

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
OPERATIONS AND REGULATIONS COMMITTEE MEETING

OPEN SESSION

Wednesday, July 10, 1996

9:15 a.m.

The Legal Services Corporation
750 First Street, N.E., 11th Floor
The Board Room
Washington, D.C. 20002

BOARD MEMBERS PRESENT:

LaVeeda Morgan Battle, Chair
John G. Brooks
F. Wm. McCalpin
Ernestine P. Watlington
Thomas F. Smegal, Jr.

STAFF PRESENT:

Martha Bergmark, Executive Vice President
John Tull, Office of General Counsel
Suzanne Glasow, Office of General Counsel
Laurie Tarantowicz, Office of Inspector General
Renee Szybala, Office of Inspector General
Joan Kennedy, Assistant to the President

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P R O C E E D I N G S

1
2 CHAIRPERSON BATTLE: We are now on the record this
3 morning in a continuation of the Operations and Regulations
4 Committee meeting. We have made substantial progress on the
5 15 regulations that we had on our agenda, completing all but
6 4 in the 2 days prior to now.

7 We have before us today four remaining regulations
8 that we have on our agenda, and we will take up the
9 regulation on lobbying, fee-generating cases, attorney's
10 fees, and welfare reform today, not in that order. I think
11 the first one up today is on welfare reform.

12 Suzanne, can you give us some background on that
13 one?

14 MS. GLASOW: This is a new rule. And it is
15 intended to implement a new Congressional restriction that
16 prohibits our grantees from initiating litigation or being
17 involved in litigation, lobbying, or other activities,
18 attempting to reform federal and state welfare systems.

19 The rule basically defines what law comes within
20 federal and state welfare systems, and it defines what
21 informing that system means. It includes the prohibition.
22 It does have a section explaining the exceptions to that

1 prohibition, and it has a provision on policies and
2 procedures, as do many of those rules.

3 CHAIR BATTLE: There was a rather lengthy
4 commentary to this rule. Why don't we do this? Let's start
5 with the rule itself in our discussion and try to cover those
6 specific provisions in this new rule first as our approach.
7 And if there are concerns about the commentary, we can cover
8 those as we go through. All right.

9 MS. GLASOW: The first section is the purpose
10 section. And the purpose of the rule is to ensure that our
11 recipients do not challenge or participate in efforts to
12 reform a federal or state welfare system. It clarifies when
13 recipients can engage in representation for particular
14 clients on welfare issues that do not involve reforming a
15 system and allows public --

16 MR. McCALPIN: Are you reading?

17 MS. GLASOW: Am I reading? I'm paraphrasing.

18 MR. McCALPIN: Are you reading --

19 MS. GLASOW: No, I'm paraphrasing.

20 MR. McCALPIN: Oh.

21 MR. TULL: Just to make sure there's another
22 version.

1 (Laughter.)

2 MR. HOUSEMAN: You didn't get the new version
3 yesterday?

4 MS. GLASOW: I stayed up all night.

5 CHAIR BATTLE: Let me just say that I think that
6 the impetus of what we communicate in our comment with regard
7 to the purpose of this rule really needs to forcefully
8 communicate to our recipients the major concern which
9 Congress has about our participation in welfare reform.

10 And I think the flavor of the commentary, though
11 when you read the purpose, you've got one short sentence that
12 says, "Don't do it" and then it clarifies and you've got five
13 lines describing how the clarification works to clarify those
14 instances where there might be the opportunity for
15 involvement, I think that the real push and the overall scope
16 and view of how this rule is written and what it communicates
17 should make clear to recipients that the position that
18 Congress has for us is that we not participate in welfare
19 reform and that those limitations and those opportunities for
20 participation are specific delineated exceptions to that
21 overall overarching general rule.

22 MS. GLASOW: Okay.

1 CHAIR BATTLE: All right. Are there any other
2 concerns about the purpose?

3 (No response.)

4 CHAIR BATTLE: Okay. 1639.2, "definitions."

5 MS. GLASOW: The first definition is the definition
6 of "federal or state welfare system." And we used
7 legislative history extensively to determine the type of
8 legislation that Congress was really concerned about. And
9 this definition reflects that.

10 CHAIR BATTLE: You know, when I read the
11 commentary, maybe I didn't read it as carefully to be able to
12 understand why certain things were in and why certain things
13 were out, and it may be that just as the commentary is
14 written, it needs to clarify just what you just said, that in
15 order to determine what Congress truly meant by not
16 participating in welfare reform, we relied on legislative
17 history to determine what Congress meant by this.

18 And we found that -- and give some citation to
19 where we found these things. Because as you read through
20 this list, as someone not familiar with all of this, it
21 doesn't give me a clue as to why all of a sudden these things
22 are considered welfare reform and other things are not

1 considered welfare reform.

2 MS. GLASOW: The second definition defines the
3 "reform" of a system. And we have suggestions for revisions
4 there.

5 CHAIR BATTLE: Okay. All right.

6 MS. GLASOW: Paragraph B, "'Reform of federal or
7 state welfare systems' as used in this part means, A" -- and
8 we want to add, "legislative or administrative" -- then we go
9 back to what's already there -- "effort or action to change"
10 -- and we want to add "key" --

11 MR. McCALPIN: Add what?

12 MS. GLASOW: "Key," k-e-y, "components of the
13 federal welfare system" and it goes on from there. We want
14 to take out "or action." I'm sorry.

15 MR. McCALPIN: We want to take out what?

16 MS. GLASOW: "Or action." So we just have "means
17 legislative or administrative effort to change key
18 components."

19 CHAIR BATTLE: That makes sense.

20 MS. GLASOW: Right.

21 CHAIR BATTLE: Because we really can't take action.
22 We can make efforts, it seems to me, in this context. Okay.

1 Is there anything else about the "reform" definition that we
2 need to discuss?

3 MR. McCALPIN: I had written myself a note in the
4 margin on page 4 in your comment under one of the last
5 sentences, "A technical or an isolated change in federal or
6 state law that is not made as an effort to change how a
7 welfare system functions -- would not be a reform." What is
8 a "technical or isolated change"? Do you create as many
9 problems as you solve by that?

10 MS. GLASOW: We really focused on the fact that
11 Congress used the two very important words in the
12 restriction, "system" and "reform." And a "system" suggests
13 that it's a unit, it's an interdependent group of parts that
14 form a unit. It's a whole plan, program that's interrelated.

15 So to change a little piece that doesn't affect
16 that whole component in any significant way is not to reform
17 it. "Reform," too, suggests you're changing somehow the
18 fundamental character of the system. It's not some isolated
19 legislative change, but it's something that's really
20 significantly changing the system. And we really struggled
21 with the correct language to convey that.

22 And that's why we ended up with the word "key

1 component," because it can be a piece, but it's a very basic
2 piece to the system that's formed. Because otherwise,
3 Congress could have used a lot simpler language. They could
4 have used "any welfare reform legislation or law." And then
5 it would have been very clear that we couldn't have anything
6 to do with any change, even a technical change.

7 So we tried to be true to the statutory language.
8 And very often, I think the legislature or the Congress lets
9 you know that they consider this to be a fundamental or a
10 real reform of the system.

11 MR. McCALPIN: The question is, how's a program in
12 the field going to interpret this and decide what's key,
13 what's isolated, what's technical? It seems to me it leaves
14 an awful lot of room for interpretation. And I suspect that
15 it could get across programs and us in trouble by inadequate
16 or what some might consider to be an inappropriate
17 determination that this is not key.

18 MR. HOUSEMAN: I think we're struggling with --

19 MR. McCALPIN: Very subjective, it seems.

20 MR. HOUSEMAN: Yes, it is. But we're struggling
21 with sort of an imponderable problem. And so it's hard to
22 figure out language. There are changes all the time in

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1 welfare laws. They literally happen every legislative
2 session, every regulatory session.

3 Nine times out of 10, these aren't reform and have
4 nothing to do with reform. The HEW last year revised eight
5 regulations in Title IVA five times. None of them had a
6 thing -- there was no new federal legislation. It wasn't
7 some administrative initiative. It was nothing. It had
8 nothing to do with that.

9 On the other hand, and if you look down at the
10 prohibitions, I think it gets much clearer. On the other
11 hand, if you -- if a state has adopted a waiver proposal to
12 go to HHS, that's welfare reform, and that's explicitly
13 prohibited here.

14 Last year, there were 12, 15 waivers filed with
15 HHS. They involved changes in a whole set of things in each
16 state, for example. That's clearly welfare reform. So
17 that's the struggle we're having --

18 MR. McCALPIN: What if there's a provision to raise
19 the general assistance benefit by \$10 a month?

20 MR. HOUSEMAN: I would say that's welfare reform.

21 CHAIR BATTLE: It's not changing the system in
22 place, it's just increasing the dollars associated thereto.

1 MR. McCALPIN: But that's the kind of problem, it
2 seems to me, you're going to get into.

3 CHAIR BATTLE: Yes.

4 MS. WATLINGTON: What about --

5 MR. McCALPIN: But it just seems to me that this
6 opens the door unnecessarily. I mean, we may have the
7 problem, but it seems to me that this sentence, it is an
8 invitation to programs to open the door.

9 MR. HOUSEMAN: Here's the problem, though. I don't
10 know what other way you can go. Because if you go and say
11 "any time anybody does anything," then you're stopping any
12 welfare work. Because if you look at what it does, that's
13 the inevitable result of it.

14 I can play it out, if you want. That's not what
15 the Congress said. They didn't say, "You can no longer
16 litigate or provide representation in welfare cases." That's
17 not what they said.

18 MR. McCALPIN: Very specifically, they said, "You
19 can represent an individual client seeking a welfare
20 benefit."

21 MR. HOUSEMAN: That's right. But they didn't --

22 MR. McCALPIN: Generally, you can do that.

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1 MR. HOUSEMAN: But that's an exception to the
2 prohibition. The prohibition was on welfare reform law, so
3 you have to start with what is prohibited by this. And what
4 was prohibited was an effort -- doing anything involved in an
5 effort to reform a federal or state welfare system. That's
6 what the language says.

7 CHAIR BATTLE: Well, this whole discussion is
8 around the use of the word "key component" as opposed to
9 "component." Isn't it -- to try to --

10 MR. McCALPIN: That, plus "technical and isolated"
11 in this sentence that I referred to.

12 MR. BROOKS: And even more basically on the use of
13 the word "system," in the statute, it seems to me that's what
14 we're trying to define.

15 MS. SZYBALA: For what it's worth, the OIG reg and
16 our discussions, our comments on this, I think this is
17 actually what is being raised here. We have debated it fully
18 with management. Our bottom line view is that their view,
19 their reading of what welfare reform is, is rational. It is
20 a rational, acceptable view. And, therefore, we just agree
21 to disagree.

22 Our view would have been -- our druthers would have

1 been that you create bright lines when you can to keep a
2 program out of trouble, the program or the capital. But the
3 interpretation that John put forth, to me, anyway, was
4 rational based on the statute.

5 So it's not wrong. I can't say it's wrong. I
6 would agree -- precisely the points that you're pointing to
7 are the points that we pointed to. And they just create
8 fuzziness, which is where people get into trouble. And I
9 guess it's just a policy decision.

10 MR. BROOKS: Have we specified in the commentary or
11 emphasized in the commentary the use of the word "system" in
12 the statute, Section 16?

13 MS. GLASOW: No. We really need to expand the
14 commentary.

15 MR. BROOKS: If that were emphatic, it would help.

16 CHAIR BATTLE: What is a "system"? Yes. That's, I
17 think, your point. Because the terminology in the statute is
18 a federal or state welfare system. And we're talking about
19 an effort to reform such a system.

20 MR. HOUSEMAN: I don't know if this helps, but let
21 me just try it for a second. The debate on this issue
22 occurred -- has occurred in three contexts. The first

1 context was the Gramm Amendment in 1984.

2 The case that everybody focused on in the Gramm
3 Amendment -- and that was the only case that was mentioned in
4 that debate -- was the New Jersey child exclusion case or
5 family cap case, a class action challenging the New Jersey
6 policy. Nobody doubts that that was not welfare reform,
7 that's that what it was.

