughts.

6 As I am sure you all know, he wrote a treatise on
7 civil disobedience. Northerners tend to do those things. In
8 that treatise, he had the following to say, "Why does government
9 not cherish its wise minority? Why does a (?) resist before it
10 is hurt? Why does it not encourage its citizens to be on the
11 alert, to point out its faults and to do better?"

12 Indeed, why not? That is why we travelled from New
13 Hampshire. That is why we brought the cold air with us because
14 we want to tell you that you should be listening to us and not
15 to this ill-conceived, infirm regulation that has been proposed
16 and now apparently clarified as step number one on the hidden
17 agenda to lay the table open for other changes of more substance
18 and form than one could imagine from reading cold pages of the
19 federal register.

20 Mr. Chairman, thank you for your patience and
21 cooperation.

22 CHAIRMAN WALLACE: Thanks, Mr. Tober. I appreciate

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1 your coming here. You are quite correct that this is not the
2 first time the Yankees have said such a thing to the federal
3 government.

4 Succession, after all, was invented in New England
5 during the War of 1812. It is the only significant political
6 idea in the history of this country that did not originate in
7 the south. So we are glad to hear you all have not abandoned
8 your heritage all together.

9 Let me ask other members of the board if they have any
10 questions for Mr. Tober this morning.

11 MR. VALOIS: I just have one and that is referring to
12 your quotation from Senator Calhoun. Are you suggesting that if
13 we give the power to appoint to the New Hampshire bar, that they
14 would exercise it irresponsibly?

15 MR. TOBER: No, sir. I am suggesting that the power
16 you are attempting to create here is irresponsible power.

17 MR. VALOIS: But if we gave it to you, you would
18 exercise it responsibly; would you not?

19 MR. TOBER: I am sure I do not see the synapse between
20 those two points. The power, sir, that we have right now and
21 perhaps you should understand that ours is a modest size bar.
22 We have 3,000 lawyers of which about 2,400 are active.

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1 We have a million people in our state. It is a small
2 state. We have a 400 person legislature. We are very proud of
3 the citizen involvement that we have in our government, both in
4 the bar and in the regular civil government.

5 The power that we exercise in New Hampshire now, sir,
6 is eminently reasonable and responsible. It is done in a
7 fashion that would be, I think, to your acceptance, but it would
8 not, sir, be done in a fashion to which this regulation would be
9 addressed.

10 I am indignant if you would ask me, sir, to go back
11 and take a poll of the political affiliations of the people
12 involved in our programs. You might as well ask me to ask them
13 their religion. I will not do either.

14 MR. VALOIS: I am not going to ask you to do any of
15 that. Do you know how many democratic lawyers there are in
16 your state?

17 MR. TOBER: I would not even begin to ask, sir.

18 MR. VALOIS: Do you think there are any?

19 MR. TOBER: It does not matter. That is not the
20 moment of this debate.

21 MR. VALOIS: I think it does matter because my next
22 question is whether or not you think democrats in New Hampshire

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1 can act responsibly?

2 MR. TOBER: Sir, you might as well ask me if Jews in
3 New Hampshire can act responsibly because it has about as much
4 connection to the delivery of legal services as whether or not a
5 person is a democrat.

6 MR. VALOIS: As far as equal protection argument is
7 concerned, I can think of at least two statutes; the one
8 establishing this board and the one establishing the National
9 Labor Relations board that do require that the board not be
10 dominated from time to time by one political party.

11 MR. TOBER: May I address that point, sir?

12 MR. VALOIS: If you would like.

13 MR. TOBER: This board and the NLRB are creatures of
14 Congress. You report back to a political process and there is
15 some logical connection that makes the rational basis work
16 between what you do and what congress would have you do.

17 You are suggesting by this regulation that in the
18 remotest outreaches of where these programs may be delivering
19 legal services, that there is some logical connection between
20 the party affiliation of a lawyer in Colebrook, New Hampshire
21 and the poor people who cannot afford a lawyer in Colebrook, New
22 Hampshire.

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1 I am suggesting to you, sir, that is a far cry away
2 from your responsibility to report to the capital or the
3 Congress in Washington. That goes true for the NLRB and any
4 other governmental agency you wish to report in the same echelon
5 level.

6 When you begin to get to the subparts of this program,
7 where delivery actually takes place, what in the world is the
8 connection between political affiliation and proper and ethical
9 and dignified delivery of legal services? I just do not see it.

10 MR. VALOIS: Part of it might be the infusion of new
11 blood which we have talked about; hopefully the infusion of new
12 ideas. Part of it might be a different attitude.

13 MR. TOBER: May I suggest that my presence here is
14 demonstrative of new blood and new ideas and new attitudes, at
15 least within the New Hampshire Bar Association. You have heard
16 from Jonathan Ross; you have heard from Phillip Waystack; and
17 now you have heard from me.

18 I think you see that we are all different. We all
19 have our own disparate ways of approaching things. We all
20 deliver our sentences somewhat differently too. Sir, New
21 Hampshire has no problem in diversity, in geographical
22 distribution, in personality.

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1 We are not going to ask people what their political
2 affiliation is because it does not make any difference in
3 delivering legal services.

4 MR. VALOIS: I do not know that you are correct that
5 people in New Hampshire are necessarily offended by being asked
6 their political affiliation. I assume there are one or two
7 democrats up there; maybe even more than that; maybe even enough
8 to fill some boards.

9 I will yield to other board members.

10 MR. DURANT: Mr. Tober, I think you might be right on
11 that point. I had to think about what you said. I think you
12 made a very good point. Let me ask you another question.

13 What about the idea of this? I have had some phone
14 calls over the last three years -- over the last month on this
15 question. What if the boards were composed -- I realize with
16 the existing laws and whatever, but I just want to explore--
17 what if the board were composed evenly between clients and
18 attorneys?

19 MR. TOBER: The purpose being what, sir? What is the
20 policy or the goal which you hope to accomplish by that? Then I
21 can, perhaps, answer that.

