

TRANSCRIPT OF PROCEEDINGS

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LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE

January 9, 1987

11:00 a.m.

Capitol Holiday Inn
Columbia Room
550 C Street, S.W.
Washington, D.C.

A P P E A R A N C E S

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

Also Present:

Robert A. Valois
Hortencia Benavidez
Claude G. Swafford
Basile J. Uddo
Paul L. Eaglin

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PROCEEDINGS

1
2 MR. WALLACE: We will convene the
3 Committee at this point. Yes, before I convene the
4 Committee, let me tell everybody what's going on.

5 We're going to start the Committee meeting on
6 operations and regulations. I understand there are
7 some sentiments on the Board to interrupt it for a
8 Board meeting when it becomes convenient to do so and
9 I will adjourn as soon as Clark tells me to do
10 so...or recess...and then we can get to the Board
11 with its business and back on the road.

12 But in any event, we got enough for a meeting
13 here and we're going to start doing some work.

14 Mr. Houseman has given the members of the Board
15 a draft that he and I have been working on over a
16 long distance and we'll talk about that as it goes
17 on.

18 For members of the Board, there are some
19 confidential documents that, I think, are in a box
20 over there. Those are not for public view, but they
21 are for the education of the members of the Board as
22 we work on this subject and you may want to get your
23 hands on those before we start.

24 With that, let me call to order the meeting of
25 the Operations and Regulations Committee of the Board

P R O C E E D I N G S

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confidential documents that I think are in a box

over there. Those are not for public use, but they

are for the education of the members of the Board as

we work on this subject and you may want to get your

hands on those before we start.

With that, let me call to order the meeting of

the Operations and Regulations Committee of the Board

1 of Directors of the Legal Services Corporation,
2 pursuant to notice duly given in the Federal
3 Register.

4 The first item of business is the adoption of
5 the agenda, which is contained in your Board Book and
6 your Committee Book and basically all we're doing is
7 approving minutes and working on lobbying
8 regulations.

9 Let me ask unanimous consent the agenda be
10 adopted as printed in the Board Book.

11 Hearing no dissent, so ordered.

12 We do not have minutes of our last Committee
13 meeting which was held December 15th, I think. They
14 haven't got the transcript back and minutes have not
15 been put together.

16 We do have minutes of the April 10th Committee
17 meeting, which I did not attend in New Orleans
18 because my baby was born a couple days later and at
19 the last meeting we asked the staff to go over them
20 to make sure that we had various citations correct.
21 At this point I'll defer to the Secretary of the
22 Board, Mr. Baker, to tell us the status of the April
23 10th minutes.

24 MR. BAKER: The April 10th minutes
25 were drafted by Tom Brevard, who no longer works for

of directors of the paper business corporation.

pursuant to notice duly given in the legal

minutes.

The first item of business is the adoption of

the agenda, which is contained in your board book and

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the last meeting we asked the staff to go over them

to make sure that we had various citations correct.

At this point I'll defer to the Secretary of the

Board, Mr. Baker, to tell us the status of the April

10th minutes.

MR. BAKER: The April 10th minutes

were drafted by Tom Bravard, who no longer works for

1 the corporation. He has assured us that the
2 citations in the minutes are correct.

3 CHAIRMAN WALLACE: Okay. I think
4 all members of the Committee had a chance to look
5 over these minutes at the last meeting and I think
6 except for the citations there are no problems with
7 any of the minutes at the last meeting.

8 So, at this point let me ask unanimous consent
9 that the minutes of the meeting be adopted as printed
10 in the Committee Book?

11 Hearing no dissent, so ordered.

12 We are now prepared to proceed with the lobbying
13 regulation, Part 16.12. At the close of the last
14 meeting, we asked our staff to prepare information
15 for us based on their experience in enforcing the
16 lobbying regulation and I don't know where we want to
17 begin on this. I guess Mr. Williams and...Mr.
18 Williams primarily, I don't know if Mr. Bayly has got
19 anything to say at this point.

20 Do you, Mr. General Counsel?

21 MR. BAYLY: Not at this point no,
22 Mr. Chairman.

23 CHAIRMAN WALLACE: All right, thank
24 you.

25 Mr. Williams, if you'd come forward.

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errors in the minutes are correct.

CHAIRMAN WALLACE: Okay. I think

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over these minutes at the last meeting and I think

except for the citations there are no problems with

any of the minutes at the last meeting.

So, at this point let me ask unanimous consent

that the minutes of the meeting be adopted as printed

in the Committee Book?

Hearing no dissent, so ordered.

We are now prepared to proceed with the lobbying

regulation, Part 18.15. At the close of the last

meeting, we asked our staff to prepare information

for us based on their experience in entering the

lobbying regulation and I don't know where we want to

begin on this. I guess Mr. Williams and Mr.

Williams primarily, I don't know if Mr. Bayly has done

anything to say at this point.

Do you, Mr. General Counsel?

MR. BAYLY: Not at this point, no.

MR. WILLIAMS:

CHAIRMAN WALLACE: All right, thank

you.

Mr. Williams, if you'd come forward,

1 Mr. Williams, we appreciate the work that's gone
2 into this presentation.

3 At this point let me say one thing before I do,
4 because I don't think I did it at the last Committee
5 meeting and something Mr. Baker said jogged my
6 attention.

7 Tom Brevard who has been staff worker for this
8 Committee is no longer with the corporation. He has
9 gone over to the Civil Division of the Justice
10 Department to get back into litigating and lawyering
11 up a storm and, if I neglected at the last Committee
12 meeting to express my own appreciation of Mr.
13 Brevard's work, then it was very thoughtless of me to
14 do so. And I don't want to do it twice.

15 Tom Brevard did a very good job for this
16 Committee. He was a very great help to me. This
17 Committee misses him and I appreciate his willingness
18 to continue to help us from long distance in the
19 Justice Department as we tie up some loose ends.

20 Having said that...

21 MR. MENDEZ: Mr. Chairman, I would
22 like to echo your comments concerning Mr. Brevard and
23 I would encourage the staff and Mr. Baker to send a
24 note telling Mr. Brevard that fact is our position,
25 that he did an excellent job under trying

Mr. Williams, we appreciate the work that's done

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1 circumstances.

2 CHAIRMAN WALLACE: I'm not sure
3 that I see Mr. Baker, but I think that the
4 unanimous...

5 MR. MENDEZ: Mr. Bayly, will you
6 relate that to Mr. Baker to have that done?

7 CHAIRMAN WALLACE: I think it is
8 the unanimous sentiment of this Committee that the
9 Secretary of the corporation ought to write Mr.
10 Brevard in appreciation of the services that he
11 performed, because he did a yeoman task, putting a
12 lot of regulations together for us.

13 Anyway, let me get back to you, Mr. Williams,
14 because you've also done a yeoman task in putting
15 this presentation together.

16 Let me ask you to proceed however you would
17 like. Give us an overview and introduce the people
18 who are going to talk to us, because what we want to
19 hear from you is about the corporation's experience
20 in actually enforcing the lobbying regulation which
21 we have before us.

22 MR. WILLIAMS: Yes, sir. Thank
23 you. And I think I can speak for the whole staff in
24 expressing the staff's regard for Mr. Brevard and his
25 work in supporting the corporation.

of course.

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1 OFF THE RECORD

2 MR. WILLIAMS: As you can tell, as
3 the Chairman and I discussed and as the other Board
4 members can see, Mr. Wallace asked that we present
5 several exchange monitors who could give their direct
6 experiences in attempting to deal with the issue of
7 the use of non-public funds, whether they are
8 restricted or unrestricted and their use, in
9 particular, for matters related to 1612.

10 We have prepared a written report which is in
11 two versions, as Mr. Wallace indicated. One version
12 does not reveal confidential information, and that
13 version is available to the public at large.

14 Another version has been given to each of the
15 members present.

16 CHAIRMAN WALLACE: Now, when we say
17 confidential information, we're not talking
18 attorney/client privilege information. It is simply
19 sensitive material which the corporation is entitled
20 to know about, but which we don't want to reveal to
21 the world at large, is that correct?

22 MR. WILLIAMS: That's right sir.

23 MR. MENDEZ: Let's further clarify
24 that.

25 CHAIRMAN WALLACE: Okay.

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that.

CHAIRMAN WALLACE: Okay.

1 MR. MENDEZ: This is because the
2 final drafts of the monitoring reports are not
3 completed and the individuals have the right to make
4 comments and corrections.

5 Is that a fair summary?

6 MR. WILLIAMS: Yes.

7 MR. MENDEZ: And as soon as that is
8 completed then those reports can be released.

9 MR. WILLIAMS: Yes, sir, though...I
10 think the corporation should exercise some sound
11 discretion in terms of information that's released
12 that a grantee says they have proprietary interest
13 and it's an asset to their grantee...to them.

14 MR. MENDEZ: We understand that,
15 but I...

16 MR. WILLIAMS: We shouldn't have a
17 flat rule one way or the other to anything they say
18 they have a proprietary interest in we should keep
19 confidential, but we should take that into serious
20 consideration and give deference to it.

21 I'd like to make one general statement before I
22 go on and let the members of this panel give their
23 direct information, which they know much better than
24 I, since they have been out in the field and
25 attempted to enforce these regulations and I've been

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go on and let the members of this panel give their direct information, which they know much better than I, since they have been out in the field and attempted to enforce these regulations and I've been

1 sitting in Washington and I haven't the direct
2 experience that they have.

3 We have a lot less information than we would
4 like to have to answer the Committee's needs for
5 information to base regulations upon, for three
6 principal reasons.

7 One, that many recipients do not keep the kinds
8 of records that we believe a responsible organization
9 that has restricted and unrestricted money should
10 keep in order to demonstrate to all of the relevant
11 parties that all of the money is being spent the way
12 of the grantees and within all legal requirements.

13 Second, a few recipients have denied access to
14 highly relevant documents that they admitted
15 possessing, even though those records, they do not
16 allege as subject to attorney/client privilege.

17 This general kind of...we have a proprietary
18 interest in this and it's not your money, so you
19 don't have a right to look at it. That general kind
20 of thing. We have had that several times and people
21 here can speak to that question.

22 The third is just a general pressure of time
23 during monitoring visits with whatever problems may
24 come up during that visit. Every question may not be
25 pursued as thoroughly and as well as we would like,

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1 especially when we look back at a particular visit
2 that raises a particular issue, but that is not
3 thoroughly resolved and sometimes we have to have
4 follow-up visits and sometimes that can't always be
5 done.

6 And just a similar kind of thing, that in
7 drawing together all the information we have and
8 analyzing it to put it into this kind of format, the
9 more time one has to prepare it, the better job one
10 can do.

11 During the Holiday Season it's been hard to get
12 this kind of thing done as thoroughly as I would have
13 liked.

14 Rather than attempting to summarize each
15 person's statements, I think the best way we can
16 proceed is simply to let each of the members of this
17 panel introduce themselves, describe their
18 credentials and their experience in a very summary
19 way and then tell us what experiences they have had
20 and how they relate to the issues the Board has
21 raised.

22 CHAIRMAN WALLACE: All right.
23 Before you do that, let me ask each of the panel
24 members, in conjunction about what we've said about
25 confidentiality, I think a lot of the documents that

especially when we look back at a particular visit that raises a particular issue, but that is not thoroughly resolved and sometimes we have to have follow-up visits and sometimes that can't always be done.

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CHAIRMAN WALLACE: All right.

Before you do that, let me ask each of the panel members, in conjunction about what we've said about confidentiality, I think a lot of the documents that

1 back up some of the things you're going to say are
2 available to the Board, but not to anybody else, so
3 if you'll just keep people's names, organizations
4 names out of your testimony, but refer to Exhibit 8,
5 9, 10 or whatever, so we'll know where you are, we
6 would appreciate it and we'll try to move as
7 expeditiously as we can.

8 With that, Mr. Williams, who is your first
9 witness?

10 MR. WILLIAMS: Mr. Bruce McDonald.

11 CHAIRMAN WALLACE: Mr. McDonald?

12 MR. McDONALD: Thank you, Mr.
13 Williams. Mr. Chairman, Members of the Committee.

14 I am Bruce McDonald. I have been associated
15 with the Legal Services Corporation since March of
16 1986. I served as a consultant for six months and
17 for the past four months I have been serving as a
18 temporary employee.

19 During this period I have monitored 11 LSC
20 grantees, three National Support Centers, one State
21 Support Center and seven field programs.