8 The next debate occurred not in Legal Services, it
9 occurred last September during the welfare reform -- not
10 Legal Services -- bill, during the welfare reform bill that
11 was being considered by Congress. Senator Gramm introduced
12 an amendment to prohibit any litigation challenging welfare
13 reform as it was adopted.

14 And in that debate, Senator Gramm talked about five
15 cases. Then he made some strong statements. But he talked
16 about five cases. All of those cases were major challenges
17 to like the GA system when it was cut off in Michigan to work
18 requirement waivers. And the other four cases that he talked
19 about were cases where states had sought waivers, imposed
20 time limits and new work requirements.

21 And then he said things like, "And every time we
22 try to impose a time limit or a new work requirement, people

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1 sue us," which is inaccurate. But that's the framework that
2 that was in. And the third debate was last year during the
3 -- and it's very sketchy, as you can see -- during the
4 consideration of the appropriations legislation in the
5 Senate, and it's on the Domenici amendment, which, of course,
6 is an amendment to Gramm's proposal.

7 And in the material that I gave you, I gave you the
8 entire debate wherever it even vaguely referred to welfare.
9 And again, the only cases that are mentioned are those kinds
10 of cases. So --

11 CHAIR BATTLE: Those kinds of cases which -- do
12 they address a state system, or what specifics --

13 MR. HOUSEMAN: Yes. They were fundamental changes
14 in the state system.

15 CHAIR BATTLE: Okay. So we're talking -- okay.
16 So --

17 MR. HOUSEMAN: If you look at it, the family cap is
18 viewed as a key or fundamental change in the system, the hot
19 issue.

20 CHAIR BATTLE: All right.

21 MR. HOUSEMAN: The time limits are a fundamental --
22 the AFDC provision -- program does not have time limits.

1 CHAIR BATTLE: So I guess what I hear Bill saying
2 is -- and also, I hear John saying is, then what we need to
3 do is to give further clarity to what a state welfare system
4 is, because in part, that will help programs to understand
5 what we're talking about when we say, "You can't reform
6 this." What is "this"?

7 And then secondly, we were having some debate about
8 key components, because when you talk about reform, I think
9 about major change as opposed to if you're making a technical
10 change, that's not a reform. Reform is something more than
11 just any change. And we're trying to figure out a way to
12 distinguish levels that are in gray areas of what change is,
13 and how do you articulate that.

14 And it may be helpful if you have this background
15 which gives an indication from Congress of what kinds of
16 specific changes they were attempting to address when they
17 began their debate about this particular -- what ends up
18 being what we have got in our appropriations bill if those
19 examples are somewhere available.

20 Something that takes it from the abstract to the
21 specific so that as programs look at this issue they have
22 something that they can hang their hat on and say, "Okay. I

1 want to do something, but it doesn't look like this or this"
2 I think would be extremely helpful.

3 So we have got some explanation on this key
4 components. And I agree that it ought to be more than just
5 "component," because "component" as a word could be small,
6 big, large, medium-sized, some modifier but also with some
7 explanation of that modifier somewhere. Does that cover the
8 concerns, Bill and John, that you raised?

9 MR. McCALPIN: Well, I think it remains to be seen.

10 CHAIR BATTLE: What they end up with?

11 MR. McCALPIN: What comes out.

12 CHAIR BATTLE: But that at least characterizes the
13 work I think that the staff needs to do on this issue.

14 MR. HOUSEMAN: I think in the commentary and also
15 if you look when you get to the prohibitions, I think we can
16 cover virtually all of the problem areas that we all know
17 this thing was trying to stop and not create loopholes that
18 people can drive through.

19 CHAIR BATTLE: Yes.

20 MR. HOUSEMAN: Because that makes no sense when we
21 have that happening. And yet there's a lot of areas here
22 where appropriate work can go on that isn't bound by this.

1 Remember, you can't lobby. You can't do class actions. So
2 you're essentially limited to representing clients in the
3 administrative process or individual clients in court.

4 CHAIR BATTLE: Which is what the second part of the
5 statute really addresses. You can do individual work, which
6 may effect a change in the system as you do it, because they
7 may look up and see what you've done and say, "Ah, we need to
8 change this. This makes sense what you're proposing on
9 behalf of this individual client." But your intent in
10 undertaking that representation is to represent that
11 individual client.

12 MS. WATLINGTON: I think the field program is very,
13 very much aware of what this is addressing and what they
14 can't do because of past differences in how it has been
15 affected.

16 So I think they need -- what you're doing is
17 explaining more what they can do is what they'll understand a
18 lot more than what they can't do, because -- and you have the
19 other part that restricts that also when you say you can't do
20 the lobby, you can't do all of that. So it's a whole other
21 major thing that really, basically, is back to just
22 individual clients.

1 CHAIR BATTLE: Yes. That's essentially what
2 Congress was saying. I would be curious on this point on
3 taking based on what Ernestine just said what it is that
4 programs already know they cannot do and illumining what in
5 addition to what they already know they cannot do is added by
6 this regulation, because really, I think she's right.

7 We have been under several restrictions that
8 restrict a lot of what ultimately gets covered by this
9 regulation already because of what is contained in other
10 places. But what we're attempting to do is to implement what
11 we have in 504(a)(16), which deals specifically with the
12 issue of welfare reform.

13 But there are some of the things in here that have
14 already been restricted based on other provisions that we
15 have on lobbying anyway. And carving out what in addition to
16 that this regulation actually covers would probably be the
17 most instructive way to let programs know, "Now, you already
18 know you can't do A, B, C. This means you can't do C(1) and
19 C(2)." And we'll try to restrict the commentary to just 30
20 pages.

21 (Laughter.)

22 MR. TULL: Can we single space, LaVeeda?

1 MR. BROOKS: Plus footnotes.

2 CHAIR BATTLE: Plus footnotes. That's right.

3 MR. HOUSEMAN: Don't ask for footnotes. Mr.
4 McCalpin's eyes just lit up.

5 (Laughter.)

6 CHAIR BATTLE: I think your point, Ernestine, is
7 well taken.

8 Bill, did I see you -- did you need to make a
9 point? I saw you look this way. No?

10 MR. McCALPIN: No.

11 CHAIR BATTLE: All right. Well, have we covered
12 "reform and existing law"?

13 MR. McCALPIN: Not "existing law."

14 CHAIR BATTLE: "Existing law" is next. C,
15 "Existing law is used in this part" -- Suzanne?

16 MS. GLASOW: Basically it means "federal or state
17 statutory law, federal or state regulations having the force
18 and effect of law that were issued pursuant to federal and
19 state rule making procedures or local government laws or
20 regulations having a force and effect of law that were
21 enacted to implement a federal or state welfare reform law or
22 regulation."

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1 Basically, we're covering federal/state
2 legislation, regulations, and local government laws and
3 regulations.

4 MR. McCALPIN: Let me ask you whether there isn't
5 an inconsistency between the last full sentence at the top of
6 page 5 which starts, "Agency policies are not to include the
7 definition of existing law," and the statement at the bottom
8 of page 6 that says, "draw a distinction between challenges
9 to agency policies and statutes and representation of
10 individual clients."

11 It seems to me in the one case, you're saying a
12 policy is not existing law and, therefore, subject to change.
13 And in the second one, you're saying that you can't attack a
14 policy.

15 MR. HOUSEMAN: Existing law only comes up in one
16 part of the regulation and the statute. It's the exception.
17 So it's not in the prohibition part of the statute, so that
18 when you're defining "existing law," that's the place it
19 comes up. That's the only place it's used, so that the
20 prohibition is much broader than existing law. The
21 prohibition isn't on existing law.

22 The prohibition is on any effort to reform a

1 federal or state welfare system, policies, regulations,
2 whatever, whatever the -- it might not even be -- so the
3 prohibition is much broader than that. It's the perception
4 of the prohibition where you use the term "existing law,"
5 which we're trying to define here.

6 MR. McCALPIN: But it seems to me, on page 5, you
7 are saying in effect, "Agency policies are not within the
8 definition of 'existing law' and, therefore, you may
9 represent people addressing agency policies."

10 MR. HOUSEMAN: No, no. That's not what it's
11 saying.

12 MR. McCALPIN: "Policies, instruction, guidelines,
13 manuals, and the like which are not considered as law are not
14 included within the definition of 'existing law.'"

15 MS. GLASOW: It's only those that don't have the
16 force of law within the state, I think. Is that what you're
17 trying to say, Al?

18 MR. SMEGAL: Don't you alleviate Bill's problem by
19 just eliminating on the bottom of page 6 the words "agency
20 policies and" -- so it reads "challenges to statutes" --

21 MR. McCALPIN: You might use "regulations," but
22 it's the use of the policies that it seems to me it's

1 inconsistently used on 5 and 6. But "regulations" on 6 will
2 do it.

3 MS. GLASOW: We can fix that.

4 MR. SMEGAL: Right.

5 CHAIR BATTLE: Have we come up with a resolution to
6 this?

7 MR. HOUSEMAN: It's easy to deal with. I mean, we
8 made more out of it than it needs to be.

9 MR. McCALPIN: What?

10 MR. HOUSEMAN: We can deal with Bill's problem by
11 striking that and covering it as Tom --

12 CHAIR BATTLE: As Tom suggested just by taking
13 "challenges to" out and just talk about the distinction
14 between agency policies and representative representation --

15 MR. McCALPIN: "Agency regulations and statutes."

16 CHAIR BATTLE: It says --

17 MR. McCALPIN: Substitute "regulations" for
18 "policies" on page 6.

19 MR. SMEGAL: Take out the words "agency policies"
20 at the bottom of page 6.

21 MR. McCALPIN: Well, we're leaving "agency" in and
22 substitute "regulations" for "policy."

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1 MR. SMEGAL: The word "policy" is inconsistently
2 used there as compared to the --

3 CHAIR BATTLE: Okay.

4 MR. BROOKS: While we're at it, in that sentence, I
5 wonder whether we should say "statutory language is intended
6 to draw a distinction" rather than "attempt to."

7 CHAIR BATTLE: I think you're right.

8 MR. BROOKS: Approach this with confidence.

9 CHAIR BATTLE: Yes. "This language is intended to
10 draw." That's better. Absolutely right, John. Okay.

11 Now, we're down to the prohibition, Section 1639.3.
12 And it covers what it is we cannot do. Suzanne?

13 MS. GLASOW: This section states the prohibition in
14 the first sentence and then the second sentence, "Prohibited
15 activities include participation in" -- and then it lists the
16 type of activities that would come within those prohibited by
17 the restriction.

18 CHAIR BATTLE: You know, the statute says "in any
19 way initiates legal representation or participates in any
20 other way in litigation, lobbying, or rule making." And when
21 we get to our prohibition, we say "initiate legal
22 representation, challenge, or participate." I guess we cover

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1 the litigation and the lobbying and the rule making in the
2 specific prohibitions."

3 MR. McCALPIN: Yes.

4 CHAIR BATTLE: All right. That's fine.

5 Are there any other questions about the
6 prohibition?

7 (No response.)

8 CHAIR BATTLE: It's pretty straightforward, isn't
9 it? 1639.4, "permissible representation of eligible
10 clients."

11 MS. GLASOW: This section deals with the exception
12 to the prohibition, and it "allows recipients to represent
13 individual clients on cases or matters involving the receipt
14 of cash assistance, services, or in-kind benefits provided
15 under federal or state welfare systems." Do we want to get
16 rid of "so long as"?

17 CHAIR BATTLE: Yes.

18 MS. GLASOW: "Provided that" --

19 MR. McCALPIN: Where are you?

20 MS. GLASOW: Paragraph (a).

21 CHAIR BATTLE: Paragraph (a), the third line.

22 We're going to take that "so long as" out.

1 MS. GLASOW: Of Section 4.

2 MR. McCALPIN: What line?

3 CHAIR BATTLE: The third line, the second word, "so
4 long as."

5 MS. GLASOW: We're taking out "so long as."

6 MR. McCALPIN: Oh, we're doing "so long ases" now?

7 CHAIR BATTLE: Yes. We're taking them out. They
8 have to be extracted from our regs.

9 MS. GLASOW: Sorry. They're in our flow of
10 thought. "Provided that the representation does not
11 challenge or seek to amend laws or regulations that were
12 enacted as part of reform of a federal or state welfare
13 system."