22 MR. DURANT: I think one of the purposes is that it

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1 seems to me that the purpose of the program is to serve
2 eligible clients. Why not have more clients as a part of the
3 governing board, eligible clients?

4 MR. TOBER: Without more thought into it, I offer to
5 you that I would be happy to consider it further and be more
6 than happy to respond back to you either in writing or orally
7 about that concept.

8 It is one that I had not prepared for today. It is
9 one that may have some merit. I would not want to prejudge it,
10 sir, without doing a lot more thought about it.

11 MR. DURANT: Do you have any intuitive judgment one
12 way or the other?

13 MR. TOBER: I am not sure that intuitive judgment is
14 the best way to govern. I would suggest that as I am sure you
15 know, sir, that the burden would be on the person bringing
16 forward the new law to show by statistics or any other kind of
17 data that the proposed change was one worthy of going through
18 the process.

19 I do not have available to me at this moment the kind
20 of statistics or the data that would support that kind of
21 judgment. Intuitive judgments are fine but often contradicted
22 by logical thought and data afterwards. I would hate to share

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1 one with you that is inappropriate.

2 I am more than happy to go back to New Hampshire to
3 consider it in light of the New Hampshire programs and report
4 back to you on what it might mean in New Hampshire.

5 MR. DURANT: I would be interested.

6 MR. TOBER: Yes, sir, I will do so.

7 MS. SWAFFORD: This question comes from something I
8 thought I heard you say, Mr. Tober. Did I hear you say that you
9 are advocating or threatening this simple disobedience?

10 MR. TOBER: That is correct.

11 MS. SWAFFORD: That is fine; advocating or
12 threatening?

13 MR. TOBER: Ms. Swafford, what I said was you would
14 either see us in court or you would see us ignore the
15 regulation if it ever passed. You can choose how you wish to
16 categorize it.

17 I told you that the bar association of our state is so
18 repulsed by the concept of the litmus paper test and some of
19 the other changes, that to a person around that board, we simply
20 are not going to even listen to them.

21 CHAIRMAN WALLACE: Mr. Tober, do you disagree with Mr.
22 Ide's description of the dark and bloody history of the legal

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1 services movement in this country that he and I just discussed a
2 few minutes ago?

3 MR. TOBER: I am going to have to say I do not share
4 the full understanding of the history that Mr. Ides has about
5 it, but I do know some of it, sir. Certainly it has not been
6 unpretentious.

7 CHAIRMAN WALLACE: You would not -- maybe you would--
8 tell us that legal services, whatever it should or should not
9 be, you are not telling us that it is today, in fact,
10 nonpolitical; are you?

11 MR. TOBER: All I can tell you in New Hampshire it is
12 nonpolitical.

13 CHAIRMAN WALLACE: It is in New Hampshire?

14 MR. TOBER: Yes, sir.

15 CHAIRMAN WALLACE: You would not tell us what it is
16 like in the other 49 states plus the District of Columbia and
17 whatever territories we administer?

18 MR. TOBER: Mr. Wallace, I am president elect of the
19 state bar in New Hampshire. I can only say that -- may I
20 suggest to you, sir, as I suggested to Mr. Durant, that when
21 someone comes forward with a proposal to change the law, the
22 burden of proof is on the proponent.

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1 If you can show me data, if you can show me
2 statistics to demonstrate your point that there is a political
3 judgment process that colors the way delivery of legal services
4 is performed and that is sufficient to justify change in the
5 law, we will listen.

6 I will tell you that I can counter it with equal
7 studies from New Hampshire that that is not true in our state.

8 CHAIRMAN WALLACE: Your board already appoints all of
9 the board members in the New Hampshire program; is that correct?

10 MR. TOBER: Yes, sir.

11 CHAIRMAN WALLACE: So the effect this regulation would
12 have on you is twofold. One is that it changes the election
13 process, not the selector but the selection process and it
14 requires you to inquire into political believe; is that
15 correct?

16 MR. TOBER: At least those two changes, that is
17 correct, sir.

18 CHAIRMAN WALLACE: You object to both of those
19 changes?

20 MR. TOBER: That is correct, sir.

21 MR. MENDEZ: Do you also object to a six -- two three
22 year terms with one year -- it now says three years off but with

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1 one year off? Is that so thoroughly objectionable that you
2 would refuse to follow that?

3 MR. TOBER: The policy that I assume that is
4 addressing is that we simply do not want a lot of ward bosses
5 running these programs. We just do not want people creating
6 fiefdoms for themselves; is that correct, Professor?

7 MR. MENDEZ: You were not here yesterday, but I will
8 tell you the reason why I wanted that. I have, in the past, sat
9 on a number of voluntary boards -- sort of by years of service.
10 We have had several people that were difficult that nobody
11 wanted to take on, that should not have been on there but nobody
12 wanted to take it off.

13 In the past, I have had a couple of occasions where I
14 had to do that. One of them was an extremely difficult and bad
15 situation. I do not want to have anybody else to have to face
16 the same circumstance I do.

17 I know that on some of the bar associations that I sit
18 on, some of the groups, that we have some of those difficulties.
19 It is not -- that is the reason why I wanted it. It is not a--
20 if you have got a good board member, to have him sit off for
21 one year, I do not think is a bad impairment because you can put
22 him on one year later.

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1 MR. TOBER: If I may respond. I am troubled by
2 institutionalizing changes for purposes of getting at a couple
3 or three or four isolated specific examples because you throw
4 when you make those kind of changes, as you have just said, sir,
5 some very good people.

6 The theory you advance of, well, those good people
7 will come back, is true also for the bad people. They can come
8 back too. You are not accomplishing anything if that is all you
9 are aiming for.

10 My feeling is that unless you can show me that people
11 are creating long term negative drains on the programs by their
12 long term service, I would not want to sport such a prohibition.

13 For that matter, President Reagan does not even like
14 the idea of having presidents limited to two terms anymore.
15 Apparently, it is not just us who feels that way.

16 MR. DURANT: Steve, why does the New Hampshire bar
17 have a new president every year? Why not have the same one
18 every year?