22 During that period I served as Team Leader at
23 two National Support Centers and two field programs
24 and I also served as the management consultant at
25 seven other programs, as a member of the team.

back up some of the things you're going to say are available to the board, but not to anybody else, so if you'll just keep people's names, organizations names out of your testimony, but refer to Exhibit B, C, D or whatever, so we'll know where you are, we would appreciate it and we'll try to move as expeditiously as we can.

With that, Mr. Williams, who is your first

witness?

MR. WILLIAMS: Mr. Bruce McDonald.

CHAIRMAN WALLACE: Mr. McDonald?

MR. McDONALD: Thank you, Mr.

Williams, Mr. Chairman, members of the Committee.

I am Bruce McDonald. I have been associated with the legal services Corporation since March of 1985. I served as a consultant for six months and for the past four months I have been serving as a temporary employee.

During this period I have monitored 11 LSC grantees, three National Support Centers, one State Support Center and seven field programs.

During that period I served as Team Leader at two National Support Centers and two field programs and I also served as the management consultant at seven other programs, as a member of the team.

1 Prior to my association with LSC I spent 10
2 years as an independent management consultant in both
3 the private and the public sectors.

4 Over the last four months, during my temporary
5 employee status with LSC, I have assisted in the
6 analysis of data gathered from the field and I was
7 asked to present to you the following information
8 from part of this effort.

9 The 1986 LSC refunding applications collected
10 information for the first time about non-LSC funds
11 being subject to Section 1010C of the Act.

12 Based on the information received on the 1986
13 applications, monitors began collecting non-LSC grant
14 documents where the programs had outside funds.

15 The second phase of gathering information about
16 outside funds began with the 1987 refunding
17 application which contained a more detailed form, F1,
18 which you will find in your materials under Exhibits
19 2 and 4. And this Form F1 included for the 1987
20 refunding application in addition to the recipient's
21 name, it asked the recipient to list the source of
22 the funds, the amount awarded, the date awarded, the
23 date last monitored. It asked the recipient to check
24 off characteristics of the funds, whether they were
25 public, non-public or tribal.

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1 It also asked the recipient to indicate whether
2 or not the funds were subject to the provisions of
3 1010C and finally, the form requested that the
4 recipient list the purpose of the funds.

5 The LSC staff prepared an analysis of these F1
6 forms that had been submitted to the corporation and
7 found that among the field programs, approximately 24
8 percent of the private outside funds received by the
9 field programs was characterized by them as being
10 unrestricted.

11 In contrast, among the National Support Centers,
12 more than 80 percent of the outside private funds
13 received by them were characterized by the National
14 Support Centers as being unrestricted.

15 To repeat, the field programs had about 24
16 percent unrestricted private funds and the National
17 Support Centers had 81 percent, actually, unrestricted
18 private funds among all the non-LSC private funds
19 received.

20 During my own monitoring of field programs, I
21 saw two programs using private funds consistent with
22 the LSC Act and the regulations.

23 In one situation, the field program...

24 MR. MENDEZ: Consistent or
25 inconsistent?

It also asked the recipient to indicate whether or not the funds were subject to the provisions of 1010C and finally, the form requested that the recipient list the purpose of the funds.

The LSC staff prepared an analysis of these forms that had been submitted to the corporation and found that among the field programs, approximately 89 percent of the private outside funds received by the field programs was characterized by them as being unrestricted.

In contrast, among the National Support Centers, more than 80 percent of the outside private funds received by them were characterized by the National Support Centers as being unrestricted.

To repeat, the field programs had about 89 percent unrestricted private funds and the National Support Centers had 81 percent, actually, unrestricted private funds among all the non-LSC private funds received.

During my own monitoring of field programs, I saw two programs using private funds consistent with the LSC Act and the regulations.

In one situation, the field program...
MR. MENDES: Consistent or

inconsistent?

1 MR. McDONALD: Consistent.

2 In one situation the field program had lost its
3 United Way funding. They went out and hired a
4 professional fund raiser with non-LSC funds and they
5 received in funds from the local legal community
6 about double the money they had been getting from the
7 United Way.

8 All monies that they received from this fund
9 raising drive, after paying the expenses of the fund
10 raiser from non-LSC funds, all of the funds received
11 are being used to maintain and to expand their legal
12 services to the poor.

13 And a second program which contained a fund
14 working component, fund raising of a slightly
15 different sort was done. The fund raising was done
16 by, again, a fund raiser with non-LSC funds, but the
17 main object of the fund raising was from church
18 related groups and the specific purpose for which the
19 funds were raised was for the representation of
20 aliens by the Farm Work and Migrant Unit, which is
21 allowed under 1626.3B3. And, from what we could
22 ascertain during the monitoring, the funds were
23 indeed used for that purpose.

24 In contrast, while monitoring National Support
25 Centers, we found language in various successful

Mr. McDonald: Consistent.

In one situation the field program had lost its United Way funding. They went out and hired a professional fund raiser with non-LSC funds and they received in funds from the local legal community about double the money they had been getting from the United Way.

All monies that they received from this fund raising drive, after paying the expenses of the fund raiser from non-LSC funds, all of the funds received are being used to maintain and to expand their legal services to the poor.

And a second program which contained a fund working component, fund raising of a slightly different sort was done. The fund raising was done by, again, a fund raiser with non-LSC funds, but the main object of the fund raising was from church related groups and the specific purpose for which the funds were raised was for the representation of aliens by the Farm Work andigrant Unit, which is allowed under I&S 8.383. And, from what we could ascertain during the monitoring, the funds were indeed used for that purpose.

In contrast, while monitoring National Support Centers, we found language in various successful

1 grant proposals that should be brought to your
2 attention and are brought to your attention in these
3 exhibits.

4 And, I would prefer to paraphrase, if it's all
5 right with you, as opposed to quoting directly.

6 CHAIRMAN WALLACE: Okay, that's
7 fine. Can you tell us what exhibit you're talking
8 about as you go through it?

9 MR. McDONALD: One moment please.
10 That would be F1 in Exhibit 4, I think.

11 MR. MENDEZ: F1 was the form...

12 CHAIRMAN WALLACE: He's talking
13 about grant applications, I think, which is something
14 else.

15 MR. McDONALD: If you'll give me
16 one moment, I'll give you...

17 CHAIRMAN WALLACE: Sure. We just
18 want to stay with you.

19 MR. MENDEZ: May I ask a question?

20 CHAIRMAN WALLACE: Yes, go ahead,
21 Mr. Mendez.

22 MR. MENDEZ: As long as we're
23 talking about these F1...or as long as I'm talking
24 about it, you're talking about something else...I
25 would like to know how successful or how useful it

grant proposals that should be brought to your attention and are brought to your attention in these exhibits.

And, I would prefer to paraphrase, if it's all

right with you, as opposed to quoting directly.

CHAIRMAN WALLACE: Okay, that's

fine. Can you tell us what exhibit you're talking

about as you go through it?

MR. McDONALD: One moment please.

That would be F1 in Exhibit 4, I think.

MR. MENDES: F1 was the form...

CHAIRMAN WALLACE: He's talking

about grant applications, I think, which is something

else.

MR. McDONALD: If you'll give me

one moment, I'll give you...

CHAIRMAN WALLACE: Sure. We just

want to stay with you.

MR. MENDES: May I ask a question?

CHAIRMAN WALLACE: Yes, go ahead.

Mr. Mendes.

MR. MENDES: As long as we're

talking about these F1's, or as long as I'm talking

about it, you're talking about something else... I

would like to know how successful or how useful it

1 has been for you, this F1 form. Are there any other
2 changes that ought to be done that would make it more
3 useful to you?

4 MR. McDONALD: I think, Mr. Mendez,
5 that the most intelligent answer could be given to
6 you after we've gone out into the field to verify
7 what's on the form. I think it's a little early yet
8 to...for us to give you an opinion. I don't know.

9 CHAIRMAN WALLACE: These are the
10 forms that came in this fall?

11 MR. McDONALD: That's correct.
12 This fall and up until January 20th, I
13 believe...January 20th, I believe was the submission
14 date.

15 MR. MENDEZ: How soon do you think
16 that you could give me a preliminary answer as to
17 how...do you think you could do that by July?

18 MR. McDONALD: I would say that in
19 terms of a...I can't speak for the corporation, but
20 in terms of my own personal opinion, I would say that
21 by July we probably would have an initial feel, yes.

22 CHAIRMAN WALLACE: Mr. Mendez is
23 trying to sneak some information for the Audit
24 Committee here. That's perfectly well appreciated.

25 MR. McDONALD: I'm going to be

has been for you, this F1 form. Are there any other changes that ought to be done that would make it more useful to you?

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trying to sneak some information for the Audit

Committee here. That's perfectly well appreciated.

MR. McDONALD: I'm going to be

1 referring to Exhibits 5 and 11.

2 CHAIRMAN WALLACE: Okay, 5 and 11.

3 MR. McDONALD: And let me
4 reemphasize, the grant proposals I'm going to be
5 talking about were successful.

6 In the first instance, the grant proposal is
7 ongoing. That is, it has not been completed. The
8 second to which I am going to refer has been
9 completed.

10 In the first one, there was language to the
11 effect that change will not be brought about if the
12 debate is defined...or confined, excuse me...to the
13 realm of policy makers, pension industry sales
14 persons and Washington based advocacy groups.

15 It is critical to reach out to the people who
16 are being hurt by the system and explain to them what
17 is happening and why.

18 This particular grant has, as a purpose, the
19 addressing of the failure of the private pension
20 system to play an adequate role in contributing to
21 the retirement income of older women.

22 At this particular location, at this National
23 Support Center, we had requested as a monitoring
24 team, copies of the work plans of all the attorneys
25 and the only attorney whose work plan we were denied

referred to Exhibits 2 and 11.

CHAIRMAN WALLACE: Okay, 2 and 11.

Mrs. McDONALD: And let me

reemphasize, the grant proposal I'm going to be

talking about were successful.

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system to play an adequate role in contributing to

the retirement income of older women.

At this particular location, at this National

Support Center, we had requested as a monitoring

team, copies of the work plans of all the attorneys

and the only attorney whose work plan we were denied

1 was the attorney who was administering this grant.

2 At the same National Support Center they had
3 recently successfully completed a private foundation
4 grant where they had activity in two states. The
5 grant proposal for the monies received said that a
6 large part of the project involved public coalition
7 building, which state administrators are not
8 empowered to fund.

9 One of the project purposes was to build a
10 foundation of public support for state participation
11 and a waiver program under Medicare.

12 Two problems surfaced here and at other...during
13 other monitoring trips that limited our ability to
14 verify how the monies were spent, specifically in the
15 areas of time record keeping and overhead charges.

16 When time records were kept, they lacked
17 specificity and they appeared to charge time based
18 solely on the proportion of non-LSC funds received,
19 not actually on time spent.

20 In some of the programs, either no overhead or
21 very little program overhead was charged to non-LSC
22 grant funds. Thus LSC picked up all or almost all
23 overhead costs.

24 In programs such as these, on examining the
25 grant documents, there was no indication in the grant

was the attorney who was administering this grant.

At the same National Support Center they had

recently successfully completed a private foundation

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overhead costs.

In programs such as these, on examining the

grant documents, there was no indication in the grant

1 documents forbidding the charging of overhead.

2 I'd like to introduce, if I may, Miss Ellen
3 Smead, on my right, who has further information.

4 MRS. BERNSTEIN: Before you go on,
5 let me ask you, have you had experience, yourself, in
6 any sort of...have you been in any nonprofit
7 organization that may have received restricted or
8 unrestricted funds. You know, in dealing with
9 private funding sources, I think it would be helpful
10 if you...do you have any experience in that area, to
11 know whether or not these are typical responses
12 or...?

13 MR. McDONALD: I've served as
14 executive director, president or board member of four
15 different kinds of nonprofit organizations and three
16 of them, we were getting money from many sources,
17 public and private.

18 Primarily, where I had the responsibility of
19 watching over time records, was serving as executive
20 director. And in those situations, just in terms of
21 good management policy, aside from the restrictions
22 that we were facing, I insisted that the time records
23 of all the people, professional and the support
24 staff, show not only what project the money was being
25 charged to, but also the type of activity during that

documents forbidding the drawing of overhead.

I'd like to introduce, if I may, Miss Ellen

Swad, on my right, who has further information.