14 MR. McCALPIN: Let me ask, why do you have that
15 last clause in there? It seems to me I would simply add the
16 word "existing" between "amended" and "laws," whether they
17 were enacted as part of a reform or not. I don't know why
18 you have that last qualifying clause in here.

19 "You may represent a client involving receipt of
20 cash or services in-kind provided that -- provided under a
21 federal or state system, so long as the representation does
22 not challenge or seek to amend existing laws or regulations,"

1 period.

2 MR. HOUSEMAN: But that's not --

3 CHAIR BATTLE: Part of --

4 MR. HOUSEMAN: The problem is that the prohibition
5 isn't on welfare, it's on welfare reform, so that this is an
6 exception to the prohibition which says -- and this is
7 fundamental.

8 MS. WATLINGTON: And that's it.

9 MR. HOUSEMAN: This says, "You can represent
10 clients, including challenging laws, as long as they're not
11 welfare reform." That's why you need the phrase.

12 MR. McCALPIN: But why does it have to be seeking
13 to amend a law or regulation that was enacted as a part of
14 reform? Can't we say that they will represent an individual
15 client in any case, provided it does not seek to challenge or
16 amend existing laws or regulations?

17 MS. GLASOW: It goes back to the definition of
18 "reform" of a welfare system. That's what they can't do.
19 But they can -- if the law or regulation that they're seeking
20 to amend is an attempt to reform the welfare system, they
21 cannot do that. That's why we have the qualifying clause.

22 MR. McCALPIN: But what you're saying is that they

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1 can seek to amend any law that's on the books that's not a
2 part of a reform?

3 MS. GLASOW: Yes, of a welfare system. Because
4 this rule on prohibits them from --

5 CHAIR BATTLE: Let me see if I can underscore what
6 I understand Bill's concern to be. The very first provision
7 for welfare in this country -- so that means it was not a
8 reform, it was the first -- is enacted. Then, there are
9 several reforms to it. But there is some piece that was
10 there from the onset that's still there. Are we saying that
11 that piece, you can amend, but all other pieces, you can't?

12 MR. HOUSEMAN: What we're saying is, you can
13 represent an individual client in court or anywhere except
14 what you can't do. And so if you're representing an
15 individual client and challenging a welfare law that's not
16 part of a reform, yes, you can do it. And that's what --
17 this is, again, trying to draw the distinction between what
18 you can do and what you can't do.

19 CHAIR BATTLE: It's not clearly stated, though,
20 because to me, it communicates what I think I'm hearing Bill
21 say, that what you're getting at is that you can't go in and
22 do a representation in a way that it seeks to amend or some

1 sort of -- or reform some system. But what I hear him saying
2 is, the way this is written, you're qualifying what kind of
3 federal or state welfare system you can amend.

4 MR. McCALPIN: It seems to me you get back into the
5 question of what we dealt with earlier, and that is whether a
6 particular provision was part of a welfare reform or not.

7 MR. HOUSEMAN: Let me start over again.

8 CHAIR BATTLE: And if it's not, I still think you
9 can't do it.

10 MR. HOUSEMAN: Well, then we have -- then at least
11 with me, that would make a difference. What you can do now
12 before this is, you can challenge any welfare law in court.
13 Okay? What you can't -- what the statute says you can't do
14 is challenge any welfare reform effort. So that's the
15 prohibition. It didn't say you cannot change any welfare
16 law --

17 CHAIR BATTLE: Now I'm hearing what he's talking
18 about.

19 MR. HOUSEMAN: It didn't say that.

20 CHAIR BATTLE: I hear.

21 MR. HOUSEMAN: It said "welfare reform."

22 CHAIR BATTLE: Okay.

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1 MR. HOUSEMAN: So what this is permitting you to do
2 is represent individual client in court or administrative or
3 whatever --

4 CHAIR BATTLE: I finally figured it out. This is
5 to block Legal Services' programs from engaging in disputing
6 any kind of welfare reform that might be undertaken by
7 certain legislative bodies or wherever. That's what this is
8 about.

9 And since the entire section has to do with reform
10 of a welfare system, we're talking about up and coming
11 reforms that are attempted by legislative bodies, not whether
12 historically, this is what started out as our welfare system,
13 and at some point, it was reformed; and, therefore, you can't
14 challenge it.

15 And it's not really clear, because I got the same
16 reading that Bill did when I read this. But now, I
17 understand what your point is. And what you're saying is, I
18 think, that the real issue with Congress was as state
19 legislators begin to think about changing their welfare
20 system, that prohibiting Legal Services' attorneys from
21 attacking their changes is what this is all about. Okay. I
22 now have that.

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1 MS. WATLINGTON: And the majority of the changes --
2 in a majority rather than the clients -- that it caused by
3 all these things that it encourages, most all the reform is
4 detrimental to the client. And the program carries on
5 litigation against it, and that's what you're challenging.

6 CHAIR BATTLE: Sure. Challenging those changes.

7 MS. WATLINGTON: Challenging them.

8 CHAIR BATTLE: Yeah.

9 MS. WATLINGTON: So this is why they're making sure
10 that they can't do it anymore for a large amount of clients,
11 because most of those reforms have been very detrimental to
12 the clients.

13 CHAIR BATTLE: Yes. Okay. Tom?

14 MR. SMEGAL: Alan, you're reading "an effort" in
15 subparagraph (b)(16) to be not an effort by a Legal Services
16 Corporation lawyer but an effort by somebody else about which
17 there's a prohibition with respect to a Legal Service lawyer?

18 CHAIR BATTLE: Yes.

19 MR. HOUSEMAN: Right. The effort that's here is
20 not an LSC effort. The effort is a political body's effort.

21 MR. SMEGAL: Right. So that's the only one. So
22 you want to limit 1639.4 or you want to put in 1639.4 those

1 parts that are still permissible, having read "an effort" to
2 be somebody else's effort?

3 MR. HOUSEMAN: Yes. That doesn't mean Legal
4 Services can do something to reform the welfare system. They
5 can't.

6 MR. SMEGAL: No.

7 MR. HOUSEMAN: But they can continue to represent
8 clients and challenge laws that aren't part of welfare
9 reform. That's what (a) is all about.

10 CHAIR BATTLE: We need to work (a) up a little bit
11 differently, because I got the same reading that Bill did
12 initially. Now that we have discussed it, it is much
13 clearer. And we're really talking about welfare reform
14 efforts by, as Tom pointed out, others that are being
15 challenged by Legal Services or Legal Services attempting to
16 do welfare reform through direct challenges to the existing
17 system.

18 John?

19 MR. BROOKS: It seems to me if we use in the
20 regulation the statutory language, it would be clearer.
21 Because in Subsection (16), it says "if such relief does not
22 involve an effort to amend or otherwise challenge existing

1 law in effect the date of the initiation of the
2 representation" rather than laws or regulations that were
3 enacted as part of reform.

4 MR. HOUSEMAN: Here's the problem. The problem
5 with that is -- it's very complicated, but here's the
6 problem. First, you have a prohibition. Then, you have an
7 exception, which is an exception to the prohibition. So the
8 problem with your reading -- the problem with that is, the
9 exception is only exception to the prohibition, so the
10 existing law has to be existing welfare reform law to make
11 any sense.

12 MR. McCALPIN: I don't think so.

13 MR. SMEGAL: Well, the other problem is the --

14 MR. HOUSEMAN: Sure. Because it's "existing
15 prohibition."

16 CHAIR BATTLE: It says "existing on the date of the
17 representation," so it gives you a specific time and place to
18 determine --

19 MR. HOUSEMAN: Then you're reading this as a
20 broader prohibition.

21 MR. McCALPIN: Yes, I do.

22 MR. HOUSEMAN: I don't think that's right. That's

1 the case. The question is, did Congress want to stop
2 challenging any welfare law? If they wanted to do that, they
3 could have done it. They didn't do it. They said, "You
4 can't participate in efforts to reform a welfare system."

5 MR. McCALPIN: I think you're drawing too fine a
6 line on what Congress intended.

7 CHAIR BATTLE: Well, in just reading the statute
8 itself, it says "or otherwise challenge existing law in
9 effect on the date of the initiation" --

10 MR. HOUSEMAN: But that's part of the exception to
11 the restriction.

12 CHAIR BATTLE: Right.

13 MR. BROOKS: If that's what we're talking about
14 here.

15 CHAIR BATTLE: Permissible representation, yes.
16 Isn't it?

17 MR. SMEGAL: Is part of it -- it's an additional
18 complication, in fact, that "an effort" appears twice. And
19 "an effort" in the first instance is with respect to somebody
20 else, and this "an effort" with respect to the second
21 instance is an LSC representation. It's a different kind of
22 "an effort."

1 MR. TULL: Part of what pushed an interpretation of
2 this language into a narrow construction rather than a broad
3 construction that it would prohibit challenging any law
4 that's on the books that involves welfare reform is, this is
5 a unique restriction in that it goes to what a lawyer can do
6 on behalf of his or her client in the actual representation.
7 It isn't a flat prohibition, "You can't represent a person in
8 welfare matters."

9 It says, "You can represent them pursuing their
10 individual rights, but it's a restriction on a claim you can
11 raise within that," which raises a very serious professional
12 responsibility problem. Because if you say, "I can represent
13 you fully, but I can't challenge this law, even though it may
14 be applied improperly against you, it may be an illegal law,
15 that there's a cost where a lawyer could undertake a case" --

16 CHAIR BATTLE: Let me try something, and then I'm
17 going to let Tom jump in. Let's try this: "provided that
18 the representation does not challenge or seek to amend laws
19 or regulations that are part of reform of a federal or state
20 welfare system," just take out "enacted as" but just our part
21 of reform. So you can't challenge --

22 MR. McCALPIN: And that "reform" would include what

1 occurred years ago?

2 CHAIR BATTLE: Could have, yes. If it's welfare
3 reform and you're attempting to challenge it based on
4 whatever our definition of "welfare reform" is, if it's part
5 of that, we can't challenge it.

6 MR. McCALPIN: And something that may have been
7 enacted four or five years ago would, under our definition,
8 have constituted a reform of then existing welfare law.

9 CHAIR BATTLE: Yes.

10 MR. McCALPIN: And then you can't challenge it.

11 CHAIR BATTLE: That's right.

12 MR. HOUSEMAN: I think as a practical matter,
13 you're stopping welfare. I mean, if that's your -- I don't
14 think that's what this does, but if that's what you want to
15 do, I mean --

16 CHAIR BATTLE: When you say "enacted as," or you
17 say "are," I don't really see the distinction, other than
18 what you do with "are" is, you don't go back to what the
19 intention is but what it is. I mean, what the intention --

20 MR. HOUSEMAN: I don't have any problem with "are."

21 CHAIR BATTLE: Okay. Tom?

22 MR. SMEGAL: I'm with the group at the table there.

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1 It seems to me we're looking at the wrong end of the tunnel.
2 I mean, if there are welfare laws that need reforming -- now,
3 the question is, well, how are they going to be reformed?
4 Are they going to be reformed as we are prohibited from
5 involving ourselves, are they going to be reformed by
6 Congress or by some state legislature?

7 And what this says is, "Hey, if some legislative
8 body has looked at these welfare laws that have been there
9 for a long time, realized they need reforming and have
10 reformed them, we don't want you fooling around with those."

11 And what Alan's saying, there's the rest of that
12 welfare law that has been there forever, and we're not
13 prohibited from helping Congress out or helping a legislative
14 body by recognizing the need to reform those areas. And we
15 can continue to do that.

16 MR. McCALPIN: But why was not all that prior
17 action or reform of an existing welfare system?

18 MR. SMEGAL: Because we didn't call it that then.
19 See, "reform" is a new word.

20 CHAIR BATTLE: And "reform," I thought, was
21 current.

22 MR. SMEGAL: Right.

1 CHAIR BATTLE: See, we get into two different
2 distinguished -- and that's the problem I have with this last
3 sentence, because it went back to the enactment of a
4 particular section, which the system is in reform all the
5 time. If we're talking about reform as I understood Congress
6 to want to prohibit Legal Services from, "As we are in the
7 process of changing our system, we don't want Legal Services
8 attempting to stop us or change us or influence us in" --

9 MR. HOUSEMAN: Challenge it.

10 CHAIR BATTLE: "Or challenge us in that process,"
11 but that the prohibition or this restriction has to do with
12 that activity, not with already existing laws that have been
13 in place that you've got one claim for an individual client
14 that you're challenging something under that prior law, but
15 actually the whole process of interfering with the
16 legislative process. That was my understanding of what this
17 was all about.