19 MR. TOBER: Probably burn out if nothing else. Your
20 point being that there should be turnover at the top?

21 MR. DURANT: Sure.

22 MR. TOBER: I guess I do not see it the same way. I

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1 do not see the fact that we have a pro bono and a legal
2 assistance program as somehow or other being equivalent to the
3 person who leaves the bar association.

4 As I am sure you can appreciate, Mr. Durant, the bar
5 associations a different animal from the delivery of legal
6 services even though it embraces and weaves those programs
7 along.

8 I suppose you would have to ask the framers of the New
9 Hampshire Bar constitution why they chose to do this. I do not
10 think it is atypical, although I suppose I could address it on a
11 national scale.

12 In many respects before I came along, our bar and I
13 heard Mr. Valois talk about his bar, it was almost in a pointed
14 position. You waited out your time; you served your time; and
15 you moved on for the honor and the glory of the profession.

16 That is not true, I do not think, anymore in at least
17 our bar association. I think my election demonstrates that. I
18 suspect as lawyers become younger and more enthusiastic in
19 involvement in the professions, you are going to see new blood
20 in leadership anyway.

21 That is the kind of change you are going to have by
22 process alone in our pro bono program and or legal assistance

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1 program. The change will be there without having to
2 institutionalize any artificial reasons for making change.

3 MR. DURANT: The New Hampshire Bar, have you not
4 institutionalized a particular change?

5 MR. TOBER: No, I do not think we have. If I can sit
6 here as the candidate with his nose pressed against the glass
7 looking in wanting to be president some day and actually being
8 able to get there, having never served on the board of governors
9 before my election, then I do not think we have
10 institutionalized anything except for a process that allows
11 open and free election.

12 MR. DURANT: Every year.

13 MR. TOBER: Every year, sir. Let me point out that we
14 have governors that serve for three year terms. They can go from
15 county position which is a two year term to governor at large
16 for a three year term. Then they can return if they want as a
17 county governor for another two year term.

18 MR. DURANT: Are they elected?

19 MR. TOBER: Yes, sir. Everything is open and free and
20 democratic and available to everybody who wants to serve.

21 MR. DURANT: It is for a term and it is elected?

22 MR. TOBER: All government, I hope in this country,

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1 sir, is for a term and elected. If we did not have that, we
2 would have some problems.

3 MR. DURANT: I did not say that, but don't you think
4 that then should apply in this board also?

5 MR. TOBER: Not unless you can show me the policy you
6 are attempting to satisfy and that there is underlying data and
7 reason for the change.

8 MR. DURANT: What do you think the reason is for that
9 in the -- having terms and elections on the different bar
10 associations? What is the underlying premise of that?

11 MR. TOBER: I suspect it is to make sure that the
12 fifedom problem that I talked about does not occur, not because
13 there may be one or two bad people that you would rather get out
14 of office.

15 MR. DURANT: Was there any data brought before the New
16 Hampshire group when that process was set up to suggest that?

17 MR. TOBER: I am afraid I was not practicing in 1941
18 or '42, sir, when they drafted the Constitution.

19 MR. DURANT: Could you find that out?

20 MR. TOBER: I certainly could and I would be happy to
21 address that to you in the same letter.

22 MR. DURANT: I would appreciate it.

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1 CHAIRMAN WALLACE: Let me ask you: You just endorsed
2 open and free elections. I certainly agree with that. Would
3 your bar have any opposition in principle -- let's not talk
4 about the practicality of it -- in principle to open and free
5 elections for boards of directors of legal services programs?

6 MR. TOBER: On a partisan basis?

7 CHAIRMAN WALLACE: No. I mean, putting it on the
8 ballot with -- I mean, New Hampshire is famous for its
9 participatory democracy. You do not buy a spare tire for your
10 fire truck without voting on it at town meetings.

11 Would you approve of putting boards of directors (?)
12 the New Hampshire legal assistance project or whatever you call
13 it on the ballot in New Hampshire and let people vote for who
14 is going to spend their tax money?

15 MR. TOBER: I approve of what we do right now and that
16 is we send out a mailer to every lawyer in the state of New
17 Hampshire asking them if they would like to serve -- this is
18 annually of course -- on either pro bono or legal assistance.

19 That is reviewed by the president elect and is
20 reviewed and voted upon by the board of governors. That is open
21 and that is democratic. We do not have to go through, quite
22 frankly through a bar of our size, prohibitive costs of going

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1 through an election.

2 If you are talking about an internal bar election--
3 if you are talking about putting it on the voter ballot of the
4 state --

5 CHAIRMAN WALLACE: Let's let the state of New
6 Hampshire pay for it like they elect the 435 members of the
7 state House of Representatives. You all are massively
8 democratic place.

9 Is there anything wrong in principle with the voters
10 electing the people who are going to spend their money? I do
11 not care whether you do it on a partisan basis or a nonpartisan
12 basis or you draw straws.

13 MR. TOBER: I find that to be, I guess, an (?) to the
14 concept of local control. See, we are talking apples and
15 oranges here, Mr. Wallace. Our state governs pro bono and legal
16 assistance at the state bar level. Yet I am sitting here
17 telling you do not make any changes proposed as the regulation
18 would have it.

19 One of the things you want to accomplish for your
20 hidden agenda, quite frankly, is to --

21 CHAIRMAN WALLACE: Nothing hidden about my agenda and
22 never has been.

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1 MR. TOBER: It is certainly now. What you would like
2 to accomplish is to have every state do it at the state level.
3 What I am telling you is the reason it is apples and oranges is
4 we only have 3,000 lawyers; 2,400 which are active. That, sir,
5 is a floor in a building in Wall Street when you count up the
6 number of lawyers, for example, in other states.

7 We are a very small state. So, in a sense, even
8 though we do it on a state level, we are a local level agency,
9 bar, doing it because of our size and because of the
10 geographical nature of our state.

11 So I guess what my point is that when you ask me about
12 open and free election and doing it differently in the state of
13 New Hampshire, I am telling you that given the uniqueness, size,
14 the way the New Hampshire people deliver right now, we already
15 have a very healthy dose of democratic process in the selection
16 process. I do not see any need to change.