MRS. BERNSTEIN: Before you go on,

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any sort of... have you been in any nonprofit

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that we were facing, I insisted that the time records

of all the people, professional and the support

staff, show not only what project the money was being

charged to, but also the type of activity during that

1 time period that was carried on on behalf of that
2 project.

3 Now, I would say...I would tell you that I have
4 not seen that any...I think I can honestly say that
5 of all the places I've visited so far that are
6 receiving outside funds, I have not seen that type of
7 record keeping yet at an LSC affiliate. I shouldn't
8 say affiliate, I'm sorry, recipient.

9 MR. MENDEZ: LeaAnne, was that the
10 question you were asking or concerning the grants?

11 MRS. BERNSTEIN: I was asking about
12 his experience, you know, to compare, you know, in a
13 lot of different nonprofit organizations, not just
14 legal services organizations, but a lot of different
15 nonprofit organizations receive both public and
16 private funds and I just think it's important to put
17 in context what the general practice is.

18 MR. McDONALD: Well, basically the
19 practice that I followed with a nonprofit
20 organization was that recommended by the American
21 Society of Association Executives, which is the
22 professional organization for nonprofit association
23 executives.

24 CHAIRMAN WALLACE: All right, Miss
25 Smead?

time period that was carried on on behalf of the
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not seen that any... I think I can honestly say that
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practice that I followed with a nonprofit
organization was that recommended by the American
Society of Association Executives, which is the
professional organization for nonprofit association
executives.

CHAIRMAN WALLACE: All right, Miss
Smead?

1 MISS SMEAD: My name is Ellen Smead
2 and I am an attorney licensed to practice in the
3 District of Columbia. I have been a consultant to
4 Legal Services Corporation for approximately 15
5 months. During that time I have monitored 20
6 programs. Of those I served as Team Leader on six
7 monitoring visits and on the rest I was a team member
8 and a legal consultant.

9 The programs which I have monitored have
10 included two National Support Centers, two State
11 Support Centers and one Regional Training Center. I
12 was also retained by the corporation to help the
13 staff analyze and finalize reports written by other
14 monitors.

15 Prior to becoming a legal consultant I was a
16 paralegal and then an associate attorney in a private
17 law firm for five years and I was a legislative aid
18 to a United States Congressman for four years.

19 Several of the LSC grantees that I have
20 monitored for the past 15 months have had both public
21 and non-public alternative sources of funding.

22 I usually try to review all the grant documents
23 and grant award letters so I can ascertain the
24 purpose for which these funds were provided. I also
25 interviewed staff about the type of work that they

MISS SMITH: My name is Ellen Swann

and I am an attorney licensed to practice in the District of Columbia. I have been a consultant to Legal Services Corporation for approximately 12 months. During that time I have monitored 50 programs. Of those I served as team leader on six monitoring visits and on the rest I was a team member and a legal consultant.

The programs which I have monitored have included two National Support Centers, two State Support Centers and one Regional Training Center. I was also retained by the corporation to help the staff analyze and finalize reports written by other monitors.

Prior to becoming a legal consultant I was a paralegal and then an associate attorney in a private law firm for five years and I was a legislative aid to a United States Congressman for four years.

Several of the LSC grantees that I have monitored for the past 12 months have had both public and non-public alternative sources of funding.

I usually try to review all the grant documents and grant award letters so I can ascertain the purpose for which these funds were provided. I also interviewed staff about the type of work that they

1 have performed under these grants.

2 At one of the programs I monitored I was denied
3 access to any of their non-LSC grant documents.

4 I also monitored a State Support Center that had
5 received private funds. These funds were used to
6 support the Center's efforts to develop an
7 alternative means of financing low income housing.
8 In the grant award letter that I was provided, the
9 public funding...the private funding source
10 stipulated that none of the funds were to be used for
11 lobbying.

12 The grant proposal, which had been drafted by
13 the Center, stated that one of the measures for
14 evaluating whether the project had been successful or
15 not, was whether any bill had been introduced into
16 the legislature and with what success.

17 The proposal also noted that the Center had
18 extensive political ties, political allies that would
19 enhance success of this project.

20 It also noted that LSC funds would be used as
21 matching funds to this private grant. As it turned
22 out, during the first 11 months of the project, all
23 staff time on the project was charged to the LSC
24 fund.

25 During another monitoring visit I reviewed

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out, during the first 11 months of the project, all

staff time on the project was charged to the LSC

fund.

During another monitoring visit I reviewed

1 several grant proposals submitted by a National
2 Support Center to private foundations.

3 As to requests for outside funding, this
4 National Support Center emphasized its effectiveness
5 at monitoring Congress and federal agencies...

6 CHAIRMAN WALLACE: Let me just ask
7 you before you get off that state support. Have we
8 got any exhibits in here related to that state
9 support project you were talking about?

10 MISS SMEAD: No sir, I don't
11 believe you do.

12 CHAIRMAN WALLACE: All right. And
13 do we have any exhibits relating to what you're about
14 to go to now?

15 MISS SMEAD: Yes, you do.

16 CHAIRMAN WALLACE: Which one is
17 that?

18 MISS MEAD: We have Exhibit #6 and
19 Exhibit #10.

20 CHAIRMAN WALLACE: All right, thank
21 you very much. Go ahead.

22 MISS SMEAD: In the Center's
23 request for this outside funding, the Center
24 emphasized that the effectiveness at monitoring
25 Congress and federal agencies, the effectiveness of

several grant proposals submitted by a national Support Center to private foundations.

As to requests for outside funding, this National Support Center emphasized its effectiveness at monitoring Congress and federal agencies...

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MISS SNEAD: We have Exhibit #6 and

Exhibit #10.

CHAIRMAN WALLACE: All right, thank

you very much. Go ahead.

MISS SNEAD: In the Center's

request for this outside funding, the Center

emphasized that the effectiveness at monitoring

Congress and federal agencies, the effectiveness of

1 providing service to advocacy organizations and its
2 effectiveness at furthering a social reform agenda.

3 For example, in one proposal the National
4 Support Center said, at least as important as any
5 administrative proceeding would be undertaken would
6 be the assistance we'll give state and local advocacy
7 groups wishing to propose rules.

8 We can offer a vast experience in both
9 formulation and drafting of regulations and we are
10 experts, not only in lobbying for their adoption, but
11 in teaching others to lobby effectively.

12 In another grant proposal, to another party
13 source, the same Center discussed the broad impact of
14 those activities over a 15 year period and the
15 limitations that it had to operate under.

16 In the proposal it stated, where the use of
17 federal funds is restricted to direct service on
18 relatively limited issues, private contributions to
19 this Center's support research, administrative
20 advocacy, demonstration projects and media campaigns,
21 all aimed at rectifying or alleviating in the long
22 term the problems of the poor.

23 The executive director of this other Center,
24 stated the Center does attempt to secure private
25 funds which have as few restrictions attached to them

providing service to advocacy organizations and the effectiveness of formulating a social reform agenda.

For example, in one proposal the National

Support Center said, at least as important as any

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term the problems of the poor.

The executive director of this other Center,

stated the Center does attempt to secure private

funds which have as few restrictions attached to them

1 as possible, so they can use the funds in the manner
2 that they see fit, with the least restrictions.

3 MR. MENDEZ: Well, let me ask
4 you this question. If you were that executive
5 director, wouldn't you do the same thing?

6 MISS SMEAD: Probably I would.

7 MR. MENDEZ: Tell me, I think
8 that that's fairly appropriate to ask for as few
9 restrictions as possible. I know on all the boards
10 that I ever sat on, that was the favor we asked for
11 all the time, was let us make the choice. You're
12 giving the grant, give us the discretion.

13 Now, I understand that sometimes there's not
14 appropriate oversight exercised, but in and of
15 itself, I don't see anything wrong with that
16 particular item.

17 MR. WALLACE: And let me make
18 it clear, Mr. Mendez that if I were an executive
19 director I'd probably do business the same way and
20 all we're trying to do here is to get a picture of
21 how the business is actually done and then the
22 Committee and Board can apply our own judgments to
23 what's appropriate and what isn't.

24 Mr. Williams, do you need to interject something
25 at this point?

as possible, so they can use the funds in the manner that they see fit, with the least restrictions.

MR. MENDES: Well, let me ask

you this question. If you were that executive

director, wouldn't you do the same thing?

MISS SMEDLEY: Probably I would.

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how the business is actually done and then the

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what's appropriate and what isn't.

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at this point?

1 MR. WILLIAMS: I'd just like
2 to interject that I've asked these monitors to
3 provide facts and I haven't asked them to color the
4 facts, if you will. Because they've stated fact
5 doesn't mean that they believe there's something
6 wrong with what they're describing.

7 MR. WALLACE: Okay. As Mr.
8 McDonald said when he started his testimony, I think
9 he went over a couple of programs that had, in fact,
10 been fully forthcoming about what they were doing
11 with their money and that's part of the facts that we
12 need to know.

13 But anyway, Miss Smead, we appreciate it and go
14 on ahead.

15 MR. MENDEZ: I'm sorry I
16 interrupted.

17 MISS SMEAD: This same Center
18 does engage in some lobbying and it stated to the
19 monitors that its legislative advocacy activities are
20 charged to non-LSD funding sources.

21 The difficulty in monitoring this representation
22 was in defining the scope of legislative advocacy.
23 The Centers that registered lobbyists listed the
24 following as components of legislative advocacy.

25 One, preparing testimony and fact sheets.

MR. WALLACE: I'm just like

to interject that I've asked these monitors to provide facts and I haven't asked them to color the facts, if you will. Because they've stated fact doesn't mean that they believe there's something wrong with what they're describing.

MR. WALLACE: Okay. As Mr.

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MR. MENDES: I'm sorry I

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The difficulty in monitoring this representation was in defining the scope of legislative advocacy. The Centers that registered lobbyists listed the following as components of legislative advocacy. One, preparing testimony and fact sheets.

1 Two, meeting with Congressmen and their staff.

2 Three, testifying on Capitol Hill.

3 And Four, answering requests from members of
4 Congress.

5 The lobbyists did state that legislation was
6 essential to preparing for an effective legislative
7 advocacy scheme. However, the time that was spent on
8 monitoring legislation was charged to LSC funds as
9 opposed to non-private funds. Only direct advocacy
10 was charged to those private funds.

11 The other difficulty that we had in monitoring
12 was that sometimes the employee did not know to which
13 funding source their work was being charged.

14 At this point I'd like to introduce David
15 Schneier who has some additional comments to make.

16 CHAIRMAN WALLACE: David
17 Schneider?

18 MR. SCHNEIER: Schneier.

19 CHAIRMAN WALLACE: Schneier.
20 Thank you, Mr. Schneier, go ahead.

21 MR. SCHNEIER: Mr. Chairman,
22 members of the Committee. My name is David Schneier.
23 I am an attorney in private practice, in my own
24 practice for six years and licensed in the States of
25 Maryland, Pennsylvania and the District of Columbia.

two, meeting with Congressmen and their staff.

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The lobbyist did state that legislation was

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CHAIRMAN WALLACE: David

Schneier

MR. SCHNEIER: Schneier.

CHAIRMAN WALLACE: Schneier.

Thank you, Mr. Schneier, go ahead.

MR. SCHNEIER: Mr. Chairman,

members of the Committee. My name is David Schneier.

I am an attorney in private practice, in my own

practice for six years and licensed in the State of

Maryland, Pennsylvania and the District of Columbia.

1 For the past year and a half to two years, I
2 have had an opportunity to take part in monitoring
3 visits, most of the time as a Team Leader. I would
4 estimate I have been on 12 to 15 monitoring visits,
5 two of which were at National Support Centers.

6 I'd like to address one visit at a National
7 Support Center under some references on Page 18 in
8 the section marked Board Section.

9 At that time I was a consultant on that
10 monitoring visit. I was assigned to discuss and
11 explore the private funding grant requests for the
12 Support Center and any approvals or restrictions on
13 those grants that were received by the LSC grant fee.

14 I was initially told that my request for
15 documentation would have to be reviewed with the
16 director of the program and at the exit conference I
17 was informed that we would not receive that
18 information because of trade secrets.

19 I requested an explanation because I was not
20 quite sure what that meant and was told that it would
21 be an impossibility of other organizations or
22 grantees to, by the Freedom of Information Act,
23 request to get the types of grant packages that the
24 grantee was putting together or their sources of
25 funding and they were trying to protect their, I

For the past year and a half or two years, I have had an opportunity to take part in monitoring visits, most of the time as a Team Leader. I would estimate I have been on 15 to 18 monitoring visits, two of which were at National Support Centers.