18 Now, if that's it, then what we need to do is to
19 talk about permissible representation in the context of
20 excluding that piece but not other pieces. And if we can do
21 that, then I think we're fine. But what this does is it goes
22 back to "enacted," which covers all the reforms that have

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1 happened since the very first piece of welfare legislation
2 ever hit the books.

3 And I think that's where we have really had a
4 problem in our discussion, and that is distinguishing all of
5 those reforms that have taken place as opposed to existing,
6 pending legislative deliberations on how to reform welfare
7 systems.

8 John?

9 MR. BROOKS: Well, I'm still bothered by what
10 Section 16 says. I go back to "hand-in-hand" indicates --
11 which my office tried before him, trying to -- never mind
12 what they were trying to do. The conclusion was, according
13 to Judge Hand, whatever they might have said, they said what
14 they said. So whatever the statute says, that was a
15 statutory interpretation.

16 Here, it seems to me it's perfectly clear that this
17 applies only if it does not involve an attempt, effort to
18 amend or otherwise challenge existing law in effect at the
19 time of initiation of the litigation. "Existing law," I
20 think it's existing law which may have reform elements to it,
21 may not.

22 CHAIR BATTLE: I agree with John.

1 MR. McCALPIN: Basically, what you're saying is,
2 you can go after an individual claim, but you can't try to
3 amend the law.

4 MR. BROOKS: Is challenge --

5 CHAIR BATTLE: Let me just follow up with what John
6 has said, because I think that what he said is extremely
7 valuable to this debate right now. And that is, it seems to
8 me that the exclusion in the statute gives us the bright line
9 that we need in this discussion. It says, "If it's an
10 existing law and you've got an individual client, we don't
11 have a problem with that."

12 Our problem is with deliberative processes that the
13 legislatures are undergoing to reform welfare. We're saying,
14 "Don't do that." If you've got an existing client and an
15 existing law, go to it. That's my reading. So if you take
16 -- because --

17 MR. McCALPIN: I don't think so, because it's an
18 existing law in effect on the date of the initiation of the
19 representation. It's not something that's in gestation in
20 the legislative process. It's something that's on the books.

21 MR. HOUSEMAN: Well, Bill, what you two are doing
22 is, you're reading the exception as if it's the prohibition.

1 This is part of the exception. The prohibition -- you've got
2 to start with the prohibition.

3 The prohibition says, "You can't be involved in an
4 effort to reform a federal or state welfare system." But if
5 you are involved, the only way it could -- then there's an
6 exception to that prohibition. That's what this says.

7 You can represent an eligible client in the welfare
8 reform matter as long as you don't try to amend or challenge
9 the welfare reform law if it was a law in effect of the date
10 -- that's what -- it's the only way you can read that --

11 MR. McCALPIN: Well, why was not every amendment to
12 welfare laws ever put on the books a welfare reform law?

13 MR. HOUSEMAN: It wasn't. It wasn't part of an
14 effort.

15 MR. McCALPIN: Simply because it preceded this
16 statute?

17 MR. HOUSEMAN: Yes, in large part, but it wasn't
18 necessarily part of a reform effort. There's laws that
19 happen on the books all the time.

20 MR. TULL: Certainly the concern that was expressed
21 in the debates about getting Legal Services' programs out of
22 welfare reform was in the context of the current efforts to

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1 change the system.

2 MR. MCCALPIN: Isn't any question that's true, but
3 I'm not at all sure that was the limit of the Congressional
4 concern.

5 MR. HOUSEMAN: All right. The only way -- the only
6 thing I can tell you is that the only statement that appears
7 in this that in any way tries to interpret it is when -- and
8 this is based on what -- this language is identical to that
9 in the McCollum bill -- when I introduced and testified on
10 this in May of 1995, I went through the entire debate.

11 And in the transcript of that hearing, he made the
12 statement that's quoted on page 6. And he doesn't exclude
13 challenging welfare laws.

14 CHAIR BATTLE: I'm going to do something a little
15 bit different right here, because I see we have gotten to a
16 point where we have had a lot of discussion about how this
17 ought to read. We haven't been able to distill language in
18 this initial section about what is permissible that is
19 reflective of at least the Board members' understanding of
20 what the statute has set out.

21 Why don't we take a five-minute break, based on
22 what we have discussed, see if we can come up with some

1 language, and then let's get back together. This is a pretty
2 important piece of what we have got to do, and I'm afraid
3 that if we leave this for some later date, we may not be able
4 to agree on it. And we have a very short period of time when
5 we meet the next time to really take up all of this.

6 So let's take a break. Let's let the staff get
7 together based on the discussion we have had now and see if
8 we can come up with something. Five minutes. Take a recess.

9 (A brief recess was taken.)

10 CHAIR BATTLE: We're back on the record.

11 MR. HOUSEMAN: Here's our proposal.

12 CHAIR BATTLE: Okay.

13 MR. HOUSEMAN: We have tried to do this. First,
14 under "existing law" back on page 10, strike the word "or"
15 and substitute "and."

16 MR. MCCALPIN: Wait a minute. Strike the word
17 "or" --

18 MR. HOUSEMAN: Under (c) (2).

19 MR. MCCALPIN: (c) (2), "federal" --

20 MR. HOUSEMAN: And strike the word "or" and put in
21 its place the word "and."

22 CHAIR BATTLE: Now, you mean "federal and state

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1 regulations"? Is that what you're suggesting?

2 MR. HOUSEMAN: Yes.

3 MR. TULL: No. There's an "or" at the end of the
4 second clause, so it's (c) (2) --

5 MR. McCALPIN: Read it the way you want it.

6 MS. GLASOW: (2), "Federal or state regulations
7 having the force and effect of law that were issued pursuant
8 to federal or state rule making procedures;" -- strike the
9 "or" and put "and."

10 CHAIR BATTLE: "And local law."

11 MR. BROOKS: Are we changing the first line from
12 "means" to "includes"?

13 MS. GLASOW: I thought you wanted us to say "means"
14 instead of "includes."

15 MR. BROOKS: No. I --

16 MS. GLASOW: Oh, you said the opposite.

17 MR. BROOKS: It says "means." I was suggesting
18 changing the "means" to "includes."

19 MR. TULL: I think "means" actually might --

20 MS. PERLE: "Means."

21 MR. TULL: If the desire is to have it to convey
22 the notion that "existing law" is all of them together, and

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1 that's what we're referring to, then "includes" suggests a
2 list as opposed to "means," which I think conveys more.

3 MR. BROOKS: I guess that's okay what we have.

4 MS. GLASOW: Okay. That makes sense.

5 MR. HOUSEMAN: And then put a period after -- in
6 (3), (c)(3), having -- it would be "local government laws or
7 regulations having the force and effect of law," period.

8 CHAIR BATTLE: Okay.

9 MR. HOUSEMAN: Then you go back to 1639.4(a).
10 Okay, guys.

11 CHAIR BATTLE: Okay. Go slow.

12 MR. HOUSEMAN: "Recipients may represent individual
13 eligible clients on cases or matters involving the receipt of
14 cash assistance, services, or in-kind benefits provided under
15 federal or state welfare systems, provided that the
16 representation seeks to enforce existing law but does not
17 challenge or seek to amend such laws," period.

18 CHAIR BATTLE: "Seeks to enforce existing law"?

19 MR. HOUSEMAN: Yeah.

20 MR. BROOKS: I'm sorry. Where are you, Alan?

21 MR. HOUSEMAN: Why don't you just stop after "seeks
22 to enforce existing law" and not --

1 MR. McCALPIN: "Provided that the representation"
2 -- is that where the insert comes?

3 MR. HOUSEMAN: Yes. "Provided that" -- it's on the
4 third line or the fourth line.

5 MR. BROOKS: Page what?

6 MR. HOUSEMAN: Page 11. I'm sorry.

7 CHAIR BATTLE: "Provided that the representation
8 seeks to enforce existing law."

9 MR. HOUSEMAN: We can just put a period there.

10 MS. PERLE: Well, except then you have statutory
11 reg as your law.

12 MR. HOUSEMAN: Okay. Well, I think you have to use
13 the statutory language. "Seeks to enforce existing law but
14 does not seek to challenge or amend such law." Let's make it
15 "law."

16 MR. McCALPIN: "But does not seek" --

17 CHAIR BATTLE: "But does not challenge or seek to
18 amend" --

19 MR. McCALPIN: Tell us what you've got.

20 MR. HOUSEMAN: I'm sorry. The way it would read
21 is, "provided that the representation seeks to enforce
22 existing law that does not challenge or seek to amend such

1 law."

2 CHAIR BATTLE: Why not -- but does "not involve an
3 effort to amend or otherwise challenge existing law" --

4 MR. HOUSEMAN: That's fine.

5 CHAIR BATTLE: That comes straight out of the
6 statute.

7 MR. HOUSEMAN: Right. That's fine. We'll do that.
8 "But does not" --

9 CHAIR BATTLE: "Involve an effort to amend or
10 otherwise challenge existing law."

11 MR. BROOKS: Well, I think we also need the last
12 language -- the few words of 16, "in effect on the date of
13 the initiation of the representation."

14 CHAIR BATTLE: That doesn't hurt anything.

15 MR. HOUSEMAN: No.

16 MR. BROOKS: That could be --

17 MR. HOUSEMAN: "In effect -- existing law in effect
18 on the date of the representation."

19 MR. BROOKS: "Initiation of the" --

20 MR. HOUSEMAN: I mean "on the date."

21 MR. TULL: I've never understood what that meant.

22 CHAIR BATTLE: This was a stroke of genius. I

1 think the fact that we after being able to caucus off the
2 record got together and came up with a satisfactory
3 articulation of "permissible representation of eligible
4 clients" is to be congratulated. So there we are.

5 MR. BROOKS: We'll be interested to see what the
6 commentary says.

7 CHAIR BATTLE: That's right. Okay. Now, did
8 everybody hear that and understand that? Are we clear on
9 that?

10 (No response.)

11 CHAIR BATTLE: Then let's move on to (b),
12 1639.4(b). Suzanne?

13 MS. GLASOW: In (b), "Recipients are allowed to
14 represent individual eligible clients who are seeking
15 specific relief from a welfare agency in agency adjudicatory
16 processes or in negotiations with the agency where the agency
17 action is based on a rule or law that was enacted as part of
18 a reform of a federal or state welfare system, provided that
19 the representation within the agency does not involve
20 participation in a rule-making proceeding of the agency
21 unless permitted under Section 39.5."

22 MR. McCALPIN: Instead of the tail end of that, why

1 don't we simply say "does not involve an effort to amend or
2 otherwise challenge existing law"?

3 MR. HOUSEMAN: Because we're back to a similar
4 problem. Here's the problem. Does that mean that you could
5 -- well, it depends -- if you put in the enforcement stuff,
6 it would be okay. It's the same problem we're dealing with.

7 CHAIR BATTLE: Can we put in the enforcement stuff?

8 MR. HOUSEMAN: Okay. "Provided" -- well, we'll use
9 the same language.

10 CHAIR BATTLE: We'll use the same language.

11 MR. HOUSEMAN: Fine.

12 MR. McCALPIN: Let me ask, basically, what does (b)
13 add to (a)?

14 MR. HOUSEMAN: (a) is not welfare reform.
15 Originally, the theory was -- the original theory, I think,
16 was that (a) was not welfare reform, it was other welfare
17 laws. (b) was welfare reform within the agency. (c) was
18 welfare reform seeking judicial review. So that's the
19 structure.

20 MS. PERLE: This has to do with pro bono.

21 MR. McCALPIN: Well, yes. But you've brought in,
22 though, "so long as it doesn't involve rule making," but so

1 long as it also doesn't involve, as we said above, an effort
2 to change the reform -- the welfare reform law under which
3 they're seeking the benefit.

4 MR. HOUSEMAN: The reason I think we used "rule
5 making" was only because within an agency process, that's the
6 only way you can change.