17 MR. DURANT: Can I ask Mr. Tober, two things; one on
18 this hidden agenda thing. No one has ever -- and certainly I
19 have never given any speech on it and no one in particular
20 related to this amendment has ever suggested to me that somehow
21 or other that this as Mr. Smegal's knows in tenth or the --

22 MR. CLARK: Mr. Wallace's.

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1 CHAIRMAN WALLACE: Oh, absolutely. That is oblivious
2 from history, Clark. Our friend in Texas, whose name fortunately
3 escapes me, came out to El Paso and I asked him two years ago:
4 Can we just send the state bar of Texas a check and let you do
5 it? He found it much more convenient to run to Washington and
6 call me names than to take responsibility for running the
7 programs.

8 MR. TOBER: I was the one who asked him that question
9 actually.

10 CHAIRMAN WALLACE: Maybe I put you up to it. There
11 ain't nothing hidden about the sediments of some people on this
12 board to turn it over to the bar association.

13 MR. TOBER: May I say, Mr. Wallace, that should have
14 been in the federal register preamble when this regulation was
15 proposed.

16 CHAIRMAN WALLACE: This does not do that. It does
17 not. It does not say that.

18 MR. TOBER: The perception, sir, from the rank and
19 file out there and the hustings of New Hampshire is that this
20 was a self contained regulation that proposed a political
21 litmus paper test and changes in the way delivery of legal
22 services would be performed in a certain finite way.

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1 I get here today and I hear, in fact, this is a table
2 setting proposition for purposes of talking about state blocked
3 grants. That, to me, Mr. Wallace, is a hidden agenda. It was
4 not clear from the four corners of the federal regulation that I
5 read before I got here.

6 CHAIRMAN WALLACE: Now you can go home to New
7 Hampshire and tell everybody what I said because there is -- as
8 I told the gentleman from the ABA, I intend to do things with
9 the lights and the microphones.

10 I do not think I have ever turned down a question
11 anybody has asked me. I would love to see that happen somebody,
12 but that regulation before us does not mandate that. I mean, it
13 just does not.

14 MR. TOBER: May I ask you a question, sir?

15 CHAIRMAN WALLACE: The presidents of your bar have a
16 long history of asking me questions. I tend to answer them.

17 MR. TOBER: Then may I ask you if this is not, in
18 fact, the first step in getting along for the state blocked
19 grant issues?

20 CHAIRMAN WALLACE: I doubt it because we are not going
21 to be here long enough to get along to the state blocked grant
22 issue. Should the happy day ever dawn when President Kemp is

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1 sworn in, maybe we can ask him to go along with that.

2 We do have elections in this country and all I would
3 like to know is whether you have got any objection to having
4 elections for boards of directors; apparently you do.

5 MR. VALOIS: Two questions: Do people of my party,
6 democrats, register publicly in New Hampshire?

7 MR. TOBER: Yes, sir. They also have a system whereby
8 - and I saw this anticipated in the federal regulation--
9 whereby if you are registered independent but you proceed to
10 vote in the primary, then it rolls you over until you re-
11 register again to the party in which you voted in the primary.

12 MR. VALOIS: The other question, I think, is a
13 question I asked Mr. Whitehurst. Would you be willing to accept
14 a blocked grant and administer those funds and be responsible
15 for monitoring and auditing and relieve the federal government
16 of all that responsibility and home rule, as it were, to take
17 care of all of that stuff.

18 We could just monitor you guys once a year or so. Are
19 you willing to accept that responsibility back there at home?

20 MR. TOBER: I wish I could give you a simple answer to
21 what is a startlingly simple question with a great deal of
22 complexity behind it. The answer would be given the impact it

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1 would have beyond simply New Hampshire, and that is the
2 emphasis, no.

3 MR. VALOIS: Suppose we just start with New Hampshire,
4 since you are one little old state with only 2,400 lawyers--
5 whatever that number was -- we could start there and being good
6 honest people with open democracy and home rule and all that, it
7 might set a good standard for the rest of the country.

8 MR. TOBER: Mr. Valois, if you want to send me a big
9 check for purposes of application to delivery of legal services
10 for the poor in New Hampshire, we will find a way to spend it.

11 MR. VALOIS: Thank you.

12 CHAIRMAN WALLACE: Mr. Smegal, were you trying to jump
13 in at one point?

14 MR. SMEGAL: Let me make an observation first. You
15 have been focusing on a concept of board presidents staying on
16 year after year. I am sure that some of you are aware that I
17 served as president of the San Francisco Bar -- it was a little
18 over a year -- and the thought of continuing for more than a
19 year would be a financial disaster.

20 It took over half of my time -- I do not know how much
21 time Mr. Tober will find he spends as president of the New
22 Hampshire Bar but I expect it is going to be more than half his

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1 time.

2 So the concept of state bar presidents or large
3 metropolitan bar volunteer presidents staying on for more than a
4 very short term is just an irrational thought. We should not
5 pursue it any further.

6 It just is not the kind of thing that people have to
7 make a living to do. We are talking about board members here
8 serving on boards that meet several times a year or possibly an
9 afternoon or evening or possibly even a full day.

10 We are not talking about that kind of commitment.
11 Certainly, in that context, people are able to serve longer.
12 Mr. Mendez has suggested that there is some problem with those
13 that stay on.

14 He has arbitrarily picked six years. I am not sure
15 why that number is here. I read a book once by a good friend of
16 mine in San Francisco -- a lawyer by the name of Ben Morris who
17 wrote a book that the presidency should be limited to one six-
18 year term.

19 He toured the country trying to develop some support
20 for that. It is a good book, and I recommend that you read it.
21 There are a lot of good pictures in it. If that is where your
22 six year term came from, I can understand at least the basis.

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1 Other than that, though, I am not sure where you find
2 it. What is more interesting to me is do we have any numbers on
3 how many -- what percentage of boards across the country on our
4 program have members that have been there more than six years?
5 Do we know?