I'd like to address one visit at a National Support Center under some references on Page 18 in the section marked Board Section.

At that time I was a consultant on that monitoring visit. I was assigned to discuss and explore the private funding grant requests for the Support Center and any approvals or restrictions on those grants that were received by the LSC grantee.

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1 guess, proprietary interests in the types of the
2 grant packages they put together or those sources and
3 that instance is one I would like to provide.

4 CHAIRMAN WALLACE: Well, I
5 appreciate it, Mr. Schneier.

6 MR. SCHNEIER: I would like to
7 introduce Mr. Mike Bush who has additional comments.

8 CHAIRMAN WALLACE: All right. Mr.
9 Bush?

10 MR. BUSH: Good afternoon, Mr.
11 Chairman and members of the Committee.

12 My name is Michael Bush...

13 CHAIRMAN WALLACE: Try again, Mr.
14 Bush.

15 MR. BUSH: My name is Michael
16 Bush and I'm a senior auditor in Legal Services
17 Corporation in the Audit Division. I've been with
18 the corporation for approximately three years.

19 Among my responsibilities is the performance of
20 fiscal monitoring of LSC grantees to determine
21 compliance with the LSC Act, regulations and LSC
22 audit and accounting guides.

23 I have monitored approximately 19 LSC grantees,
24 of which three are National Support Centers. On most
25 of these visits I was the Team Leader responsible for

guess, proprietary interests in the type of the
grant packages they put together on those sources and
that reference is one I would like to provide.

CHAIRMAN WALLACE: Well, I

appreciate it, Mr. Schneider.

MR. SCHNEIDER: I would like to

introduce Mr. Mike Bush who has additional comments.

CHAIRMAN WALLACE: All right, Mr.

Bush?

MR. BUSH: Good afternoon, Mr.

Chairman and members of the Committee.

My name is Michael Bush...

CHAIRMAN WALLACE: Try again, Mr.

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Bush and I'm a senior auditor in legal services

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I have monitored approximately 19 LSC grantees,

of which three are National Support Centers. One of

of these visits I was the Team Leader responsible for

1 fiscal compliance.

2 Many of these grantees receive significant
3 funding from sources other than LSC. As you know,
4 the Act, regulations and the audit guide require that
5 funds received by any recipient from a source other
6 than the corporation must be accounted for and
7 recorded as receipts and disbursements separate and
8 distinct from federal funds.

9 It has been my experience that ascertaining an
10 accurate division of a grantees efforts and costs
11 toward LSC activities versus private funded
12 activities has been somewhat difficult.

13 Generally, we have been unable to adequately
14 assure that particular activity is actually funded by
15 the appropriate private source.

16 One grantee that I monitored received in excess
17 of \$200,000 in private funding. In monitoring this
18 grantee, one of my responsibilities included
19 ascertaining and verifying whether activities
20 performed by the grantees employees were properly
21 charged to the correct funding source.

22 The most appropriate manner in which this
23 information can be verified is through one, the
24 examination of grant documents where we set forth
25 time and effort recording requirements.

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assure that particular activity is actually funded by

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of \$500,000 in private funding. In monitoring this

grantee, one of my responsibilities included

determining and verifying whether activities

performed by the grantee employees were properly

charged to the correct funding source.

The most appropriate manner in which this

information can be verified is through one, the

examination of grant documents where we set forth

time and effort recording requirements.

1 Two, employees time records approved by
2 supervisors or project managers, documenting their
3 efforts spent for LSD funding activities versus
4 private funded activities and three, examining
5 payroll distribution reports or financial reports
6 which show the distribution of labor and fringe
7 benefit costs between funding sources.

8 In order for this verification to have any
9 validity or credibility, time records must be
10 maintained contemporaneously by the grantee. These
11 time records must be accurate and complete and
12 readily identified labor efforts among funding
13 sources.

14 This was not the case at this particular
15 grantee. For this grantee, I was unable to assure
16 that an activity was actually funded by the
17 appropriate source, due to the absence of reliable,
18 contemporaneous time and effort records.

19 As a result, I could not determine whether LSC
20 funds were being used to finance activities
21 prohibited by the LSC Act.

22 CHAIRMAN WALLACE: Mr. Mendez has a
23 question.

24 MR. MENDEZ: I'm sorry, I didn't
25 pick this up. Was this group that you audited, were

Two, employee time records approved by supervisors or project managers, documenting their efforts spent for LSC funded activities versus private funded activities and three, examining payroll distribution reports or financial reports which show the distribution of labor and fringe benefit costs between funding sources.

In order for this verification to have any validity or credibility, time records must be maintained contemporaneously by the grantees. These time records must be accurate and complete and readily identified labor efforts among funding sources.

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As a result, I could not determine whether LSC funds were being used to finance activities prohibited by the LSC Act.

CHAIRMAN WALLACE: Mr. Hender has a

question.

MR. HENDER: I'm sorry, I didn't

pick this up. Was this group that you audited, were

1 they performing any activities restricted by the Act?

2 MR. BUSH: Restricted by the Act?

3 MR. MENDEZ: Yes. Outside funding
4 sources.

5 MR. BUSH: I wasn't able to
6 determine that because the records that they provided
7 were incomplete.

8 CHAIRMAN WALLACE: I think the
9 question is not what were the activities charged to,
10 I think what Mr. Mendez is saying, were they doing
11 any grassroots lobbying or organizing or lobbying
12 that would be prohibited with our funds?

13 MR. SMEGAL: Excuse me, Mr.
14 Chairman, that's the answer he just gave. That they
15 were not.

16 CHAIRMAN WALLACE: I think his
17 answer was he couldn't tell.

18 MR. SMEGAL: He couldn't tell.
19 Well, define it.

20 MR. BUSH: I couldn't tell based on
21 the records that I examined whether...you know, they
22 weren't...I couldn't tell whether they were reporting
23 that activity or whether they were charging
24 activities to LSC funds.

25 CHAIRMAN WALLACE: Was that

they performing any activities restricted by the Act?

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CHAIRMAN WALLACE: Was that

1 activity being conducted by the recipient at all. I
2 mean, that's what Mr. Mendez's question is, not just
3 how can you tell who paid for it, but were they, in
4 fact, doing some things that were illegal to do with
5 our money?

6 MR. BUSH: I believe that there is
7 an example...Exhibits 7, 8, 9 and 12.

8 CHAIRMAN WALLACE: All right.

9 MR. SMEGAL: I'm sorry, what was
10 your name?

11 MR. BUSH: Michael Bush.

12 MR. SMEGAL: Mr. Bush, Exhibit 7 is
13 a grant proposal. Can you advise if that proposal
14 was ever the result of...ever resulted in any
15 funding?

16 MRS. BERNSTEIN: Tom, before you
17 came in, Mr. Williams made clear that all...

18 MR. SMEGAL: I understand that, I
19 just said grant proposal, LeaAnne, I didn't identify
20 anything.

21 MR. BERNSTEIN: I understand...no,
22 no. What I'm trying to say, Tom, is that he
23 clarified that though these show that they are
24 proposals, all of them were, in fact, awarded.

25 MR. HOUSEMAN: All of them were

activity being conducted by the recipient of the... I mean, that's what Mr. Mendez's question is, not just how can you tell who paid for it, but were they, in fact, doing some things that were alleged to be with our money?

MR. BUSH: I believe that there is

an example... Exhibits 7, 8, 9 and 15.

CHAIRMAN WALLACE: All right.

MR. SIEGAL: I'm sorry, what was

your name?

MR. BUSH: Michael Bush.

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proposals, all of them were, in fact, awarded.

MR. HOFFMAN: All of them were

1 what? I couldn't hear.

2 CHAIRMAN WALLACE: In fact awarded.

3 MR. SMEGAL: All right, excuse me.
4 So go ahead. Let's talk about 7. Which other ones 7
5 and what else?

6 MR. HOUSEMAN: 7, 8, 9 and 11, I
7 thought he said.

8 MR. SMEGAL: Those are examples
9 of...if we looked at those closely we would find in
10 those examples of private funds being spent for
11 restricted political lobbying and similar activities,
12 is that what you're saying?

13 CHAIRMAN WALLACE: Mr. Smegal, I
14 know 7 is a document that we had last weekend in a
15 smaller package that was given to everybody at the
16 Board. Now, this is a document that I know we've
17 seen before. While I haven't yellow highlighted
18 mine, I read it at the time and I know there is
19 information in here that involved lobbying,
20 grassroots lobbying and...

21 MRS. BERNSTEIN: Organizing.

22 CHAIRMAN WALLACE: ...organizing and
23 it's...and if they actually did this, I think they
24 pretty clearly fell outside our regulations.

25 The question is, whose money?

what I couldn't hear.

CHAIRMAN WALLACE: In fact awarded.

MR. SMERAL: All right, excuse me.

Go on ahead, let's talk about V, which other ones V

and what else?

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CHAIRMAN WALLACE: ...organizing and

it's...and if they actually did this, I think they

pretty clearly fell outside our regulations.

The question is, whose money?

1 MR. SMEGAL: That's my question.

2 MR. MENDEZ: Now, let's make sure
3 that we're clear. In each one of these documents,
4 even though we haven't had a chance to review them,
5 but you've told us someplace in them it says that; is
6 that a fair statement?

7 MR. BUSH: I think so, yes.

8 MR. MENDEZ: So, if we just take
9 the time to look through them, we'll be able to find
10 that?

11 MR. HOUSEMAN: What will you be
12 able to find?

13 MR. MENDEZ: That there are
14 language to the effect that there is grassroots
15 lobbying.

16 CHAIRMAN WALLACE: One restricted
17 activity or another under this regulation is proposed
18 in these grant proposals. That's the point.

19 MR. HOUSEMAN: They don't tell you
20 whether anything was done, right?

21 CHAIRMAN WALLACE: You can't tell
22 it from a proposal.

23 MR. HOUSEMAN: I mean, I don't have
24 it.

25 CHAIRMAN WALLACE: I know you don't

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it.

CHAIRMAN WALLACE: I know you don't

1 and that's why...

2 MR. MENDEZ: That's the reason I'm
3 asking the question that I'm asking.

4 CHAIRMAN WALLACE: All right now,
5 let's take 7, Mr. Bush.

6 We can see the proposal, we know they got money
7 for it. And the question is, did they...could you
8 tell what money was assigned to these activities and
9 what was it.

10 And Mr. Williams, go ahead and interject what
11 you have.

12 MR. WILLIAMS: Yes. I just wanted
13 to point out that there are excerpts from each of
14 those exhibits starting on Page 13 of the public and
15 Board version of the memoranda.

16 CHAIRMAN WALLACE: Okay.

17 MR. WILLIAMS: And those excerpts
18 highlight the areas that relate to the restricted
19 area.

20 MR. SMEGAL: I'm trying to focus on
21 what you're doing here.

22 Now let me just go back and let's go over any
23 exhibit you want, whatever one you want to pick.

24 CHAIRMAN WALLACE: All right, let's
25 stick with 7.

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asking the question that I'm asking.

CHAIRMAN WALLACE: All right now,

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And Mr. Williams, go ahead and interpret what

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CHAIRMAN WALLACE: All right, let's

stick with V.

1 MR. SMEGAL: Let's stick with 7,
2 okay.

3 CHAIRMAN WALLACE: That's one the
4 Board has had for a week now.

5 MR. SMEGAL: Okay now, what you're
6 saying is that proposal that was submitted to some
7 foundation or whatever source it was, requested
8 funding for various activities and the next thing you
9 tell us is that funding was received.

10 Had you given us the document by which the
11 funding was provided? The response from the
12 foundation as to what the money should be used for?

13 MR. BUSH: The foundation's
14 response was rather general. There were some...

15 MR. SMEGAL: But there were
16 responses?

17 MR. BUSH: There were responses.

18 MR. SMEGAL: Do we have those in
19 this material? You can ask for lots of things on a
20 Christmas list and maybe you don't get them all.
21 Maybe Santa Claus just doesn't come through for you.
22 So, you got the letter from Santa telling us what the
23 money was for?

24 MR. BUSH: No. In this exhibit
25 it's just the proposals of what they intended to do.

MR. SNEEGAL: Let's start with V.

okay.

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Board has had for a week now.

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money was for?

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it's just the proposals of what they intended to do.