7 CHAIR BATTLE: Change the rule.

8 MR. HOUSEMAN: But --

9 MR. TULL: This is Cohen-Bumpers, correct?

10 MR. HOUSEMAN: No, this isn't Cohen-Bumpers.

11 MS. PERLE: Well, it references that.

12 MR. HOUSEMAN: Well, fine, yes. At the end of it,
13 "unless it's permitted under" -- right. Maybe it would be
14 fine if we said "provided that the representation within the
15 agency seeks to enforce existing law but does not" --
16 although you can't just limit it to that. There's probably a
17 way to write this that's consistent with what we did above.

18 MR. McCALPIN: I think there is.

19 CHAIR BATTLE: Can we do that? You know, my
20 concern about leaving a lot of this, to the extent that we
21 can resolve issues today, we're better off. Because we have
22 such a short period of time between today and when we meet

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1 again. Can we somehow work on that today and kind of --

2 MR. HOUSEMAN: Excuse me? I'm sorry.

3 CHAIR BATTLE: On how to fix (b). I'm just asking
4 the question, can we work on that?

5 MR. HOUSEMAN: Yes. We'll fix (b). We'll fix (b).

6 CHAIR BATTLE: Okay. All right.

7 MR. HOUSEMAN: We'll have to do the same thing.

8 CHAIR BATTLE: Okay. All right.

9 MR. HOUSEMAN: And the (c) is the same thing.

10 CHAIR BATTLE: Yes. Tom, we're glad that you were
11 able to make it. We're glad you were able to make this
12 portion. I hope you have a safe trip home.

13 MS. GLASOW: We can do this over lunch.

14 CHAIR BATTLE: Okay. Over lunch. You're going to
15 have a working lunch today. Let's look at (c).

16 MR. HOUSEMAN: It needs the same change.

17 CHAIR BATTLE: (c) is over lunch. Okay. 1639.5,
18 "exceptions for public rule making and responding to
19 requests." Is this the Cohen-Bumpers?

20 MR. HOUSEMAN: This is Cohen-Bumpers.

21 CHAIR BATTLE: Okay. "Request using non-LSC
22 funds." Suzanne?

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1 MS. GLASOW: This basically allows recipients to
2 use non-LSC funds to make oral or written comments in public
3 rule making proceedings involving an effort to reform a
4 federal or state welfare system or to respond to a written
5 request from a government agency, et cetera, "to testify or
6 provide information regarding an effort to reform a state or
7 federal welfare system, provided that the response by the
8 employee of the recipient is made only to the party making
9 the request and the recipient does not arrange for the
10 request to be made."

11 CHAIR BATTLE: Yes. Go ahead.

12 MR. McCALPIN: I don't know why you don't follow
13 the language of 504(e) more exactly, when it says "may use
14 funds from sources other than the Corporation to comment on
15 public rule making or to respond to a written request for
16 information or testimony from a federal, state, or local
17 agency" and so on.

18 MR. HOUSEMAN: We did, but the language attempts to
19 just make sure -- make it clear that this includes welfare
20 reform.

21 MR. McCALPIN: Well, I would go on with that, "in
22 an effort to reform the federal or state welfare system."

1 But it's -- "to make oral or written comments in a public
2 rule making procedure" is where I would have thought that you
3 ought to more accurately follow the statute. I would not
4 leave out the welfare reform.

5 MR. HOUSEMAN: Okay. To make --

6 CHAIR BATTLE: Tell me what you would add.

7 MR. HOUSEMAN: I know what he wants. He wants to
8 track the language exactly right.

9 MR. McCALPIN: Right. I want to track the language
10 in 504(e).

11 MR. HOUSEMAN: Right, just that, no gloss on it.

12 MR. McCALPIN: No.

13 MR. HOUSEMAN: Okay.

14 MS. PERLE: And if you look at 1612.5 anyway, it
15 references it.

16 MR. HOUSEMAN: Fine. We'll track the language. I
17 think that's the only place that it isn't tracked, actually.

18 CHAIR BATTLE: Anything else on 1639.6?

19 (No response.)

20 CHAIR BATTLE: Which is the policy statement. We
21 have already basically covered it. Anything else on the rule
22 on welfare reform?

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1 (No response.)

2 CHAIR BATTLE: Anything else?

3 (No response.)

4 CHAIR BATTLE: Okay. Just to note that when we see
5 this again, we're going to see some substantial changes, I
6 suspect, in the commentary.

7 MR. HOUSEMAN: We're going to do it today.

8 CHAIR BATTLE: Okay. Good. On the rules,
9 definitely. We would like to look at those, the two that we
10 left out for some discussion, after lunch.

11 All right. Welfare reform. Now, "restriction on
12 lobbying and other activity."

13 MS. GLASOW: Can we have a five-minute break?

14 CHAIR BATTLE: Five-minute break so we can get
15 ready for this.

16 (A brief recess was taken.)

17 CHAIR BATTLE: Before we begin, we have made a
18 request to the staff that they provide us with the regulatory
19 requirements for policies, procedures, and record keeping so
20 that they could cite to us which specific regulations had any
21 requirement for record keeping, and we could at least keep
22 tabs on how much additional work we're requesting recipients

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1 to undertake. Let me just pass out what we got in response
2 to that.

3 MR. TULL: We have not had an opportunity to talk
4 with the inspector general about that.

5 CHAIR BATTLE: Oh, okay.

6 MR. TULL: And they asked if they could meet with
7 us first. So if we can defer this discussion until --

8 CHAIR BATTLE: I'm sorry. If I had it, I thought
9 we could. Okay. We'll do that.

10 MR. TULL: Thank you.

11 CHAIR BATTLE: And Laurie -- let's just also note
12 for the record that Laurie is here on behalf of the inspector
13 general and will give input, I'm assuming, whenever necessary
14 on the regs that we're covering this morning.

15 We are now on the part 1612, "restrictions on
16 lobbying and certain other activities." Suzanne?

17 MS. GLASOW: This is -- we have a current rule on
18 lobbying, but it has been basically overhauled and revised
19 extensively based on the fact that the new legislation
20 restricting such activities has revised the law
21 substantially.

22 MR. McCALPIN: This is a total replacement?

1 MS. GLASOW: It is, yes.

2 CHAIR BATTLE: Okay.

3 MS. GLASOW: It does include a few provisions in
4 the old rule, but very few.

5 CHAIR BATTLE: Okay.

6 MS. GLASOW: The first section is the purpose
7 section, and the basic purpose of the rule is "to ensure that
8 LSC recipients and their employees do not engage in the
9 activities prohibited under this rule." It also provides
10 guidance on "when recipients can use non-LSC funds to
11 participate in" -- and we want to add some words to this
12 provision.

13 CHAIR BATTLE: Okay. "Participate in" --

14 MS. GLASOW: "State or local fund-raising."

15 MR. McCALPIN: Where is this going to be?

16 CHAIR BATTLE: This is going to be on page 18 in
17 the purpose on page 18 at the top of the page, the very first
18 line. Let's just make sure everybody has that out.

19 MR. McCALPIN: "Recipients can use non-LSC
20 funds" --

21 MS. GLASOW: "To participate in state or local
22 fund-raising, or" -- and then go on with what we have.

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1 CHAIR BATTLE: "Public rule making."

2 MS. GLASOW: "Public rule making or" -- that's in
3 the statute, right?

4 MR. McCALPIN: Let me ask just a general question
5 that I guess I intuit the answer to. But when I saw this
6 initially, it's -- although I recognize it in there, why do
7 we put "training and demonstrations and other matters" which
8 appear to be other than lobbying in this particular
9 regulation?

10 MS. GLASOW: I think because historically, the
11 restrictions on training and organizing has not been a
12 restriction on training per se, but it's advocacy training or
13 advocacy organizing. In other words, it's related to an
14 effort to advocate for or against -- it's sort of a form of
15 lobbying through training.

16 You're training to advocate for or against public
17 policies or legislation. It's not a strict prohibition on
18 the activity of training. I mean, we provide training to
19 train attorneys how to litigate in areas of law.

20 CHAIR BATTLE: The "certain other activities" is
21 such a -- I mean, it's broad. And even what you are
22 suggesting adding, "state or local fund-raising," has nothing

1 to do directly with the whole issue of lobbying. But is that
2 under the umbrella of this "other activities"?

3 MR. HOUSEMAN: Well, it does. The state and local
4 fund-raising does, in this context, because the -- I'm going
5 to call it the "minutiae exception" to lobbying that permits
6 you to lobby at the state and local level using non-LSC funds
7 to raise funds -- there's two exceptions to the lobbying
8 provisions, Cohen-Bumpers and the state and local fund-
9 raising exception. That's shorthand for that.

10 Let me just say -- I don't mean to disagree with
11 Suzanne, but historically, there was not a regulation on
12 training or organizing until 1984. There was none. The
13 restrictions on public demonstrations was in an old
14 regulation on 1612, so the original regulation back in the
15 '70s included both the lobbying and rule making and public
16 demonstrations.

17 And the reason it originally did that was because
18 the original statute had a reference to public demonstrations
19 and lobbying in the same section of the statute. It was
20 another reference, but it had it in. Then in '84, they added
21 in training and organizing. And part of the problem here is
22 that -- what did you do with this rule if you have to revise

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1 it completely? Did you break it into three or four rules, or
2 did you just keep it at one?

3 And so I think we understood the direction of this
4 committee was to -- you know, we had to change the rule
5 anyway, and you had to substantially revise all kinds of
6 sections to it.

7 CHAIR BATTLE: We don't define "certain other
8 activities."

9 MR. HOUSEMAN: And we didn't really fiddle much
10 with "public demonstrations, training, or organizing" as we
11 say. We're really just fine-tuning there from what was in
12 the last version.

13 CHAIR BATTLE: Yes.

14 MR. HOUSEMAN: So what's really new, with very
15 minor exceptions, is everything -- the first part. You know,
16 you could put "public demonstrations, training, and
17 organizing" into three separate regulations if you wanted.
18 And that's a choice the committee could make.

19 CHAIR BATTLE: I think we could probably handle it
20 under one rubric, which is what we have done here. I just --
21 I don't understand --

22 MR. McCALPIN: We have lived with it for 20-odd

1 years, or 10 or 20.

2 CHAIR BATTLE: Yes. We could live with that, but I
3 just -- when you see that out front, you don't know what else
4 is in it, and then it pops up in different places in
5 different ways, and so --

6 MR. HOUSEMAN: I think it would be a lot plainer,
7 because there's some definitional problems here, too, if they
8 were separate. But that isn't in the long run -- and it
9 seemed to me maybe you would want to do that down the road.

10 CHAIR BATTLE: Yes. Well, for interim purposes,
11 why don't we struggle through what we have got. And if it is
12 confusing to people who comment to us and we have the
13 opportunity, we may break it out. Because they are such
14 different kinds of activities, that I just don't know that
15 they all get the best treatment under one umbrella, but
16 they're here. So let's kind of go with it.

17 MR. HOUSEMAN: I agree with -- I think on training,
18 there's a rationale. And I think on the others, there isn't.
19 But even training, the rationale is --

20 CHAIR BATTLE: Okay. Let's just go through. We
21 have handled the purpose. Anything about the purpose other
22 than the additional information that Suzanne has given us on

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1 that?

2 (No response.)

3 CHAIR BATTLE: Then let's go on to "definitions."

4 MS. GLASOW: The first definition is of "grass
5 roots lobbying." And without reading the whole thing, it
6 basically means it's --

7 CHAIR BATTLE: It has changed significantly from
8 what "grass roots lobbying" used to be, hasn't it?

9 MS. GLASOW: We did change a lot of the
10 definitions. We deleted some because they were no longer
11 necessary, or they were just -- didn't make much sense.

12 CHAIR BATTLE: Okay.

13 MS. GLASOW: In federal terminology and in federal
14 appropriations law, you use the term "grass roots lobbying"
15 and -- what was the one she used before?

16 MR. HOUSEMAN: Well, the old regulation had a
17 definition of "publicity and propaganda" and "grass roots
18 lobbying."