6 MR. MENDEZ: Yes.

7 MR. SMEGAL: We do. Do you have that information? Do
8 you want to share it with me?

9 MR. MENDEZ: I do not have -- somebody -- who has it?

10 CHAIRMAN WALLACE: Ms. Disanto, when you do the final
11 draft of your report, put in a paragraph telling how many
12 boards have people who have been serving more than six years.
13 Give us some numbers if you can.

14 MR. MENDEZ: I do not recall what they had, but they
15 had some sort of reference yesterday when they made their
16 presentation.

17 CHAIRMAN WALLACE: They had some talk about longevity.
18 I do not think it answered your specific question, Mr. Smegal.
19 How many directors and what sort of percentages have been
20 serving more than six years; I do not think it was broken out
21 that way. I am sure it is available. We have got those things.

22 MR. SMEGAL: If I understood, Pepe's concern is that

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1 these Neanderthals who he is unable to remove from some legal
2 aid program in Colorado somehow control these programs. In
3 other words, I would expect to see in the data provided that you
4 have before you that these people represent more than 50 percent
5 of these boards.

6 I would sure be interested to see that. The other
7 point you made, and I assume it is correct, don't all of these
8 boards have bylaws that require elections over a fixed term,
9 two, three, four, one year, whatever it is?

10 Nobody gets to serve forever. You do not get
11 appointed. There is a reappointment process or a reelection
12 process everywhere. Nobody serves indefinitely. Am I
13 incorrect, Mr. Bayly?

14 MR. BAYLY: I am sorry.

15 MR. SMEGAL: Is it a requirement of our grant process
16 that there be a governing board and that the governing board's
17 selection process involve a fixed term, some term?

18 MR. BAYLY: I believe that is so. It is certainly the
19 primary activity of the board. I think there is a requirement.
20 I will not call it a regulation but a requirement about term of
21 office that has to be fixed; it cannot be indefinite.

22 MR. SMEGAL: Is it fair to say that there is no

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1 grantee that we have through this Legal Services Corporation
2 that has a governing board in which members are appointed for
3 life?

4 MR. BAYLY: I do not believe there is anything
5 considered a life term.

6 MR. MENDEZ: I believe there are several of them,
7 Chuck. I believe there are several that do not have terms.

8 MR. SMEGAL: I would be interested to know what
9 programs those are.

10 MR. DURANT: John, do you have that information? I
11 think Tom wants is.

12 MR. BAYLY: I do not have that information with me. I
13 am just drawing on my experience that all board members programs
14 have a term of some fixed length.

15 MR. MENDEZ: Before you do that, I would like to have
16 Ms. Disanto --

17 MR. DURANT: Mr. Tober, can I ask you another
18 question?

19 MR. TOBER: Sure.

20 MR. DURANT: You mentioned in terms of developing the
21 people to participate that you send out ballots or questions to
22 2,400 active or 3,000 active attorneys. What about having, in

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1 terms of board composition, more, if you will, public members
2 in the sense in which not necessarily attorneys in the majority?
3 What do you think about that?

4 MR. TOBER: This relates back to your question again
5 about clients. I would again defer to my earlier answer that I
6 would be more than happy to focus on the New Hampshire
7 experience based on those questions as to what that would mean.

8 I am not opposed to a healthy dose of democracy
9 anywhere you might want to put it. I want to know what it means
10 for the program. I want to know what it means for the quality
11 of delivery of legal services. I want to know what it means for
12 the financial impact it might have before I would even begin to
13 offer that gut reaction that I know we are all looking for.

14 I really hesitate to give it. If I might offer, just
15 for the moment, Mr. Smegal has reminded me that the six year
16 term for president does not originate with your friend's book.
17 It was James Madison at the Constitutional Convention who first
18 proposed a one term, six year period for the presidency of the
19 United States.

20 He was voted down for a very good reason. The framers
21 of our Constitution felt that the people were smart enough in
22 the democratic process to know when to stop electing people. We

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1 made some changes to that, but if it was good enough for the
2 framers to leave it open ended, then I suggest perhaps it is
3 good enough for us to do.

4 CHAIRMAN WALLACE: That is a lovely speech, but the
5 people who invented the electoral college did not believe that
6 the people of the United States were smart enough to elect their
7 presidents.

8 Let me ask you this: I am looking here at a bylaw of
9 one of our organizations that we give money to. This bylaw
10 tells the bar association -- it is one that was read yesterday
11 when we were spending some time going through some of the
12 problems that we think we have that we may be attempting to
13 resolve.

14 This bylaw tells the appointing bar association what
15 kind of people to put on the board. It says that the only
16 lawyers they are willing to accept from the bar association are
17 those who are committed to helping the people achieve far
18 reaching and basic reforms to utilize enough of the wealth
19 flowing from extraction of the regions natural resources to
20 finance insofar as possible the institutions essential to a
21 mature, dignified, comfortable and civilized society.

22 I am sure this is not from the New Hampshire program,

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1 but would your board of governors be repulsed if a program told
2 you that you had to inquire of your bar members whether they
3 were committee to far reaching and basic reforms of the nature I
4 have just read to you from their bylaws?

5 MR. TOBER: Mr. Chairman, that is a lot different
6 from the way I heard you characterize it to Mr. Ide. At that
7 point, I thought Adam Smith had written the bylaw because I
8 believe the comment you made was that people had to be committed
9 to almost economic revolution.

10 What you have just read me --

11 CHAIRMAN WALLACE: The next line, by the way, is an
12 end to poverty, social injustice, discrimination and the
13 alienation of the poor, the black, the worker and the young from
14 American society. It goes on. Are those not political things?

15 MR. TOBER: About as political as the language you
16 find in the poem on the Statue of Liberty. What you have just
17 read to me are very laudable goals. Now we can disagree because
18 we are all, I suppose, willing to be contentious over exact
19 language and I do not have the black leather --

20 CHAIRMAN WALLACE: Congress, last year, voted against
21 the poem on the Statue of Liberty. Look at Simpson versus
22 Mazzoli. It is all political, is it not, Mr. Tober?

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1 MR. TOBER: I have not interrupted anybody and I
2 appreciate the same courtesy.