1 MR. SMEGAL: Okay. So what you're
2 telling us, here's a proposal, some money was
3 received in response to that proposal being submitted
4 from that particular foundation. To the extent that
5 you were able to check in your monitoring activities,
6 you were unable to identify any funds that were spent
7 in the restricted manners that are set forth on the
8 outside of this document?

9 Is that what you told Mr. Mendez?

10 MR. BUSH: The records that are
11 maintained by the Center do not detail...

12 MR. SMEGAL: That's what I'm
13 saying. You found nothing in the records you
14 examined?

15 MR. BUSH: Right.

16 MR. MENDEZ: But, what he said
17 also...correct me if I'm wrong...was that the records
18 were kept in such a general manner that you were
19 unable to identify them.

20 MR. BUSH: Right.

21 MR. MENDEZ: And that you would
22 like to have more explicit record keeping in order to
23 verify these activities.

24 MR. BUSH: Yes, in order for us to
25 determine what the Center is doing, they have to

MR. SHEGAL: Okay. So what you're

telling us, here's a proposal, some money was received in response to that proposal being submitted from that particular foundation. To the extent that you were able to check in your monitoring activities, you were unable to identify any funds that were spent in the restricted manner that are set forth on the outside of this document?

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MR. MENDES: And that you would

like to have more explicit record keeping in order to verify these activities.

MR. BUSH: Yes, in order for us to

determine what the Center is doing, they have to

1 document what they're doing and they have to show
2 some effort in their time charts to charge the cost
3 to.

4 MR. MENDEZ: Very laudable goal.

5 CHAIRMAN WALLACE: Mr. Bush, you
6 were interrupted for about five minutes of questions
7 and I have no idea where you were going at the time,
8 but if you remember, please proceed.

9 MR. BUSH: I think I would have to
10 review my statement.

11 CHAIRMAN WALLACE: Thank you, Mr.
12 Bush. I appreciate that.

13 Mr. Williams, do you have any closing comments
14 and then I'm just going to...the Board has not been
15 shy in asking questions as we've gone along, but I
16 want to give them a chance in a minute to ask any
17 questions they may generally have, so have you got
18 any closing comments before we open it up?

19 MR. WILLIAMS: I'd just like to
20 make a general statement that this is another example
21 of staff suddenly having to get ready to do something
22 and a lot of people doing a lot of hard work and I'm
23 always amazed at how quickly something can be put
24 together and I'm proud of these people for, on very
25 short notice, being called in and getting this

document what they're doing and they have to show some effort in their time charts to change the cost

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1 information together for you.

2 I hope it's been helpful to the Committee.

3 CHAIRMAN WALLACE: I appreciate
4 that, Mr. Williams. And I'd like to express the
5 Committee's thanks to all of you. As I said, at the
6 last Committee meeting, we're working at a very
7 awkward circumstance. We have a regulation that
8 people have to follow that we don't have any funds to
9 enforce. And we need to regularize things as fast as
10 we can.

11 And even if we pass a new regulation this month,
12 it'll probably be May before it goes into effect.
13 So, we kept people working pretty hard over the
14 Holidays and we appreciate that.

15 Let me ask one question to whoever can answer it
16 and maybe nobody can, but in the report there are
17 some assertions that programs have said to you that
18 we can spend private funds on such matters as
19 lobbying because those funds were not provided for
20 the purpose of legislative assistance.

21 And as I look at Exhibit 4, they don't tell you
22 what those funds went for, but they certainly say no,
23 we don't have to tell you about this grant because
24 it's not provided for the purpose of
25 legislative...for the purpose of legal assistance.

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legislative... for the purpose of legal assistance.

1 Is there somebody on this panel that has run
2 into that particular assertion in the monitoring
3 business that can tell me about it? Because it seems
4 pretty strange to me that lobbying would be described
5 as not being legal assistance after we've been
6 struggling with it for the last two years.

7 Anybody have any firsthand experience with that
8 argument?

9 MR. BUSH: Although...I went to a
10 Center where we discussed whether or not the funds
11 were used for legal assistance. There is really a
12 reluctance on the part of the program to really
13 provide the fact of accountability that we need to
14 determine that our money is being spent properly.

15 The director was...he cooperated in every way
16 that he could, but he really said he failed to see
17 the need for all this accountability and
18 documentation.

19 CHAIRMAN WALLACE: For instance,
20 I'm looking at an item in Exhibit 4. It's the third
21 page in Exhibit 4, for the benefit of Board members
22 that have these documents, and it says these
23 documents aren't for the provision of legal
24 assistance. They're specifically designated as
25 general support funding.

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1 And that would concern me. That sounds like
2 overhead. If you're paying the light bill in a
3 lawyer's office, I think you're providing legal
4 assistance and we ought to be able to know where
5 those funds came from and what that lawyer is doing
6 while the light is on in his office.

7 Now, I don't know how widespread a problem this
8 is, but I can certainly see some evidence of it in
9 the documents before us.

10 Mr. Mendez?

11 MR. MENDEZ: I wanted to follow
12 that up. We have various methods of asking similar
13 questions over that issue.

14 When we have outside funding sources and they
15 give a general grant, is there an allocation between
16 overhead and general overhead or is it specifically,
17 for instance rent, lights and electricity or is it
18 strictly to lawyer's salaries or these types of
19 things?

20 I know different grants have different subject
21 matter and different answers. But when you go in and
22 monitor these financial documents, do they attempt to
23 divide out the overhead for these grants?

24 MR. BUSH: Generally, the
25 overhead...they attempt to allocate the overhead on a

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monitor these financial documents, do they attempt to
divide out the overhead for these grants?

MR. BUSH: Generally, the

overhead...they attempt to allocate the overhead on a

1 certain formula. A formula that they say, may be
2 based on the rent, it might be allocated based on the
3 square footage or maybe the number of rooms to the
4 office and which office is doing the non-LSC work.

5 But it's not done on a current basis.
6 Generally, I think, end of the year where they try to
7 figure out and make sure that they haven't
8 overcharged LSC.

9 MR. MENDEZ: So, is it fair to say
10 that they are combining all the funds in one account?

11 MR. BUSH: During the year
12 accounting, yes, at the Center that I visited. And
13 then the allocations were made at the end of the
14 year.

15 MR. MENDEZ: They were all done out
16 of one...do you understand my question that I asked
17 you?

18 MR. BUSH: Yes.

19 MR. MENDEZ: They were all put in
20 one general account...

21 MR. BUSH: The bank account?

22 MR. MENDEZ: Bank account.

23 MR. BUSH: Right. The funds were
24 paid out of one account and then you make the
25 distributions to the various funds in the accounting

... certain formula. A formula that they may use based on the total, it might be allocated based on the square footage or maybe the number of rooms for the office and which office is doing the non-10 work. But it's not done on a current basis.

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MR. HENDEZ: They were all out in one general account...

MR. BUSH: The bank account.

MR. HENDEZ: Bank account.

MR. BUSH: Right. The funds were

paid out of one account and then you make the distributions to the various funds in the accounting

1 system, yes.

2 MR. MENDEZ: Okay.

3 CHAIRMAN WALLACE: Are there any
4 other questions that members of the Committee and the
5 Board members who are with us have of this panel on
6 their monitoring experience with this regulation?

7 MR. SMEGAL: Did I understand that
8 we are going to get the documents that I asked for?

9 The response from the foundations to these
10 proposals that indicates what the money was provided
11 to do.

12 MR. MENDEZ: You didn't ask for it,
13 but I...

14 MR. SMEGAL: I'm sorry. Well, I'm
15 asking for it, now.

16 I don't want it now. I mean, I'd just like to
17 have them. I think if we're going to look at this
18 material and try to evaluate it, we should have a
19 little more information provided.

20 MR. WILLIAMS: #11 does start out
21 with that kind of document.

22 MR. SMEGAL: 11 does. Well, I want
23 it for 7, 8, 9, 11 and 12, so as to the extent it's
24 not there for all of them, I'd appreciate having it
25 for all.

anyway, yes.

MR. MENDES: Okay.

CHAIRMAN WALLACE: Are there any

other questions that members of the Committee and the

Board members who are with us have of this panel on

their monitoring experience with this regulation?

MR. SNEGAR: Did I understand that

we are going to get the documents that I asked for?

The response from the foundation to these

proposals that indicates what the money was provided

to do.

MR. MENDES: You didn't ask for it.

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MR. SNEGAR: I'm sorry. Well, I am

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it for V, 8, 9, 11 and 12, so as to the extent that

not there for all of them, I'd appreciate having it

for all.

1 CHAIRMAN WALLACE: All right, if
2 you would get that to members of the Committee, we
3 would appreciate it.

4 Let me ask this before I let you go and I know
5 where, Mr. Williams, I know where we were on this
6 last night.

7 Earlier this week we informed some of the
8 Centers in this material we have before us, that the
9 Committee wanted to look at their work and invited
10 them to be present to discuss any...to shed any light
11 on the issue they might want to.

12 Now, as of last night I understood nobody was
13 going to be here. Has that changed? Can you
14 describe the response we've gotten to our invitation
15 for the benefit of the Committee?

16 Did John Bayly leave?

17 MR. HOUSEMAN: He didn't do it.

18 CHAIRMAN WALLACE: John Bayly
19 didn't do it? Is it Mr. Gomes?

20 MR. GOMES: I spoke with...

21 CHAIRMAN WALLACE: Let's not name
22 the people, but...

23 You'd better come up...we need you at a
24 microphone, Mr. Gomes.

25 MR. GOMES: My name is Anthony

CHAIRMAN WALLACE: All right, if

you would get that to members of the Committee, we

would appreciate it.

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the people, but...

You'd better come up... we need you at a

microphone, Mr. Gomez.

MR. GOMES: My name is Anthony

1 Gomes. I'm the manager of the Monitoring Division
2 and I spoke with two Centers at your request. They
3 were both informed of the time of the meeting. I
4 understand that one executive director indicated in
5 writing that he would not be here at all today.

6 The other did not tell me yesterday whether or
7 not he would be.

8 CHAIRMAN WALLACE: All right. Let
9 me just ask, without identifying them, because I
10 won't know them if I see them, is there anybody here
11 that is prepared...did we have contact...that is
12 prepared to speak to the subject before the
13 Committee?

14 Mr. Houseman?

15 MR. HOUSEMAN: No, no, I'm not...

16 CHAIRMAN WALLACE: I know.

17 MR. HOUSEMAN: Let me just say I
18 know that both directors sent a letter Federal
19 Express to you and to Mr. Gomes saying they could not
20 come.

21 CHAIRMAN WALLACE: I got one and I
22 didn't get the other, but...and I appreciate that.

23 It is my hope that the Committee is going to
24 vote on this regulation today. The Board, of course,
25 will not vote on it until the end of the month and I

Gomez. In the papers of the Monitoring Division and I spoke with two Centers at your request. They were both informed of the time of the meeting. I understand that one executive director indicated in writing that he would not be here at all today. The other did not tell me yesterday whether or

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didn't get the other, but... and I appreciate that.

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1 am sure that the Board will be happy to receive any
2 comments in writing or in person from the affected
3 organizations before we take final action on this
4 regulation.

5 Is it not the desire of this Chairman or this
6 Committee to legislate in the dark. That's why I've
7 asked the Monitoring Office to explain their
8 experience. The Monitoring Office has been careful
9 about not releasing information to the public
10 prematurely, so it's a little difficult for us to
11 engage in a public discussion of things that have not
12 been reduced to final monitoring reports.

13 But that's why we told the Centers in question
14 and we want to get their input on it and it's going
15 to be another three weeks before we act finally, so
16 I'd be delighted to hear what they have to say before
17 the Board finally acts.

18 Mrs. Bernstein?

19 MRS. BERNSTEIN: When did this
20 draft, the draft that's here on the table, the draft
21 that you're proposing that we vote on today, when was
22 that finished?

23 CHAIRMAN WALLACE: Oh, I think it
24 was finished about 6:00 o'clock last night. I'm
25 happy to talk about that in a minute, but I wanted to

am sure that the Board will be happy to receive any
comments in writing or in person from the affected
organizations before we take final action on this
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was finished about 6:00 o'clock last night. I'm
happy to talk about that in a minute, but I wanted to

1 get these...I wanted to get the evidence from this
2 panel taken care of.

3 MR. MENDEZ: One of these is
4 Ellen's.

5 CHAIRMAN WALLACE: I will talk
6 about that as soon as we finish with this panel
7 because I think it's a fair question, but let me see
8 if we've got any more questions for the panel on
9 their experience with monitoring, that they've come
10 to share with us today.