19 CHAIR BATTLE: Right. Yes.

20 MR. HOUSEMAN: The statute no longer uses the
21 definition of "publicity and propaganda." And that was a
22 very confusing set of definitions, because to find out what

1 "grass roots lobbying was," you had to first read that, then
2 it referred back to another definition. Then there was a
3 section of the statute that prohibited it.

4 So what we all worked on trying to do was to come
5 up with one definition of "grass roots lobbying" so that that
6 was clear and not have all these definitions floating around
7 and combine the elements of the definitions to try to get at
8 what "grass roots lobbying" is.

9 CHAIR BATTLE: And we took out "publicity or
10 propaganda" completely.

11 MR. HOUSEMAN: It's not in the statute anymore.

12 CHAIR BATTLE: Yes.

13 MR. HOUSEMAN: But it came back in essentially
14 through this.

15 MS. GLASOW: Through this.

16 MR. HOUSEMAN: Because this uses the old definition
17 of "publicity and propaganda" to define "grass roots
18 lobbying."

19 CHAIR BATTLE: Okay.

20 MS. GLASOW: The federal government uses the term
21 "publicity and propaganda" basically mean "grass roots
22 lobbying." They basically mean the same thing. And they did

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1 even when they were defined differently, so it was just very
2 confusing.

3 CHAIR BATTLE: Okay.

4 MS. GLASOW: So basically, "grass roots lobbying"
5 means communications with the public asking the public or
6 directing them to communicate with public officials to
7 support or oppose pending or proposed legislation,
8 regulations, et cetera. And it also includes "contributions
9 to or participation in any demonstration, march, rally, fund-
10 raising drive, lobbying campaign, et cetera." I mean, it
11 goes on, just about any effort --

12 CHAIR BATTLE: I've got a question about that.
13 When you say "it also includes contributions," my question
14 was, are we talking about contributions with recipient
15 resources of its time and energies, or are we talking about
16 contributions from the standpoint of requesting donations?
17 The use of the word "contribution" right there is not really
18 clear.

19 MS. GLASOW: We might need another verb. "Grass
20 roots lobbying" should also mean "providing contributions
21 from" what?

22 CHAIR BATTLE: "Recipients providing."

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1 MR. HOUSEMAN: "Recipient resources."

2 MS. GLASOW: "From recipient resources." Okay.

3 MS. PERLE: The prohibition was --

4 MR. McCALPIN: What?

5 MS. PERLE: The prohibition goes to recipients.

6 CHAIR BATTLE: Well, but the definition isn't
7 clear.

8 MS. GLASOW: That's right. We need to fix that.

9 CHAIR BATTLE: Okay.

10 MR. McCALPIN: I am slightly confused by the next
11 paragraph. There is a period at the end of the third line.

12 MS. GLASOW: That was the next thing --

13 MR. McCALPIN: Is there something omitted?

14 MS. GLASOW: No. The three lines after that need
15 to be deleted.

16 MR. McCALPIN: Oh.

17 MS. GLASOW: We went through this last night. I
18 have a lot of things to fix for you.

19 CHAIR BATTLE: Okay.

20 MR. McCALPIN: So we take out "intended or
21 designed" down to the end of the paragraph?

22 MS. GLASOW: Yes.

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1 CHAIR BATTLE: Okay. That's all deleted.

2 MR. BROOKS: There is no period.

3 CHAIR BATTLE: Well, there was no period. They
4 used up their period already. They had run out of periods in
5 that paragraph.

6 MR. HOUSEMAN: We were working on this sort of the
7 last day.

8 MS. GLASOW: I literally handed it to the Federal
9 Express man as he was picking up the load downstairs Friday
10 night.

11 CHAIR BATTLE: No problem. We can work through all
12 of this. Let's go on to (b), "legislation."

13 MS. GLASOW: "'Legislation' means any action or
14 proposal or action by Congress or state legislative bodies
15 intended to prescribe law or public policy. This would
16 include bills, Constitutional amendments, ratification of
17 treaties, intergovernmental agreements, approval of
18 appointments and budgets, and approval or disapproval of
19 actions of the executive.

20 "It does not include actions of a legislative body
21 which adjudicate the right of individuals under existing
22 laws." And we want to put a period there, take out the

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1 example, which should be in the preamble and not in the text
2 of the rule.

3 CHAIR BATTLE: I've got a question about
4 "'Legislature' as used herein does not include any Indian
5 tribal council." I thought about the term "treaties" as used
6 in the earlier part of (b). Is that -- if you've got
7 treaties with the Indian triable council, is that included or
8 excluded?

9 MR. HOUSEMAN: That would be excluded.

10 MS. GLASOW: I think it would be excluded.

11 MR. HOUSEMAN: I'm sorry. No. Treaties -- no.
12 Maybe I need to write that. What I think is meant here --
13 this has been in the regulation from the beginning.

14 CHAIR BATTLE: Okay.

15 MR. HOUSEMAN: This phrase has been in this
16 regulation from the beginning from '74 or '76 on -- '77 on.
17 And what it means is that Indian tribal council is not a
18 legislative body for the purposes of this regulation.

19 CHAIR BATTLE: Okay. That's fine.

20 MR. HOUSEMAN: It was an exception that's based on
21 the legislative history to the original Act and that doesn't
22 seem to be changed.

1 CHAIR BATTLE: No need to change it now.

2 MR. HOUSEMAN: So it may not be clear, clear but
3 that's --

4 MS. PERLE: Shouldn't it say "legislative body"?

5 MR. McCALPIN: What?

6 MS. GLASOW: We should change "legislature" as used
7 herein to "legislative body," because that's a term we use
8 elsewhere.

9 MR. McCALPIN: Let me make clear. Did you take out
10 what's in the parentheses just before that, the whole
11 parentheses?

12 MS. GLASOW: Correct.

13 MR. HOUSEMAN: That would be in the preamble, I
14 think, we decided on.

15 CHAIR BATTLE: "Existing laws" is not a term of art
16 that will flow through from one reg to the next, is it?

17 MS. GLASOW: No.

18 CHAIR BATTLE: Okay.

19 MR. BROOKS: "The period of existing laws."

20 MS. GLASOW: That's correct.

21 CHAIR BATTLE: (c), "public policy."

22 MS. GLASOW: That means "An overall plan embracing

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1 the general goals and acceptable procedures of any
2 governmental body, impending or proposed statutes, rules, and
3 regulations."

4 MR. McCALPIN: Wait a minute. "Pending or
5 proposed"?

6 MR. BROOKS: Do we need to say, "A plan as
7 expressed in regulations or policy statements"? It seems to
8 me it's a little vague.

9 MR. HOUSEMAN: Here's the problem. This is really
10 -- this is one of those unbelievable conundrums.

11 CHAIR BATTLE: This one goes further than it used
12 to.

13 MR. HOUSEMAN: Yes. Let me explain the problem
14 here. Then we'll understand it.

15 CHAIR BATTLE: Okay.

16 MR. HOUSEMAN: This is -- you wouldn't need this
17 definition if you didn't have the training prohibition. If
18 you didn't have training in here, you wouldn't need this
19 definition. And the training description says, "You can't
20 disseminate information about political activities or public
21 policies in the course of training unless it's part of an
22 exception."

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1 So what you have to do here is try to define what
2 did they mean by "public policies." Well, they can't mean
3 existing law, because how can -- training's all about
4 existing law. So it means something else.

5 CHAIR BATTLE: Okay. That's why the "pending."

6 MR. HOUSEMAN: It's very clear what it means. And
7 we have wrestled with this for years. The last time we did
8 this sort of revision of 1612 was in the era of the last --
9 the Reagan award or Durant Wallace award, and Michael Wallace
10 and I personally wrote a definition of "public policy" that's
11 close to this. But we just went round and round. We
12 couldn't figure out what the hell to do with it.

13 So we don't need it necessarily in here, except
14 that it makes reference back in training. And so it's a very
15 confused issue.

16 MR. McCALPIN: It's not very different from what's
17 in their present regulation.

18 CHAIR BATTLE: Well, the difference is the pending
19 stuff that he's talking about now. The present one doesn't
20 -- it says "already enacted by a governmental body." And
21 now, we're talking about "public policy" as including a
22 proposed statute.

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1 MR. HOUSEMAN: And we can go two different ways.
2 It seemed to me the simplest way was just to do this.

3 CHAIR BATTLE: Yes.

4 MR. HOUSEMAN: But we don't want to get into it,
5 and this is a minor point.

6 CHAIR BATTLE: All right. Any other questions on
7 (c)?

8 (No response.)

9 CHAIR BATTLE: Let's move on to (d), "rule making."

10 MS. GLASOW: It's a very long definition. It means
11 -- and basically, the legislation used terminology that comes
12 almost right out of the Administrative Procedure Act. So we
13 tried to follow that concept in defining "rule making."

14 "'Rule making' means any agency process for
15 formulating, amending, or repealing rules, regulations, or
16 guidelines of general applicability and future effect issued
17 by the agency pursuant to federal, state, or local rule
18 making procedures, including, (1)" --

19 CHAIR BATTLE: Is that a comma or -- instead of a
20 period?

21 MS. GLASOW: It should be.

22 MR. HOUSEMAN: Yes, it should be.

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1 CHAIR BATTLE: And then a colon after "including"?

2 MS. GLASOW: Yes.

3 CHAIR BATTLE: Okay. All right.

4 MS. GLASOW: Number one, "The customary procedures
5 that are used by an agency to develop and adopt proposals for
6 the issuance, amendment, or revocation of executive orders,
7 regulations, or other statements of general applicability and
8 future effect, such as notice of comment, rule making
9 procedures under the Federal Administrative Procedure Act, or
10 similar procedures used by state or local government agencies
11 and negotiating rule making." Any questions on that?

12 CHAIR BATTLE: Yes. Let me just say this . The
13 previous rule was very short, and we have gone to long one,
14 which really tracks the Act. Is there a reason for that? Do
15 we need this additional information to describe rule making?
16 Before, "rule making" was three lines. "It's an agency
17 process for formulating, amending, or repealing legislation,"
18 period. And now, we have got the definition on "rule making"
19 that covers all of this.

20 MR. HOUSEMAN: Part of the problem here is the new
21 statute is these two provisions on rule making. And so we're
22 trying to pick them up instead of constantly referring to the

1 two provisions in the definition so that we can refer to
2 "rule making." And when we use the statutory language, the
3 defined "rule making," and expanding on it to make it clear.

4 MR. McCALPIN: I don't see how you could use the
5 old, because "rule making" ordinarily applies to an agency,
6 and I don't see how an agency can repeal legislation, which
7 is the last phrase in (n).

8 MS. GLASOW: That's true. Right.

9 MR. HOUSEMAN: What they did last time was, they
10 defined "legislation" to include -- I mean, it was a mess.
11 So what we tried to do here was to try to figure out a way to
12 use the current --

13 CHAIR BATTLE: And to bring clarity to it by
14 using --

15 MR. HOUSEMAN: The FY '96 language to describe
16 "rule making" and then to use the two types of rule making
17 that that language refers to.

18 MS. GLASOW: Because two of the major provisions in
19 Section 504 of the new legislation deal with this. And
20 basically what it's doing is describing rule making in two
21 different forms. So we're putting it in the definition of
22 "rule making." Thereafter in the rule, all we have to say

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1 is, "You can't do rule making."

2 CHAIR BATTLE: I understand why. Now, what "rule
3 making" -- no, number 2, the second type. "Adjudicatory" --

4 MS. GLASOW: The second type is "adjudicatory rule
5 making." In essence, it's "adjudicatory proceedings that are
6 formal, adversarial proceedings that are formal, adversarial
7 proceedings to formulate or modify an agency policy of
8 general applicability and future effect."

9 CHAIR BATTLE: Okay.

10 MS. GLASOW: Those words are important, "general
11 applicability and future effect," because basically what
12 they're doing is either through adjudication or formal rule
13 making, they're making rules that apply to everybody versus a
14 specific order or finding or hearing for a particular person
15 and a particular set of facts.

16 "'Rule making' does not include, (1),
17 administrative proceedings that produce determinations that
18 are of particular rather than general applicability and
19 effect, only the private rights, benefits, or interest of
20 individuals, such as Social Security hearings, welfare fair
21 hearings, or granting or withholding of licenses."

22 And we want to put a period after "licenses" and

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1 delete the rest of that, which we feel is unnecessary. Semi-
2 colon. Excuse me.