3 CHAIRMAN WALLACE: I apologize.

4 MR. TOBER: My point is that we can disagree over the
5 languages in front of you that is not in front of me. I could
6 also suggest to you that a lot of Republican presidents have
7 attempted reform in the same extravagant or exacerbated fashion
8 that you are now claiming, I guess, liberals and democrats might
9 want to do under that language.

10 It is a debatable point, but it is a point that is
11 broad enough to encompass a lot of a things. We can
12 respectfully disagree on whether or not that language is
13 appropriate or inappropriate.

14 As far as what I interpret the goals to be out of
15 that, I find it laudable and fully supportable.

16 CHAIRMAN WALLACE: Let me ask you this. One of the
17 pointing institutions for New Hampshire legal assistance is the
18 New Hampshire Civil Liberties Union. They have a seat on the
19 board. Do you consider the New Hampshire Liberties Union to be
20 a nonpolitical organization?

21 MR. TOBER: Absolutely.

22 CHAIRMAN WALLACE: We have a lot of differences in

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1 language then. Any other questions for Mr. Tober?

2 MR. TOBER: May I remind the chairman that the
3 American Civil Liberties Union defended the rights of Nazis to
4 march through Skoki, Illinois. If that can be done, sir, I
5 suppose you can find a political side in that, but I sure do
6 not. I think that demonstrates adherence to constitutional
7 principles above political affiliation.

8 CHAIRMAN WALLACE: I will also remind you that the
9 American Civil Liberties Union opposed Mr. Bork's nomination to
10 the Supreme Court. I am not sure how you define politics, but
11 Nazis are political and Supreme Court Justices are political.

12 MR. TOBER: So did, as I recall, 53 or 54 U.S.
13 Senators. I guess that we could go on with specifics forever.
14 It does not accomplish anything to throw examples at each other,
15 sir.

16 CHAIRMAN WALLACE: Apparently it does not because our
17 definitions of political must be too far apart to communicate.
18 Mr. Durant, were you about to ask a question?

19 MR. DURANT: I have nothing further.

20 MR. SMEGAL: Mike, I have a question, I guess, and I
21 guess maybe Clark is going to answer it. Did I hear you say,
22 Clark, that you or you were suggesting to Mr. Tober that maybe

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1 the board should be 50-50 clients and client representatives?

2 MR. DURANT: I asked him what he thought about it.

3 MR. SMEGAL: This McCollum statute we are operating
4 under, does it not require --

5 MR. DURANT: I prefaced my remark by saying that the
6 existing law may prevent that. I mean, McCollum does say that.
7 McCollum is --

8 CHAIRMAN WALLACE: It is a rider. It is not in the
9 act.

10 MR. SMEGAL: Mike, I assume yesterday you approved the
11 minutes. I was not here. I did notice in that context that
12 there should have been one change. On page 19, there is a
13 reference to you having a conversation or discussion with
14 Representative McCollum. I would understand and recall from
15 that particular meeting that it was a staff member.

16 CHAIRMAN WALLACE: That is correct. That correction
17 was made yesterday to the minutes. Thank you, Mr. Smegal. Mr.
18 Tober, thank you very much. We have got one more speaker who
19 has waited patiently for two days.

20 Mr. Houseman, we are delighted to have you with us. I
21 am sure you can set me straight on a lot of things. If you do
22 not set me straight now, you have at least another month to work

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1 on it.

2 PRESENTATION OF ALAN HOUSEMAN

3 MR. HOUSEMAN: I just want to deal with a few things
4 so I do not take up too much of your time. There is much, much
5 more to be said. Let me just start with McCollum.

6 I have read and my comment on behalf of PAG 1188,
7 mislabeled in the materials, quotes extensively almost -- I do
8 not think it leaves anything out -- from the legislatives
9 history and the statute.

10 Let's start with this National Bar business. The
11 statute says, "The minority of directors is comprised of
12 attorneys who are admitted to practice to one of the states and
13 who are appointed to terms of office on such board or body by
14 the governing bodies of state, county, and municipal bar
15 associations, a membership of which represents majority."

16 I do not see how in the world you can suggest, based
17 on that language alone, that the McCollum Amendment suggests
18 that the National Bar, which is not mentioned and which the
19 phrase "whose membership qualifies other state, county and
20 municipal bars" is required by the McCollum Amendment to appoint
21 the nation support center boards because it is not.

22 The language is not mentioned in the American Bar

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1 Association. It explicitly mentions state, county or municipal.
2 So I do not think -- whatever the merits of that, which are a
3 separate issue, I do not think you have the authority to do
4 that.

5 Secondly, throughout this McCollum Amendment and the
6 legislative history, there is no suggestion anywhere that the
7 state bars are going to have sole appointment power, primary
8 appointment power or anything like that.

9 Third, the McCollum Amendment and the legislative
10 history does not provide virtually all of the other proposals
11 that you have made.

12 Fourth, just as a factual matter, there are some
13 states without a unitary bar where the majority bar is not the
14 state bar. That would be a direct conflict with the McCollum
15 Amendment.

16 That is true in New York. It is true in New Jersey. I
17 think it is true in Illinois. I think there are at least ten
18 others.

19 CHAIRMAN WALLACE: Say that to me again because I --

20 MR. HOUSEMAN: There are a number of states where
21 there is not a unitary bar and the majority bar for a service
22 area is not the state bar. That is the majority membership of

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1 the bar which would represent the majority of attorneys is not
2 the state bar.

3 The comments point to three of these. I think there
4 are a few more. Finally, just on the state bar appointment
5 business, a number of things have been said much more eloquent
6 than I could. I just want to point out that in some states,
7 state bars are dominated by large cities law firms who know or
8 care little about the activities of offices in isolated rural
9 areas.

10 I have seen that experience in my own work. There are
11 a number of comments that point to it. Let me turn back to,
12 very briefly, the whole context of this. The McCollum Amendment
13 became effective not in 1981 -- Congress did not pass it in
14 1981, not in 1982. It became effective in 1983.