11 If there are no further questions, we thank you
12 all for the work you've done and we appreciate the
13 material you've gathered for us and we'll let you
14 clear out from the table because I want to ask for
15 public comment before we get into voting.

16 MRS. BERNSTEIN: Well, before we
17 even get close to getting into voting, let me ask if
18 it is your proposal that we work from this draft or
19 we work from the draft that we have in our book?

20 CHAIRMAN WALLACE: It is my
21 proposal that we work from the regulation as it
22 exists and any amendments will be made to the
23 regulation...

24 MR. BERNSTEIN: So anything that
25 is a change would have to be voted on affirmatively?

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about that as soon as we finish with this panel because I think it's a fair question, but let me see if we've got any more questions for the panel on their experience with monitoring, that they've come to share with us today.

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1 CHAIRMAN WALLACE: That's right.
2 Tie goes to the regulation as it exists.

3 MRS. BERNSTEIN: I'll take planted
4 rules to a point.

5 CHAIRMAN WALLACE: No, no, no. I
6 mean that's quite clear.

7 Mr. Houseman, before I recognize you, you and I
8 talked...you talked substance before this Committee
9 extensively at the last meeting and I see Mr. Orsky
10 here who I know was at the meeting. He may have some
11 comments and there may be other people who have
12 comments before we get down to the nuts and bolts of
13 writing a regulation.

14 So, before we do that, let me ask if there are
15 any members of the public that want to talk before we
16 get down to regulating?

17 MR. HOUSEMAN: I just wanted to
18 make four quick comments about the presentation.

19 CHAIRMAN WALLACE: All right, I
20 think that's fair.

21 MR. HOUSEMAN: I don't have to go
22 first.

23 CHAIRMAN WALLACE: Tell you what.
24 Why don't you comment on the presentation and then
25 I'll ask for other comments and we'll probably take a

CHAIRMAN WALLACE: That's right.

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CHAIRMAN WALLACE: Tell you what.

Why don't you comment on the presentation and then

I'll ask for other comments and we'll probably take a

1 short break before we come back to start to write.

2 Mr. Houseman.

3 MR. HOUSEMAN: Without getting...I
4 just got this about 1:15 today and so it's hard to
5 quickly respond to everything that I just heard.

6 Let me make four points. First, a very minor
7 point, but the Form F1 was confusing. It read funds
8 subject to provisions of 1010C and virtually every
9 fund is subject to the provisions of 1010C. So it
10 wasn't clear in answering the form what you were
11 supposed to answer.

12 And the only reason I raise that is when we get
13 into characterizing what people are saying, there may
14 be some difficulties with it because of the Form F1
15 statement, which should have read funds subject to
16 the restrictions of 1010C. But it didn't.

17 Secondly, more basis. The old 1612, the 1984
18 reg, which is where virtually all of the monitoring
19 was done that this report refers to, was completely
20 unclear as to what restrictions applied to private
21 funds. The reg didn't indicate which were private and
22 public because of the appropriation rider provisions
23 and others.

24 There was substantial ambiguity among a number
25 of people about which applied to private and LSC

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unclear as to what restrictions applied to private

funds. The reg didn't indicate which were private and

public because of the appropriation rider provisions

and others.

There was substantial ambiguity among a number

of people about which applied to private and LSC

1 funds. Whether all of the reg did, whether only
2 parts of it did, whether none of it did, the reg
3 started and was written and it's introductory lines
4 were always none of the funds made available by the
5 corporation shall be used.

6 Obviously, one of the things we've been working
7 on is to try to clarify that explicitly, both in the
8 '86 reg which did so and in the things you and I have
9 been discussing.

10 But I want to point out that in terms of
11 evaluating whether there were in fact violations or
12 not, whether programs engaged in activities that may
13 have been violations, there is substantial doubt
14 about what the rules were with regard to private
15 funds.

16 Third, in this overhead issue, I want to make
17 two comments about it, but the most important is that
18 the new regulation part 1630 in large part deals with
19 it.

20 And one of the debates around 1630 which we
21 engaged in was...and some of the specific provisions
22 of 1630 require now that you charge accurately
23 overhead expenses from various funding sources,
24 whether they're private or public or LSC.

25 And so, I think to the degree that prior to

... Whether all of the red did, whether only parts of it did, whether none of it did, the red started and was written and it's introductory lines were always none of the funds made available by the corporation shall be used.

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Third, in this overhead issue, I want to make two comments about it, but the most important is that the new regulation part 150 in large part deals with it.

And one of the debates around 150 which we engaged in was... and some of the specific provisions of 150 require now that you charge accurately overhead expenses from various funding sources, whether they're private or public or PFC.

And so, I think to the degree that prior to

1 1630, which also just came into effect as you know in
2 September, it couldn't really be effective in any
3 real sense until this grant period that is starting
4 now, in terms of programs, accounting systems, et
5 cetera, that I think most of the difficulties with
6 the overhead issue are, at least in part if not
7 completely resolved by it. Prior to 1630 there was
8 no specific requirement in either the audit guide or
9 elsewhere as to allocation of funds among various
10 funding sources for overhead activities. And various
11 programs did various things with that, but there was
12 no explicit guidance or restrictions and accountants
13 applying generally accepted accounting practices
14 engaged in a variety of different methods by which
15 overhead was raised.

16 I've had accountants at my organization, which
17 is not LSC funded, but which in the past has received
18 federal funds, and three of the big eight, three
19 separate accountants through the period that I, not
20 necessarily while I was there, but over the years
21 that I've looked at audits and each of the three
22 separate big eight firms approached the accounting of
23 overhead completely different and came out with
24 different conclusions in some sense that had some
25 impact on our funding sources.

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1 My point is simply that there is not, in fact, a
2 generally accepted view of how you deal with overhead
3 from various funding sources and 1630 goes a long
4 way, at least in my judgment as well as in the audit
5 guide to make it clear what the rules are for LSC.

6 And finally, there was some reference to LSC
7 funds being used for fund raising. At least up until
8 now, there has never been any restriction which the
9 corporation or anybody else has imposed that said
10 that LSC funds couldn't be used for private fund
11 raising or to hire private fund raisers.

12 And that the money from that has always been up
13 until now, at least, treated not as LSC derivative
14 income, but as private funds or whatever they
15 are...public funds.

16 So, I'm not saying that that's the right policy
17 for the future. I'm saying when you evaluate the
18 statement that LSC funds were used to hire a fund
19 raiser which then went out and raised private or
20 public funds, that has never been a questioned issue
21 up until now. There is nothing in the regulations,
22 audit guide or anywhere else that prohibits that.

23 CHAIRMAN WALLACE: Mr. Mendez was
24 trying to jump in in his capacity as Audit Chairman.

25 MR. MENDEZ: I don't consider that

My point is simply that there is not, in fact, a generally accepted view of how you deal with overhead from various funding sources and I do not see a long way, at least in my judgment as well as in the audit guide to make it clear what the rules are for LSC. And finally, there was some reference to LSC funds being used for fund raising. At least up until now, there has never been any restriction which the corporation or anybody else has imposed that said that LSC funds couldn't be used for private fund raising or for the private fund raising.

And that the money from that has always been up until now, at least, treated not as LSC derivative income, but as private funds or whatever they are... public funds.

So, I'm not saying that that's the right policy for the future. I'm saying when you evaluate the statement that LSC funds were used to hire a fund raiser which then went out and raised private or public funds, that has never been a questioned issue up until now. There is nothing in the regulations, audit guide or anywhere else that prohibits that.

CHAIRMAN WALLACE: Mr. Mendes was

trying to jump in in his capacity as Audit Chairman. MR. MENDES: I don't consider that

1 a problem. I just wanted to see...this is one of
2 those questions that I was tossing out to see where
3 they came...I think the rest of the Board was doing
4 that.

5 May I ask one question of Mr. Houseman?

6 MR. HOUSEMAN: Yes, sir.

7 CHAIRMAN WALLACE: Go ahead.

8 MR. MENDEZ: I recently heard
9 several statements about some major grants being
10 given to our groups, relying on us to do the
11 oversight and we don't have the authority to do that
12 oversight.

13 MR. HOUSEMAN: I have no idea.

14 MR. MENDEZ: Well, we don't.

15 MR. HOUSEMAN: Well, wait a minute,
16 wait a minute. I don't know anything about the grant
17 you're talking about.

18 MR. MENDEZ: Well, that's fine.

19 CHAIRMAN WALLACE: I think it was
20 something that happened to be discussed in Executive
21 Session a week ago, if I know what you're relating
22 to.

23 MR. MENDEZ: Make the assumption
24 that that is a fact in the case. Make the assumption
25 that, in fact, they rely on us to do the oversight.

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that that is a fact in the case. Make the assumption

that, in fact, they rely on us to do the oversight.

1 Now, tell me how we're supposed to get that job
2 done.

3 MR. HOUSEMAN: Well, it seems to me
4 first of all...

5 MR. MENDEZ: They do not do any of
6 the oversight...

7 MR. HOUSEMAN: No, I understand, I
8 understand.

9 MR. MENDEZ: ...the grant says that
10 LSC will do the oversight.

11 MR. HOUSEMAN: Well, it seems to me
12 that Section 1010C, as I understand it and I would
13 interpret it, indicates that private funds received
14 for the provisional legal assistance...we can talk
15 about that phrase in a second...let's assume these
16 were received for the provisional legal assistance,
17 just for the sake of our assumptions, that the
18 corporation has an obligation to make sure that those
19 funds were used consistent with the...well, the
20 statutory language is that you can't use them for a
21 prohibited purpose.

22 The corporation has defined prohibited purpose
23 in Part 1610. It seems to me that the corporation
24 has an obligation to review the private funds, the
25 expenditures of those private funds to make sure that

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expenditures of those private funds to make sure that

1 they were...the activities conducted with those
2 private funds were carried out consistent with the
3 restrictions that are outlined in Section 1610, which
4 is where you define prohibitive purpose, essentially,
5 in the regulations.

6 MR. MENDEZ: Let me just...

7 MR. HOUSEMAN: Now, I don't know.
8 I don't think there's any broader authority myself,
9 for the corporation, but I think in...I will bet that
10 in virtually every situation we're talking about that
11 is sufficient authority for the corporation to track
12 the funds and to make sure that the private funds, if
13 there were private funds, were used consistent with
14 the LSC restrictions that apply.

15 Not all LSC restrictions apply.

16 MR. MENDEZ: Here's the point,
17 though. There's no auditing done on it.

18 MR. HOUSEMAN: That's not correct.
19 Every audit separates out private, public and other
20 funding sources.

21 MR. MENDEZ: That's correct, but
22 they don't really run the audit on the private
23 sources. A lot of them don't.

24 MR. HOUSEMAN: Well, I can't answer
25 that. I don't know that for a fact one way or the

they were...the activities conducted with those private funds were carried out consistent with the restrictions that are outlined in Section 1710, which is where you define prohibitive purposes, essentially in the regulations.

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that. I don't know that for a fact one way or the

1 other.

2 MR. MENDEZ: If the grant relies on
3 us, do you think that that is an appropriate question
4 to put in F1 to see whether or not...when the audits
5 are done on a private or, if they're relying on us to
6 do it and if, in fact, they are relying on us to
7 ensure compliance, that we put that as a provision of
8 our LSC grant, that we have a right to do that, even
9 though generally we don't.

10 MR. HOUSEMAN: I'd have to think
11 about the answer to that. I'm not sure.

12 MR. MENDEZ: Well, I want you to
13 think about it and come back with the answer when the
14 Board votes on it as a whole.

15 MR. HOUSEMAN: This issue? I don't
16 know if this issue is really in effect, but I can say
17 you have the right to ask the question.

18 CHAIRMAN WALLACE: Let me
19 respond...

20 MR. HOUSEMAN: Get the
21 information...

22 MR. MENDEZ: I'm sorry. I
23 appreciate that.

24 CHAIRMAN WALLACE: We're in the
25 audit business as well as in the regulating business,

other.

MR. MENDES: If the grant relies on us, do you think that is an appropriate question to put in FI to see whether or not, when the audits are done on a private or, if they're relying on us to do it and it, in fact, they are relying on us to ensure compliance, that we put that as a provision of our ISO grant, that we have a right to do that, even though generally we don't.