3 CHAIR BATTLE: There is -- now this is just
4 stylistic. There are several places where -- because this
5 appeared in the previous rule, as well, where you set out,
6 "This is what it is, and this is what it is not." And when
7 you start with, "This is what it is," you put (d).

8 And "This is what it is not" doesn't have any
9 number to it. Is that the Federal Register's, or is that us
10 doing that?

11 MS. GLASOW: That's us. We're basically trying to
12 define both --

13 CHAIR BATTLE: What's in it and what's out?

14 MS. GLASOW: What's in and out within the same
15 paragraph, in essence.

16 CHAIR BATTLE: But from a stylistic standpoint of
17 view, to me so that people can refer to what's out of it, it
18 needs to have a number or something. Because it's difficult
19 to follow without it.

20 MS. GLASOW: Okay. We can fix that.

21 MR. McCALPIN: It's part of the definition, though.

22 CHAIR BATTLE: That's true. But it's -- you've got

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1 (d) (1) and (d) (2). What is the rest of that? How would you
2 refer if you're trying to refer to the portion that --

3 MR. HOUSEMAN: Maybe we just run it together.

4 MS. PERLE: Well, no. You can have (d) (1), rule
5 making means, and then (d) (2) --

6 CHAIR BATTLE: Yes.

7 MS. PERLE: And then (2), rule making is not.

8 CHAIR BATTLE: Yes. Just organize it a little bit
9 differently. And that did occur when we were talking about
10 grass roots lobbying. Let's do the same thing there.

11 MS. GLASOW: I'll fix that. Number (2) under "rule
12 making does not include," "does not include communication
13 with agency personnel for the purpose of obtaining
14 information, clarification, or interpretation of the agency's
15 rules, regulations, guidelines, policies, or practices."

16 CHAIR BATTLE: Anything else on (d)?

17 (No response.)

18 CHAIR BATTLE: (e), "public rule making." I'm
19 sorry.

20 MR. McCALPIN: Let me ask a threshold question.
21 Why do you have the definition of "public rule making"? I
22 don't find it in the statute.

1 MR. HOUSEMAN: Yes, it is. It's in the Cohen-
2 Bumpers amendment, 504(e).

3 CHAIR BATTLE: Okay. "Public rule making."

4 MS. GLASOW: "'Public rule making' means any rule
5 making proceeding or portion of such proceeding or procedure
6 that is open to the public through notices of proposed rule
7 making published in the Federal Register or similar state or
8 local journals, announcements of public hearings on proposed
9 rules, notices of proposed rule making." We want to add
10 there, "including those" -- and cross out "or announcements
11 of a public hearing that are" --

12 MR. McCALPIN: "Including those published in the
13 Federal Register"?

14 CHAIR BATTLE: Including those routinely sent to
15 interested members of the public is what she's getting at.

16 MS. GLASOW: Right.

17 CHAIR BATTLE: You take out "or announcements of a
18 public hearing that are."

19 MS. GLASOW: Did you see -- it's in the seventh
20 line.

21 MR. McCALPIN: The seventh line of (d)?

22 CHAIR BATTLE: The fourth line.

1 MS. GLASOW: Seventh line of the page.

2 MR. HOUSEMAN: Fourth line of (e).

3 MR. McCALPIN: Yes.

4 MS. GLASOW: Take out "or announcements of a public
5 hearing that are" and put in its place "including those."

6 CHAIR BATTLE: So after "proposed rule making,"
7 comma, "including those routinely sent to members of the
8 public"?

9 MR. McCALPIN: That's what I think.

10 MR. BROOKS: Do we need an "or" or an "and" between
11 "rules and notices and that," the beginning of that line?

12 MR. HOUSEMAN: That would help.

13 CHAIR BATTLE: "Proposed rules and notices."

14 MS. GLASOW: Okay.

15 CHAIR BATTLE: Anything else on (e)?

16 (No response.)

17 CHAIR BATTLE: (f)?

18 MS. GLASOW: "The term 'similar procedure' refers
19 to legislative consideration of matters which by law must be
20 determined by a vote of the electorate or matters relating to
21 the structure of government itself such as reapportionment."

22 MR. McCALPIN: I would take out the reference to

1 reapportionment, which is a buzz word at this stage. It only
2 opens the door to misunderstanding on what we're doing.

3 MR. HOUSEMAN: I agree. Yes.

4 MS. GLASOW: Okay.

5 MR. HOUSEMAN: This is old language. We just
6 didn't change it.

7 MR. McCALPIN: If we just put a period after
8 "itself."

9 CHAIR BATTLE: But do we have to say "government
10 itself relating to the structure of government," period?

11 MS. GLASOW: Yes. That's a very good --

12 MR. McCALPIN: We have got another one.

13 CHAIR BATTLE: Well, we're just popping along.

14 MR. McCALPIN: You're saving them.

15 CHAIR BATTLE: That's right. Every word is worth
16 something, as long as we take these "as long ases" out. So
17 long as we take these "so long ases" out.

18 1612.3, "prohibited legislative and administrative
19 activities."

20 MS. GLASOW: This contains a prohibition on
21 legislative and administrative activities. Paragraph A
22 states that "Except as provided in Sections 4 and 5,

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1 recipients may not" -- and we want to put "and" there --
2 "recipients may not undertake any activity to."

3 MR. McCALPIN: I had simply added "attempt to
4 influence," "influence or attempt to influence."

5 MS. GLASOW: Statutory language?

6 MR. BROOKS: The statute just says "attempt."

7 MS. GLASOW: "Attempt to influence"?

8 MR. BROOKS: No. Well, that's what I was thinking,
9 "may not directly or indirectly attempt to influence."

10 CHAIR BATTLE: Well, why not just "attempt to
11 influence"? "Directly or indirectly" doesn't add anything,
12 does it?

13 MS. GLASOW: Yes, because you're influencing
14 whether -- I mean, if you're influencing, whether it's direct
15 or indirect --

16 CHAIR BATTLE: The bottom line is influence.

17 MS. GLASOW: It states it a little more strongly,
18 but it would mean the same thing. Are we taking it out?

19 MR. HOUSEMAN: "May not attempt to influence."

20 CHAIR BATTLE: "May not attempt to influence."

21 MS. GLASOW: "May not attempt to influence." Okay.
22 Number 1, "The passage or defeat of any legislation." 2,

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1 "Any referendum, initiative, or any similar procedure of the
2 Congress, any state legislature, any local council, or any
3 similar governing body acting in any other legislative
4 capacity."

5 MR. BROOKS: In any --

6 CHAIR BATTLE: "In any" -- do we need "other," "any
7 legislative capacity"? "Other" can come out.

8 MS. GLASOW: I can take it out.

9 CHAIR BATTLE: Okay. All right.

10 MR. BROOKS: Will you have these specified
11 differently from the way they're specified in 504(a)? I
12 wonder what the rationale is. Maybe you want to do that when
13 you get through the section. But it's confusing to me,
14 trying to tie the statute to the specific language that's in
15 the reg.

16 MS. GLASOW: In a way, we were trying to make it I
17 guess easy for the reader, because the first one deals with
18 any legislation.

19 MR. McCALPIN: That's 4. That's (a)(4).

20 MS. GLASOW: Right. And 2 are legislative --
21 "other legislative initiatives, referendums, initiatives, and
22 similar procedures."

1 MR. McCALPIN: Why have you split the provisions of
2 (a) (4) into two separate subparagraphs?

3 MR. BROOKS: And 3.

4 MS. GLASOW: We just thought it would make easier
5 reading.

6 MR. HOUSEMAN: Purely a stylistic --

7 MS. GLASOW: Yes.

8 MR. BROOKS: But you've left out "Constitutional
9 amendment," I think, which is in (a) (4).

10 MS. GLASOW: That may be defined in "legislation."

11 MR. HOUSEMAN: Yes, it is.

12 MS. GLASOW: Because I think that question came up
13 before. Yes, it's defined in "legislation." So it would be
14 covered by number 1.

15 CHAIR BATTLE: Okay.

16 MS. PERLE: But why do need to repeat 2 if we have
17 all these things covered in the "legislation" definition?

18 CHAIR BATTLE: So really what it is, you're saying,
19 1 is being qualified by 2 and 3. Because in 1 --

20 MR. HOUSEMAN: No.

21 CHAIR BATTLE: What?

22 MS. GLASOW: I'm sorry. We had a question from --

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1 MR. HOUSEMAN: "Legislation" doesn't include some
2 of these.

3 CHAIR BATTLE: Oh, it does not?

4 MR. HOUSEMAN: In our definition.

5 CHAIR BATTLE: Okay.

6 MS. GLASOW: We can go back and check and confirm
7 where there's anything repeated and if it is, we can take it
8 out. But most of these are not repeated.

9 CHAIR BATTLE: Okay.

10 MR. TULL: "Referendum" is not "legislation."

11 MS. GLASOW: Right.

12 MR. TULL: It's distinct from that.

13 MS. GLASOW: Right. Number 3 is "any provision in
14 a legislative measure appropriating funds to or defining or
15 limiting the functions or authority of the recipient of the
16 Corporation." This is self-interest lobbying. The same with
17 4, "the conduct of oversight proceedings concerning the
18 recipient or the Corporation."

19 CHAIR BATTLE: Okay.

20 MS. GLASOW: So paragraph (a) is basically
21 restrictions on legislative type lobbying. Paragraph (b)
22 covers most of -- covers the administrative type lobbying.

1 And so it says, "Except as provided in sections 4 and 5,
2 recipients shall not participate in or attempt to influence
3 any rule making or attempt to influence the issuance,
4 amendment, or revocation of an executive order."

5 And because of the broad definition of "rule
6 making" between that restriction on rule making and the
7 restriction on executive order, we have covered everything
8 that was in the legislative restrictions.

9 CHAIR BATTLE: Okay.

10 MS. GLASOW: And (c) refers to both (a) and (b).
11 "Recipient shall not use any funds to pay for any personal
12 service, advertisement, telegram, telephone communication,
13 letter, printed or written matter, administrative expense, or
14 related expense associated with an activity prohibited in
15 paragraphs (a) and (b) in this section."

16 MR. BROOKS: That's just right out of the statute.

17 MS. GLASOW: That's correct.

18 MR. McCALPIN: (a) (6).

19 CHAIR BATTLE: Right. Okay. 1612.4, "permissible
20 activities using any funds."

21 MS. GLASOW: Paragraph (a), we would change and
22 just say "a recipient" --

1 CHAIR BATTLE: That was my question. In some, you
2 said "employee," in some, you said "recipient and employee."
3 And I figured you really meant both in all. Right?

4 MR. McCALPIN: What are you saying?

5 MS. GLASOW: "A recipient." Because that includes
6 their employees. Basically, they can't do it. "A recipient
7 may provide administrative representation for an eligible
8 client in a proceeding that adjudicates the particular rights
9 or interest of such eligible client or in negotiations
10 directly involving that client's legal rights or
11 responsibilities, including prelitigation negotiation and
12 negotiation in the course of litigation."

13 MR. McCALPIN: I would point out to you that you
14 use "client" singular in the beginning of the second line,
15 and plural at the end of that line and singular again in the
16 next line.

17 MS. GLASOW: I noticed that as I was reading it.

18 CHAIR BATTLE: Just strike the plurals and use
19 singular throughout, it seems to me. And that corrects that.
20 Okay. (b).

21 MS. GLASOW: "A recipient may initiate or
22 participate in any litigation challenging agency rules,

1 regulations, guidelines, or policies, unless such litigation
2 is prohibited by law or Corporation regulations."

3 MR. McCALPIN: That's like saying, "You can sin
4 unless you can't" -- or "You can do this unless you can't do
5 it." What --

6 MR. HOUSEMAN: You need the last phrase because of
7 welfare reform and redistricting.

8 CHAIR BATTLE: Well, it's not any litigation, not
9 class action litigation. I would just take the word "any"
10 out and say "litigation," because "any class action," there
11 are certain kinds of litigation that is restricted.