15 The regulation of this corporation required programs
16 to be in compliance with the McCollum Amendment by the end of
17 '83 or no later than March of '84. So we have had the McCollum
18 Amendment in operation for a little under four years and for
19 most programs a little under three years.

20 It seems to me very difficult to base broad scale
21 changes in an amendment that we have not see how effective it is
22 working. It strikes me as far too early to tell whether the

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1 current system is working. I think the data that you have got
2 by yesterday -- which, of course, I have not seen -- points to
3 this explicitly.

4 For example, there is constant concern about turnover
5 and self selection on the board. What I heard yesterday -- I
6 heard it orally -- is that 21 percent of the current board
7 members have been on the board prior to the McCollum Amendment.

8 I do not know what that means, but I presume it means
9 prior to the time programs had to implement the McCollum
10 Amendment -- that is in '84 -- and it is based on '86 data. So
11 between 1984 and 1986, we have only 21 percent of the board who
12 has been on the board.

13 That strikes me as a tremendous turnover. I could not
14 tell from that whether there is a problem at all. Moreover, I
15 do not know what programs, based on that data, are doing about
16 problems that you are concerned about.

17 The comments seem to suggest and that data seems to
18 suggest to me that the McCollum Amendment is working quite well.
19 If we are going to have useful data on this issue, I think it is
20 important that we know not only a few isolated examples, but
21 that we know how many recipients are or are not doing what it
22 has claimed; that we know what the current status not the 1986

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1 status of the board selection is because maybe some of these
2 things have changed; and that we have the response of programs
3 to the claims by the MAC unit because often, as you yourself
4 have said -- maybe not this way but often in my experience--
5 MAC is factually inaccurate.

6 Thus, if we are going to talk about what MAC finds, I
7 think it is essential that we have the program response present
8 in the materials that the board looks at.

9 There are a number of specific charges. I am not
10 going to go through all of them. I could, but I am not. Let me
11 just deal with one that seems to be plaguing a lot of people.
12 This is the charge that was made yesterday, that somehow
13 recipients have influence on attorney board selection and
14 somehow this influence is terrible or bad. It is not
15 necessarily so nor does the data necessarily support any such
16 characterization.

17 First, let me draw a few distinctions. There is a
18 distinction between a project director having some informational
19 relationship to an appointing authority and a recipient board
20 having some relationship to an appointing authority. I think we
21 should a, keep that distinction in mind and try to take account
22 of it in our deliberations.

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1 Secondly, influence does not necessarily mean that the
2 appointing authority is not making the appointments and not
3 making its own independent decisions. I am not quite sure how
4 this all arose, but it does not seem to me to make that at all.

5 I do not know the specifics of what the MAC report
6 said. Obviously we will look at them if we are going to go
7 forward with this. It seems to me that a number of things that
8 were said just have to be put in some perspective.

9 First of all, under the current guidelines, it is
10 perfectly permissible for legal services recipient board to
11 suggest a list of nominees to the appointing authority. That is
12 not illegal.

13 The guidelines explicitly permit it. I do not read
14 McCollum as prohibiting it. I do not know whether that is
15 currently going on, but I am not sure it is a problem. Maybe it
16 is a problem that should be addressed.

17 Secondly, there was great concern about recipients
18 obtaining a veto power because they "elect or approve"
19 appointments made to them. I just want to point out two things
20 about that.

21 First, state law may require certain procedures by
22 recipient governing bodies they have to file as a formal

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1 matter. There is a comment from Indiana. I think there are
2 several other comments that suggest that state law requires that
3 the election of membership be only made by the members.

4 So as a formality, the board has to go through formal
5 practice of approving or electing appointments that are made to
6 it. The real question is, and the issue that was not answered
7 by any of the MAC data, was: Has this power been exercised;
8 under what circumstances and were their circumstances justified;
9 and, was there state law that required the bylaws to have that
10 provision in it?

11 None of that came out in the MAC data. There are
12 state laws, as the comments point out, that require that. So
13 the fact that some bylaws have that provision, may mean nothing.
14 There are a number of other things that could be said here. I
15 want to skip over much of the comments that the MAC report made.

16 I would suggest that taken on its face, they do not
17 support most of the proposals that you have put forward here.
18 It seems to me that the most they support, some minor
19 modifications in the guidelines and possibly some increased
20 communications for the local boards.

21 One issue that we have talked a little bit about--
22 and I just want to point out a couple more things on it -- is

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1 his issue of a compensation, the interpretations of the old
2 corporation, congress, et cetera on the issue of compensation.

3 First, you have heard about the potential dangers of
4 this interpretation in that it would preclude national and state
5 support center boards from having on their boards staff of local
6 programs.

7 There are some other complications that I think you
8 should be aware of. First of all, it would also prohibit an
9 attorney in a compensated plan from serving on the board with
10 another recipient. If you had an attorney in one program that
11 was in a compensated plan, he could not serve on the board of a
12 recipient of another program that might be a totally different
13 kind of recipient.

14 There are other consequences to this that I think you
15 have to take into account. The law, it seems to me, on this
16 issue is not as clear cut -- indeed, I think it is frankly
17 somewhat clear cut the other way -- that when the Congress
18 adopted the compensation provision, it was referring solely to
19 compensation from the recipient not any recipient.

20 That is clear both from the legislative history at the
21 time the law was enacted and the post legislative history since
22 then, which has uniformly interpreted that provision that way

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1 with the identical language that we are talking about.

2 So I would urge that in reviewing this, you would take
3 account of the law, the legislative history and the practical
4 consequences of this.

5 Finally, I think if you are going to go forward with
6 any of these, you should take the time to have a serious effort
7 of a cost benefit analysis. To me it is pretty obvious that the
8 cost would be great. There is going to be serious disruptions
9 on boards, many of whom went through a fairly serious disruption
10 in '83 and '84.

11 It is not quite clear what the benefits of this are
12 going to be given what we know now and from what the comments
13 say -- I think what the data will show -- about what is going
14 on.