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MR. MENDES: Well, I want you to think about it and come back with the answer when the board votes on it as a whole.

MR. HUBBARD: This is really, I don't know if this issue is really in effect, but I can say you have the right to ask the question.

CHAIRMAN WALLACE: Let me respond...

MR. HUBBARD: Get the information...

MR. MENDES: I'm sorry. I appreciate that.

CHAIRMAN WALLACE: Before in the audit business as well as in the regulating business,

1 on this regulation.

2 Mr. Houseman, let me respond to your general
3 comments. There is no implication on the part of
4 this Committee or this corporation in examining these
5 documents, that any of these documents violated any
6 regulation, whatever the interpretation of that
7 regulation might be.

8 As Mr. Mendez said, if he were project director,
9 he would want as free a hand as he could possibly get
10 and the purpose of this presentation is to determine
11 how free that hand has been and how free that hand
12 ought to be.

13 So I'm not looking at these for signs of
14 violations, I'm using them as a basis to make
15 judgments for the future and that's all I'm trying to
16 get here, as Mr. Williams says, is true facts without
17 color, as best we can.

18 Has anybody got any...

19 MR. HOUSEMAN: I have one more.

20 On Page 10 of the public document which is
21 apparently the first thing in your...

22 CHAIRMAN WALLACE: Right.

23 MR. HOUSEMAN: There is a statement
24 about what the foundation grants may not be used for.
25 Without going into every word of it, let me just say

on this regulation.

Mr. Housman, let me respond to your general

comments. There is no implication on the part of
this Committee or this corporation in examining these

documents, that any of these documents violated any

regulation, whatever the interpretation of that

regulation might be.

As Mr. Housman said, if he were project director,

he would want to know a hand as he could possibly get

and the purpose of this presentation is to determine

how true that hand has been and how true that hand

ought to be.

So I'm not looking at these for signs of

violations. I'm using them as a base to make

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On Page 10 of the public document which is

apparently the first thing in your...

CHARMAN WALLACE: Right.

MR. HOUSMAN: There is a statement

about what the foundation grants may not be used for.

Without going into every word of it, let me just say

1 there are a series of IRS regulations under 501C3
2 which define every one of the terms that are used in
3 A and B and this language comes directly out of the
4 IRS regulations.

5 So that in understanding what a grantee of a
6 private foundation can do with private funds, you
7 have to understand what the regulations, which are 30
8 and 40 pages long, permit and don't permit.

9 This is boiler plate language. It appears in
10 every grant I've ever gotten from private funds, from
11 every foundation I've ever received a grant from and
12 the Center has received 150 grants over its history,
13 has contained something like this, if not this very
14 identical provision. It's a common provision, but it
15 has a meaning that can't be flushed out just by
16 reading it. You have to look at the IRS regulations.

17 CHAIRMAN WALLACE: Okay. Let me do
18 this at this point. Let me explain, before we
19 recess, how we've gotten to where we are...and we may
20 be nowhere.

21 At the request of the Chairman of the Board, Mr.
22 Houseman and I have spent six or seven hours on the
23 phone over the course of the last week in an attempt
24 to work out as close to a compromise version of this
25 regulation as we possibly can.

There are a series of IRS regulations under 2010C which define every one of the terms that are used in A and B and this language comes directly out of the IRS regulations.

So that in understanding what a phrase of a private foundation can do with private funds, you have to understand what the regulations, which are 30 and 40 pages long, permit and don't permit.

This is boiler plate language. It appears in every grant I've ever gotten from private funds, from every foundation I've ever received a grant from and the Center has received 150 grants over its history. It's contained something like this, if not this very identical provision. It's a common provision, but it has a meaning that can't be flushed out just by

reading it. You have to look at the IRS regulations.

CHAIRMAN WALLACE: Okay. Let me do this at this point. Let me explain before we recess, how we've gotten to where we are... and we may be nowhere.

At the request of the Chairman of the Board, Mr. [Name] and I have spent six or seven hours on the phone over the course of the last week in an attempt to work out as close to a compromise version of this regulation as we possibly can.

1 There are some broad outlines that I'm fairly
2 satisfied with. There are some details that are
3 still up in the air, subject to hearing from the
4 staff as to how they would actually work in practice
5 and, of course, all of it is subject to the majority
6 vote of this Committee.

7 But what Mr. Houseman put together in this
8 document titled Draft, which I saw at the same time
9 everybody else did when we came in here today, is the
10 language that we've discussed in those six or seven
11 hours worth of phone calls.

12 Now, to get the procedure straight, the document
13 before the Board for a vote is the regulation as it
14 exists. In order to do anything that anybody
15 proposes to change the existing regulation, it's
16 going to take a majority vote of the Committee. A
17 two, two votes fails.

18 So we work from the original document. I
19 certainly intend to be working from the language that
20 Mr. Houseman and I have spent all week discussing,
21 but you've got to have a majority vote to do anything
22 with it and obviously there will be some changes in
23 the language, because neither Mr. Bayly, our General
24 Counsel, nor Mr. Williams, who will have to work on
25 this in monitoring, has seen this language.

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satisfied with. There are some details that are

still up in the air, subject to revision from the

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Mr. Houseman and I have spent all week discussing.

But you've got to have a majority vote to do anything

with it and obviously there will be some changes in

the language, because neither Mr. Bayly, our General

Counsel, nor Mr. Williams, who will have to work on

this in monitoring, has seen this language.

1 That's why they're here and we're going to have
2 some, I hope, fairly technical, but fairly productive
3 discussions in a little bit.

4 Now, that's how we got where we are and before
5 we get down to section by section...let me say this.

6 Is there anybody else that has public comment
7 before we take a break and come back to legislate?

8 No comment? At this point, let's let the
9 Committee declare a recess and we'll be back, I hope,
10 in about ten minutes and start plowing ahead.

11 (WHEREUPON, a brief recess was taken.)

12 CHAIRMAN WALLACE: This Committee,
13 I think is prepared to be here for quite a while, but
14 there are Board members who have to leave for western
15 parts of the United States around 5:30 or 6:00, so
16 this Committee is going to break in the not too
17 distant future and let the Board have its meeting and
18 then the Committee is going to come back.

19 I apologize to everybody here, but that's a
20 problem with a nationwide Board. As soon as Mr.
21 Bayly gets here, we'll start talking.

22 We'll call the Committee back to order and the
23 Vice Chairman may take the room away from me at any
24 time he deems necessary.

25 We're going to begin working through the

that they're here and we're going to have some, I hope, fairly technical, but fairly productive discussions in a little bit.

Now, that's how we got where we are and before we get down to section by section... let me say that.

Is there anybody else that has public comment before we take a break and come back to legislative

No comment? At this point, let's let the Committee declare a recess and will be back, I hope, in about ten minutes and start plowing ahead.

(WHEREUPON, a brief recess was taken.)

CHAIRMAN WALLACE: This Committee,

I think is prepared to be here for quite a while, but there are Board members who have to leave for certain parts of the United States around 2:30 or 3:00, so

this Committee is going to break in the not too distant future and let the Board have the meeting and then the Committee is going to come back.

I apologize to everybody here, but that's a problem with a nationwide Board. As soon as Mr.

Boyer gets here, we'll start talking.

We'll call the Committee back to order and the Vice Chairman may take the room away from us at any

time he deems necessary.

We're going to begin working through the

1 regulation. The main...the document from which we're
2 working is the regulation as it exists which is
3 printed, I believe, beginning at Page 38 of the
4 Committee Book.

5 Unless some member of the Committee has any
6 amendments to propose on A through F, I'd like to go
7 directly to G, I'm going to propose an amendment on
8 legislative activities.

9 Let me explain...we'll be working back and forth
10 from the Board Book which has the existing regulation
11 and the part I'm looking at now is G. It's on the
12 top of Page 41. The proposed amendment is on Page 3
13 of the document labeled Draft that was handed to
14 everybody and let me explain what it does.

15 Throughout this regulation we have prohibited
16 people from engaging in legislative activity.
17 Legislative activities include lobbying the
18 legislature, lobbying an administrative agency on a
19 regulation. It includes grassroots lobbying and it
20 includes liaison activities, which are activities
21 intended to make you a better lobbyist.

22 The definition as we have previously adopted it,
23 also includes agency adjudicatory proceedings and as
24 we worked through this document last time we carved
25 out various and sundry exceptions for adjudicatory

regulation. The entire document from which we're working is the regulation as it exists which is printed, I believe, beginning at Page 48 of the Committee Book.

Unless some member of the Committee has any amendments to propose on A through F, I'd like to go directly to G. I'm going to propose an amendment on legislative activities.

Let me explain...we'll be working back and forth from the Board Book which has the existing regulation and the part I'm looking at now is G. It's on the top of Page 41. The proposed amendment is on Page 4 of the document labeled Draft that was handed to everybody and let me explain what it does.

Throughout this regulation we have prohibited people from engaging in legislative activity. Legislative activities include lobbying the legislator, lobbying an administrative agency or a regulation. It includes grassroots lobbying and it includes liaison activities, which are activities intended to make you a better lobbyist.

The definition as we have previously adopted it also includes agency adjudicatory proceedings and as we worked through this document last time we carved out various and sundry exceptions for adjudicators

1 proceedings.

2 It is my proposal simply to take adjudicatory
3 proceedings and their attendant negotiations out of
4 the definition of legislative activities so that we
5 are not...we are not trying to regulate those items
6 through this regulation.

7 And that's what this would do. Legislative
8 activities will include lobbying on regulations,
9 lobbying legislators, grassroots lobbying and all the
10 attendant liaison activities, but if we adopt this
11 amendment, we will be stating that we are not
12 attempting to regulate adjudicatory proceedings such
13 as Social Security hearings, Veterans Administration
14 hearings, various eligibility hearings and the
15 negotiations that go along with a particular client's
16 problem before an agency, a client's legal rights and
17 responsibilities with respect to a particular
18 application claim or case. That language comes
19 directly out of the legislative rider that we are
20 working with.

21 Now, that narrows the scope of the regulation.
22 It narrows it in a way that several of the
23 Appropriations Committee people have suggested it
24 ought to be narrowed and in a spirit of compromise I
25 think we ought to narrow it.

proceedings.

It is my proposal simply to take adjudicatory proceedings and their attendant negotiations out of the definition of legislative activities so that we are not...we are not trying to regulate those items through the regulation.

And that's what this would do. Legislative

activities will include lobbying on regulations, lobbying legislators, grassroots lobbying and all the attendant liaison activities, but it would not include amendments, we will be stating that we are not

attempting to regulate adjudicatory proceedings such as Social Security hearings, Veterans Administration hearings, various eligibility hearings and the

negotiations that go along with a particular client's problem before an agency, a client's legal rights and responsibilities with respect to a particular

application claim or case. That language comes directly out of the legislative fiber that we are working with.

Now, that narrows the scope of the regulation.

If narrow it in a way that several of the

Appropriations Committee people have suggested it

ought to be narrowed and in a spirit of compromise I think we ought to narrow it.

1 So, it would be my motion at this time, the
2 motion of the Chair, that we amend Definition G as
3 printed on Page 3 of the draft.

4 Anybody willing to second that?

5 MRS. BERNSTEIN: I'll second it for
6 the purpose of the discussion. Let me just ask if
7 there is any other word...and I'm just...I'm not
8 completely comfortable with the word negotiations,
9 but I see what you're trying to get at and I don't
10 have any problems with what you're trying to get at.

11 But I'm just not completely comfortable with
12 that. I just wondered whether...I don't know whether
13 you, Fred, or John has had a chance to look at this
14 longer than I have and whether that's giving you
15 any...whether you have any other suggestions or
16 whether you don't think that word is going to cause
17 us any trouble.

18 CHAIRMAN WALLACE: Mr. General
19 Counsel?

20 MR. BAYLY: I suppose in this
21 context it should not have an unduly inflated or
22 expanded meaning.

23 MRS. BERNSTEIN: Okay. I don't
24 have a problem with this change.

25 CHAIRMAN WALLACE: Is there any

So, it would be my motion at this time, the motion of the Chair, that we amend Definition 6 as printed on Page 3 of the draft.

Anybody willing to second that?

MRS. BEHNSTEIN: I'll second it for

the purpose of the discussion. Let me just ask if there is any other word...and I'm just...I'm not completely comfortable with the word negotiations, but I see what you're trying to get at and I don't have any problems with what you're trying to get at.