15 I think if you do a cost benefit analysis, you will
16 come to the conclusion that the costs far exceed whatever
17 benefits. It makes no sense to go forward. In light of that
18 and I think what we have in the record today, in light of the
19 data that I have only heard orally, it seems to me that the
20 appropriate response would be to pull this off the table, to
21 examine what problems there are, if any -- the real problems we
22 faced -- and the proposed solutions to real problems not some,

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1 what I think, are theoretical concerns or hearsay or comments
2 you received that are not as record.

3 Let's look at real problems and try to address them if
4 there are such. I would go back and say that before doing that,
5 I really think we ought to give this regulation and the McCollum
6 Amendment, regulations of your predecessors past, an opportunity
7 to work before making judgments about whether there are serious
8 problems. I think that a little more time will sort out what
9 kind of problems there are.

10 CHAIRMAN WALLACE: Thanks, Mr. Houseman. I appreciate
11 your comments as always. I, again, will encourage the staff to
12 get the report and backup and come to a quorum by the end of the
13 year because I do always appreciate the light that you shed on
14 what data we have. I look forward to working with you on this
15 over the next month and maybe next several months.

16 Thank you very much.

17 MR. HOUSEMAN: Thank you.

18 MR. DURANT: Alan, could you answer a question that I
19 asked Mr. Tober regarding the makeup of the boards in terms of
20 having a 50-50 -- arbitrary capricious that is just out of the
21 air, the whole notion of expanding the client participation on
22 boards.

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1 MR. HOUSEMAN: I have not formally consulted with PAG
2 on that issue recently. I am ruling aside for a second from
3 whatever formal position they may have.

4 I think all of us in legal services have learned
5 something which many of my colleagues have told me through the
6 years about the effective role which local bars and local
7 lawyers can play in the governings of programs.

8 As we all know, there was substantial resistance
9 within the community -- not universal by the way, hardly
10 universal. It really came only out of a few pockets to the
11 McCollum Amendment.

12 I think we have learned that that amendment has had a
13 tremendous influence and a tremendous affect on proving
14 accountability, proving relations with local bars. I do not
15 want to lose that accountability and those relationships which,
16 in some places, are longstanding and in some places are only
17 recent finish.

18 So I am a little concerned about the 50 percent kind
19 of figure. On the other hand, we have all in the legal services
20 been committed from the outset to client control and to client
21 accountability.

22 We have from the outset sought both formally, in terms

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1 of the LSC board that have eligible client members on it and to
2 expand the one third requirement on the local recipient
3 governing bodies.

4 That has been the formal position taken by PAG 1188
5 historically. The legislation in '74 -- we pushed hard in '73
6 and '74 to expand the client representative number on this
7 board, actually to go three if not higher.

8 We pushed hard to expand the one third to higher. So
9 I think as an historic matter, we have a longstanding commitment
10 to client accountability and increased client accountability.
11 Whether the appropriate number is 50-50, I do not know.

12 There are a lot of strong reasons that are argued for
13 other members, the expanded members of non-attorneys of the
14 board. Let me make one other aside.

15 The way the regulation is structured in this 19 board
16 limit will have a substantial impact on this by the way. One of
17 the things that many recipients have found is that they gain
18 very much by having both nonlawyers and non-attorneys and non-
19 clients on the board.

20 People who in the community are supportive of the
21 program who may have wide and diverse contacts but are attorneys
22 and are clients. This 19 number as a practical matter precludes

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1 that. Just do the arithmetic. You have a one third, 60 percent
2 requirement. When you get through with it, there is not one
3 other member left.

4 What this does as a practical matter is knock out any
5 other person other than attorneys and clients from the board. A
6 number of boards have non-attorneys, non-clients who play
7 tremendous roles helping the fundraising bridge gaps and other
8 segments of the community that do not exist.

9 The world is not just made up of attorneys and
10 clients fortunately for everyone. So I think if you are going
11 to look at how to both move within the confines of the (?)
12 statute and how to move in the future, that there is a lot to be
13 said for altering some of these numbers.

14 We also should look at some of the history that we
15 have had and the gains that we have made and the accountability
16 that now exists and try to merge these kinds of somewhat
17 conflicting goals into a reasonable hole.

18 MR. DURANT: Two things. Correct me if I am wrong,
19 the McCollum Amendment is something that is renewed every year
20 with the appropriations bill; is that correct?

21 MR. HOUSEMAN: That is correct.

22 MR. DURANT: It is not something that -- that could be

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1 changed every year too; is that correct?

2 MR. HOUSEMAN: Sure, and it has been modified.
3 McCollum's '81 proposal was different from the proposal that was
4 on the '82 legislation which did not make it ultimately into law
5 until '83. The '83 one was modified in '84. So there have been
6 changes all along in the narrowness of the language.

7 MR. DURANT: I know what you speak in terms of--
8 because it has been said to me a number of different times and I
9 have seen it. John Brooks was sitting here when I went up to
10 Boston back in April of '85.

11 The importance of the established organized bar or
12 whatever in terms of expanding the base and people who can
13 provide assistance on boards, not even necessarily on boards, in
14 solving particular problems with clients if they come up. I
15 agree and also in terms of nonlawyers having the ability whether
16 to be in fundraising or just to solving particular problems.

17 I would like you to think about and give me a response
18 prior to our January meeting on the idea of expanding the -- I
19 mean, I just use it for the sake of this discussion -- client
20 members to 50 percent and also maybe taking into account the
21 notion of -- maybe that means you change that number a little
22 bit -- expanding so that you have non-attorneys on the board.

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1 Let me know what you are thinking.

2 MR. HOUSEMAN: Sure.

3 MR. DURANT: I am not asking you to do it necessarily.
4 You can tell me the formal position of the people that you
5 represent, but I also want you to tell me just as you too.

6 MR. HOUSEMAN: Okay. I will be glad to do that.

7 CHAIRMAN WALLACE: Thank you, Mr. Houseman. We
8 appreciate it. That concludes the agenda. I will ask unanimous
9 consent that the committee stand adjourned.

10 Hearing no dissent, so ordered.

11 (Whereupon, the Operations and Regulations Committee
12 meeting was adjourned at 11:20 a.m.)

13 * * * * *

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