But I'm just not completely comfortable with

that. I just wondered whether...I don't know whether you, Fred, or John has had a chance to look at this longer than I have and whether there's giving you any...whether you have any other suggestions on whether you don't think that word is going to cause

us any trouble.

CHAIRMAN WALLACE: Mr. General

Counsel?

MR. BAYLY: I suppose in this

context it should not have an usual, inflated or expanded meaning.

MRS. BEHNSTEIN: Okay. I don't

have a problem with this change.

CHAIRMAN WALLACE: Is there any

1 further discussion of this change?

2 All right. In that case, all in favor of the
3 proposed amendment say Aye.

4 (Chorus of Ayes.)

5 CHAIRMAN WALLACE: Opposed?

6 Adopted.

7 I want to talk about publicity and propaganda.
8 I haven't got anything to move right now, but as I
9 said, Mr. Houseman and I have discussed language. He
10 has prepared this draft and rather than me talking
11 about this language, Mr. Houseman, I'd appreciate it
12 you'd go through, briefly, what you think the
13 language that we have on Page 5 of the draft, what
14 you think it does and what you think it doesn't do,
15 so we can all make sure we're playing off the same
16 score cards.

17 MR. HOUSEMAN: Let me be clear that
18 the key is the last two sentences...it might even
19 need some stylistic work here...but what I'm trying
20 to do here is to set out what can and cannot be done
21 in as clear a fashion as possible.

22 What this would permit would be a communication
23 which described the content, the status and pending
24 or proposed legislation or the effect that such
25 legislation may have, but could not provide

Further discussion of this change?
All right, in that case, all in favor of the
proposed amendment say Aye.

(Chorus of Ayes.)

CHAIRMAN WALLACE: Opposed?

Adopted.

I want to talk about publicity and propaganda.

I haven't got anything to move right now, but as I
said, Mr. Houseman and I have discussed language. He
has prepared this draft and rather than me talking
about this language, Mr. Houseman, I'd appreciate it
if you could go through, briefly, what you think the
language that we have on Page 2 of the draft. What
you think it does and what you think it doesn't do,
so we can all make sure we're playing off the same
score cards.

MR. HOUSEMAN: Let me be clear first

the key is the last two sentences... it might even
need some stylistic work here... but what I'm trying
to do here is to set out what can and cannot be done
in as clear a fashion as possible.

What this would permit would be a communication

with described the content, the status and pending

or proposed legislation or the effect that such

legislation may have, but could not provide

1 information in the communication about how to support
2 or oppose such pending or proposed legislation.

3 Thus, you could do a reporting or descriptive
4 analysis, but in no way imply in the communication
5 information about how to support or oppose.

6 For example, you could not include information
7 about where to send comments, you couldn't include
8 information about what the comments would say and you
9 just...here is, pending your proposed legislation,
10 here is what it does and doesn't do, that kind of
11 thing.

12 This proposal is an effort to address concerns
13 which the existing regulation raises because of its
14 vagueness and because of what the statutory
15 restrictions are.

16 The statutory restrictions are for publicity or
17 propaganda, those have been defined over a period of
18 years by the General Accounting Office as to what
19 they mean and don't mean. The General Accounting
20 Office has always taken the position that information
21 put out by federal agencies or by grantees which is
22 limited to describing in an accurate and factual
23 manner the content or status of legislation or
24 regulations...actually it's only dealt with the GAO
25 opinions and have only dealt with the legislation, of

information in the communication about how to support

or oppose such pending or proposed legislation.

Thus, you could do a reporting or descriptive

analysis, but in no way imply in the communication

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put out by Federal agencies or by grantees which is

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manner the content or status of legislation or

regulations...actually it's only dealt with the GAO

opinions and have only dealt with the legislation, of

1 course, but out of the rider applies the restriction
2 to administrative rule making, as well.

3 That you can state the content of that. You can
4 describe it. Actually GAO goes even farther and says
5 you can state your opinion on it, but I haven't gone
6 that far here, but you can't urge others to take
7 action on it.

8 And what this does, is tries to take existing
9 language and the existing restrictions and give some
10 clarity as to what you can do. I think the above
11 indicates quite clearly what you can't do.

12 You cannot, under this, put out a publication
13 which would, in fact, be a publication urging people
14 to comment on something and telling them how to
15 comment and where to send the comments to.

16 That's what this attempts to do.

17 CHAIRMAN WALLACE: Let me give
18 examples of what I understand to be covered and not
19 to be covered by the discussion we've had, whether or
20 not this language does it or not.

21 The last time this Committee met, we got a
22 series of publications that were handed to us as
23 examples of publicity and propaganda. Just looking
24 at Tab One is a memorandum from the Center on Social
25 Welfare Policy and Law. It is an analysis of a

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That you can state the content of that. You can

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that far here, but you can't urge others to take

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And what this does, in terms of taking existing

language and the existing restrictions and give some

clarity as to what you can do. I think the above

indicates quite clearly what you can't do.

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That's what this attempt to do.

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examples of what I understand to be covered and not

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The last time the Committee met, we got a

series of publications that were handed to us as

examples of publicity and propaganda. Just looking

at Tab One is a memorandum from the Center on Social

Welfare Policy and Law. It is an analysis of a

1 proposed Social Security regulation.

2 Now, my view is the first five pages of this
3 publication are just fine. They tell you section by
4 section what this regulation is going to do. When
5 you get to Page 6, it says this is how you file a
6 comment with the Social Security Administration and
7 this is who you send it to and this is how you go
8 about doing it. Page 6 is not fine. That's
9 publicity and propaganda, it seems to me and I think
10 Mr. Houseman's language, whether it does it or not,
11 is saying that it can't provide information about how
12 to support or oppose such pending or proposed
13 legislation.

14 I think that would cut out Page 6. If Page 6 is
15 in here it's publicity and propaganda. If Page 6
16 isn't in here it's not publicity or propaganda.

17 That kind of analysis, it seems to me, is
18 something that can be done, telling people how to go
19 about influencing proposed regulations can't be done.

20 I went back through some of the other documents
21 that we don't have before us, that were before
22 Congress. Some other documents have political
23 cartoons. They've got addresses of Congressmen,
24 they've got all kinds of great stuff in them that's
25 absolutely wonderful with somebody else's money and

proposed social security regulation.

Now, my view is the next five pages of the

publication are just fine. They tell you section by

section what this regulation is going to do. When

you get to Page 6, it says this is how you tie a

comment with the social security Administration and

this is who you send it to and this is how you go

about doing it. Page 6 is not fine. That's

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Mr. Houseman's language, whether it does it or not,

is saying that it can't provide information about how

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that we don't have before us, that were before

Congress. Some other documents have political

cartoons. They've got addresses of Congressmen.

They've got all kinds of great stuff in them that's

absolutely wonderful with somebody else's money and

1 not having to do with legal services, but, that's
2 publicity and propaganda.

3 The kind of analysis we've got on the first five
4 pages of Tab One from last time isn't publicity and
5 propaganda, it seems to me. And I'm reasonably
6 satisfied that the language Mr. Houseman proposes
7 here at the end will draw that distinction. It will
8 permit legitimate analysis without permitting
9 drumming up stuff.

10 Let me pass this down so you can see what I'm
11 talking about.

12 MRS. BERNSTEIN: We've got it.

13 CHAIRMAN WALLACE: You've all got
14 it with you? All right, Mrs. Bernstein?

15 MRS. BERNSTEIN: I've got an
16 objection to this for a couple of reasons.

17 One, I don't think we need it. I think that the
18 language that we have is clear on what's not to be
19 done and also, I think that the language that Mr.
20 Houseman has proposed is deficient in that it doesn't
21 recognize some of the more recent interpretations by
22 the IRS and some of the courts, that you don't just
23 look at whether or not what is being said is
24 informative, you also have to look at who it is being
25 mailed to or who it is being dispersed to are all of

not have to do with legal services but, that's
publicity and propaganda.

The kind of analysis we've got in the first two
pages of the one from last time isn't publicity and
propaganda, it seems to me, and I'm reasonably
satisfied that the language Mr. Housman proposed
here at the end will draw that distinction. It will
permit legitimate analysis without permitting
dramming up stuff.

Let me ease this down so you can see what I'm
talking about.

MRS. BERNSTEIN: We've got it.

CHAIRMAN WALLACE: You're all got

it with you, all right, Mrs. Bernstein?

MRS. BERNSTEIN: I've got an

objection to this for a couple of reasons.

One, I don't think we need it. I think that the

language that we have is clear on what's not to be

done and also, I think that the language that Mr.

Housman has proposed is deficient in that it doesn't

recognize some of the more recent interpretations by

the IRS and some of the courts, that you don't just

look at whether or not what is being said is

informative, you also have to look at who it is being

mailed to or who it is being dispersed to and all of

1 the same philosophical persuasion to begin with.

2 And I think then we get into a question of do we
3 examine mailing lists to find out whether or not only
4 people who have traditionally wanted expanded welfare
5 rights get this information or is it sent to take an
6 issue that Legal Services is not even supposed to
7 deal with, but it is a clear cut example, and I think
8 one of the examples of one of the IRS cases involved
9 was if you send information about pro choice
10 legislation only to people who are opposed to
11 constraints on abortion, isn't that really
12 encouraging them to become active politically,
13 because you don't send them to pro life groups, as
14 well?

15 In other words, to make clearer to both sides of
16 the issue that this debate is out there. And
17 frankly, I would rather see a more general
18 definition, leaving out these specific...the lines
19 Mr. Houseman wants to argue...rather than not having
20 to get into the question of what the philosophy is of
21 every recipient on the mailing list.

22 CHAIRMAN WALLACE: Let me ask you
23 this.

24 I notice that our Board Chairman has arrived and
25 I promised I would adjourn...recess for the benefit

the case of the original proposition to begin with. and I think then we get into a question of do we examine waiting lists to find out whether or not only people who have traditionally wanted expanded welfare rights get this information or is it sent to take an issue that legal services is not even supposed to deal with, but it is a clear cut example, and I think one of the examples of one of the 1982 cases involved was if you send information about pro choice legislation only to people who are opposed to constraints on abortion, isn't that really encouraging them to become active politically, because you don't send them to pro life groups, as well?

In other words, to make clearer to both sides of the issue that this debate is out there, and frankly, I would rather see a more general definition, leaving out these specific...the lines Mr. Houseman wants to argue...rather than not having to get into the question of what the philosophy is of every recipient on the waiting list.

CHAIRMAN WALLACE: Let me ask you

this.

I notice that our Board Chairman has arrived and I promised I would adjourn...cess for the benefit

1 of the whole Board.

2 Let me ask Mr. Houseman, Mr. Bayly and Mr.
3 Williams, unless Mr. Bayly and Mr. Williams are
4 required elsewhere, to consult during our recess and
5 talk about language that is in this document and
6 maybe you can solve...specifically talk about the
7 concerns Mrs. Bernstein has just raised and see if
8 you all have any comments to bring us when we get
9 back.

10 Mr. Houseman and I have been through this in
11 great detail. You gentlemen have not.

12 And since I promised we would recess when the
13 Chairman arrived, I want to recess. Why don't you
14 all go out in the hall and get to work and when this
15 Committee gets back to work we may be able to go
16 faster.

17 I apologize to those here for the Committee, but
18 we've got Board members that need to go west.

19 With that, we'll recess subject to call of the
20 Chair.

21 (WHEREUPON, the proceedings were recessed at 2:50
22 p.m.)
23
24
25

of the whole Board.

Let me ask Mr. Boardman, Mr. Baily and Mr.

Williams unless Mr. Baily and Mr. Williams are

required elsewhere, to consult during our recess and

talk about language that is in this document and

maybe you can solve...specifically talk about the

concerns Mr. Bernstein has just raised and see if

you all have any comments to bring us when we get

back.

Mr. Boardman and I have been through this in

great detail. You gentlemen have not.

And since I promised we would recess when the

Chairman arrived, I want to recess. Why don't you

all go out in the hall and get to work and when this

Committee gets back to work we may be able to go

faster.

I apologize to those here for the Committee, but

we've got Board members that need to go west.

With that, we'll recess subject to call of the

Chair.

(WHEREUPON, the proceedings were recessed at 2:20

p.m.)

C E R T I F I C A T E

STATE OF VIRGINIA:

AT LARGE:

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

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

GIVEN under my hand and seal this 13th day of January, 1986.

My Commission Expires:

December 3, 1989

Sandra A. Moser
Notary Public