12 MR. HOUSEMAN: That is what that was meant to refer
13 to.

14 MR. McCALPIN: Prisoners.

15 CHAIR BATTLE: Right, prisoner litigation.

16 MR. HOUSEMAN: In other parts, we say you can't do
17 certain things. This isn't that.

18 MS. PERLE: Would it say "otherwise would have
19 been"?

20 MR. BROOKS: Shouldn't we have some clause in the
21 commentary?

22 MR. HOUSEMAN: We'll have that listed in the

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1 commentary.

2 CHAIR BATTLE: Yes. List what those prohibitions
3 are, I think, would be helpful.

4 MR. HOUSEMAN: Commentary's getting longer.

5 CHAIR BATTLE: Twenty-five page limit.

6 MR. BROOKS: I must just comment here on page 8.
7 The use of the word "and the like" --

8 CHAIR BATTLE: "And the like" has got to come out.
9 Is that page 8, John?

10 MR. BROOKS: It's the second line on page 8.

11 CHAIR BATTLE: Yes.

12 MR. BROOKS: That's not the only place. I would
13 just suggest being sparing with that phrase.

14 CHAIR BATTLE: "And the like."

15 MS. GLASOW: Paragraph (c). "Nothing in this part
16 is intended to prohibit a recipient or an employee of a
17 recipient from communicating with a governmental agency to
18 obtain information, clarification, or interpretation of the
19 agency's rules, regulations, practices, or policies."

20 CHAIR BATTLE: Okay. 2, don't we need some commas
21 in 2, "informing clients, other recipients, or attorneys
22 representing eligible clients about new or proposed

1 statutes"?

2 MR. HOUSEMAN: Right.

3 CHAIR BATTLE: Let's put some commas in.

4 MS. GLASOW: We're taking out Number 7 in that
5 list.

6 MR. HOUSEMAN: Next page.

7 MR. McCALPIN: Have you gotten to 7?

8 MR. HOUSEMAN: No.

9 MR. McCALPIN: I think we need to talk about 4.

10 MS. GLASOW: Okay.

11 MR. HOUSEMAN: Okay.

12 CHAIR BATTLE: I was happy actually to see 3.
13 Until I read 3, I wasn't really sure whether once we put all
14 of this out for comment, we were going to get anything back.

15 (Laughter.)

16 MR. TULL: We could put, "If you agree with us."

17 (Laughter.)

18 CHAIR BATTLE: 3 is real significant. Okay.

19 MS. GLASOW: Pose your questions.

20 CHAIR BATTLE: Number 4, Bill?

21 MR. McCALPIN: Yes. "Participating in meetings or
22 serving on committees and Bar Associations, if that's

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1 permitted, except that employees may not participate using
2 recipient resources." For instance, does that mean you have
3 to attend on your own time?

4 CHAIR BATTLE: Do you go leave without pay for
5 that?

6 MR. McCALPIN: Suppose there's a meeting at 2
7 o'clock in the afternoon. They would have to somehow or
8 other get off the recipient payroll to go to that meeting?

9 MR. HOUSEMAN: But it's only if the meeting
10 involves prohibited legislative or rule making activities.

11 MR. McCALPIN: Well, that doesn't say that.

12 MR. HOUSEMAN: Yes, it does.

13 MR. McCALPIN: It says "or identified -- they may
14 not participate using recipient resources."

15 MR. HOUSEMAN: But keep going.

16 MR. McCALPIN: "Or" -- so they're two different
17 things -- "may not identify the recipient and activities that
18 involve prohibited legislation or rule making."

19 CHAIR BATTLE: "And identify."

20 MR. HOUSEMAN: I see. We have got a drafting
21 problem.

22 MS. GLASOW: We need to fix that.

1 MR. McCALPIN: There are two things.

2 MR. HOUSEMAN: That wasn't meant. The phrase that
3 involved prohibited was supposed to -- it's supposed to --

4 CHAIR BATTLE: And identify the recipient in
5 activities of Bar Associations that involve --

6 MR. HOUSEMAN: That phrase is supposed to modify
7 both.

8 MS. GLASOW: We need to fix that.

9 MR. McCALPIN: Because otherwise -- does that mean,
10 for instance, if you're on a committee, you can't use the
11 recipient's telephone to call another committee member, or
12 you can't fax something to another committee member?

13 CHAIR BATTLE: If it involves prohibited
14 legislative or rule making activities, you cannot. But if
15 it's just a Bar meeting, yes, you can. And I think that's
16 what's not clear about the way this is drafted.

17 MR. McCALPIN: Let's talk about that, the next
18 prohibition, "prohibited legislative and rule making
19 activities." Suppose a Bar Association committee is
20 discussing whether or not to sponsor a particular piece of
21 legislation in the state legislature. You have to absent
22 yourself from that? Is it enough that you cannot vote? Can

1 you participate in the discussion but not vote?

2 MR. HOUSEMAN: There is a difference of opinion
3 among those of us that are working on this about what the
4 appropriate resolution of this issue should be. So let me,
5 without saying who agrees or disagrees -- I mean, we have
6 tried to come to some consensus on it, and this was our best
7 attempt.

8 The current regulation -- well, the issue is, are
9 we going to permit recipients to use recipient resources to
10 participate and employees to participate in Bar Associations
11 and committees, even if the committees are doing activities
12 that may involve prohibited activity like rule making or
13 legislation. That's the issue.

14 And we clearly want to permit employees and
15 encourage them to participate in Bar Association activities,
16 generally. And certainly, we want them on committees. And
17 if the committees -- we want them on relevant committees.
18 And if the role is the committee's comment on rules or
19 whatever they do, we certainly want them doing that.

20 The question then becomes, what about the
21 prohibitions that you can't do, lobbying or rule making? And
22 how do you draw that line? Well, the last regulation, the

1 old one, the 1984, '86, '87 one, which is the same one in
2 this point, permitted the use of LSC funds to be used by
3 recipients to participate and serve on the committees of Bar
4 Associations. It didn't have a restriction on it.

5 And the history was that Michael Wallace thought it
6 was very important to be in Bar activities, and he recognized
7 the reality that some Bar activities involve commenting on
8 rule making or legislation. And he didn't want to set up
9 some framework. So he was comfortable writing that lost --
10 it doesn't appear in the statute anywhere, but it's
11 essentially an exception to the restrictions on rule making
12 to permit it.

13 We have been struggling with that same issue. And
14 the problem is, we have now a very definitive statement by
15 Congress, "No, lobbying, no rule making, unless it's Cohen-
16 Bumpers."

17 CHAIR BATTLE: And no dues.

18 MR. HOUSEMAN: And no dues.

19 CHAIR BATTLE: So you've got --

20 MR. HOUSEMAN: So that's the sort of framework
21 we're trying to come up with. So we want to encourage
22 participation on the one hand, and we don't want people to

1 get in trouble on the other hand. So how do you do that?

2 CHAIR BATTLE: I think the identity of the
3 recipient is a key piece to this, number 4. And I think that
4 if part of your obligation as a member of the Bar is to serve
5 in some sort of capacity because you've been appointed by the
6 court to do so, then I think you've got an obligation to do
7 that.

8 If you get into being involved in that activity and
9 your identity on that activity is not in your capacity just
10 as a lawyer but as part of that recipient, then I think that
11 that's where the problem lies, because you don't want to use
12 the recipient's identity or resources for that work. But
13 your work as an individual member of the Bar and your
14 obligation to work as a member of the Bar within that
15 association, I think, is something different.

16 So I would like to see the drafting here fixed to
17 focus on the distinction being the prohibition on the use of
18 the recipient's identity and resources for this Bar activity.
19 But --

20 MR. BROOKS: As far as the -- excuse me. As far as
21 the identity of the recipient is concerned, you're kidding
22 yourself if you don't recognize that a member of the

1 committee is well known as an employee of the recipient.

2 MR. HOUSEMAN: Let's stop --

3 CHAIR BATTLE: I'm talking resources from the
4 recipient.

5 MR. HOUSEMAN: Let me go back to Bill's question.

6 CHAIR BATTLE: Because you could serve on this
7 committee, and if serving on this committee -- let's just
8 take this all the way out. Number one, your membership dues
9 are no longer paid by the --

10 MR. McCALPIN: Well, they might be if it's a state
11 Bar.

12 CHAIR BATTLE: Well, let's ride with this one for
13 just a minute. They're not paid. Your membership on this
14 committee, in many instances in order to serve on additional
15 sections and committees, you have to pay additional dues that
16 are voluntary. You have paid these voluntary dues to serve
17 on this additional committee. This committee is meeting 5
18 o'clock in the afternoon, and the discussion is around some
19 of these issues.

20 The question is -- and I understand your point
21 about who people know you to be, but the question is whether
22 you have used the recipient's resources or identity in what

1 it is that you're doing in that Bar activity. And I think
2 that's what Congress is getting at prohibiting, not an
3 individual attorney's ability to voluntarily participate in
4 Bar association activities.

5 MR. McCALPIN: Let me suggest another distinction.
6 And that is, it may be permissible to participate in common
7 activities, but that the recipient ought not be the one to
8 present the committee's decision to a legislature or rule
9 making body or something of that sort. They may be able to
10 vote "yes" or "no" within the committee, but beyond that,
11 they should not carry any responsibility.

12 CHAIR BATTLE: I think the distinction has got to
13 be the identity of the recipient's resources, funds, and
14 existence. I mean, if you've -- and I think in the
15 commentary, we need to focus on this whole question of, at
16 what point does it appear -- for example, if the committee is
17 composed of all Legal Services lawyers and you're dealing
18 with an issue involving Legal Services, then you're in a
19 situation where that identity is clear or becomes clear to
20 the Bar and to others who hear from that committee as to what
21 it is that you're doing.

22 MS. PERLE: Can I ask a question about what you're

1 saying?

2 CHAIR BATTLE: Uh-huh.

3 MS. PERLE: I want to make sure I understand
4 something. What about the question about the fax machine,
5 for example?

6 MR. HOUSEMAN: About what?

7 MS. PERLE: The fax machine. If you're working as
8 a member of a committee that's dealing with legislative
9 stuff, can you use the fax machine of the program?

10 CHAIR BATTLE: Not if it's on prohibited
11 legislative or rule making activities, no. I don't think you
12 can.

13 MS. PERLE: I don't have a problem with that. I
14 just wanted to clarify --

15 CHAIR BATTLE: No, you can't.

16 MR. McCALPIN: Wait a minute. Suppose that there
17 is a welfare reform issue before the state legislature. And
18 the appropriate Bar association committee is discussing that
19 particular piece of legislation preparatory to taking a
20 position on it. May the recipient member of that committee
21 participate in that?

22 CHAIR BATTLE: In the discussion by the entire

1 body?

2 MR. McCALPIN: Yes. Yes.

3 CHAIR BATTLE: I don't think that this prohibits
4 your participation as a general member. It's the identity of
5 the recipient in that. I mean, you can stand up and give
6 your opinion one way or the other. It's when you begin to
7 use the fax machine, the telephone from the recipient to
8 forward one position or the other on this issue.

9 MR. McCALPIN: Well, suppose you're forwarding it
10 to the other members of the committee? Suppose you fax out
11 to the other members of the committee, "My position on this
12 particular provision is such-and-such"?

13 CHAIR BATTLE: You cannot use the fax machine,
14 because that's the recipient's resource, in my view. That is
15 the line. The line is not quelching, in my view, the First
16 Amendment right of a lawyer who has paid his voluntary dues
17 to speak on a committee. It is saying, "You cannot use the
18 recipient's resources, financial or identity wise."

19 MR. McCALPIN: Can you attend on the recipient's
20 time?

21 CHAIR BATTLE: No.

22 MS. PERLE: Do you have to take leave without pay,

1 or can you take vacation?

2 CHAIR BATTLE: Vacation, I'm sure. I'm sure that
3 you can take some sort of leave that you have accrued, which
4 you could take for any purpose. But I think you cannot --
5 because to me, that's a benefit that you have accrued as
6 opposed to a benefit necessarily that solely belongs to a
7 recipient.

8 MR. HOUSEMAN: I'm going to speak out. I'm not
9 convinced that an exception for participating in meetings or
10 serving on committees of Bars would politically fly. But
11 however, what you're doing by this is what we tried to do,
12 too, so don't misunderstand me.

13 CHAIR BATTLE: Do we have to have this section in
14 here as part of the --

15 MR. HOUSEMAN: What you're doing by this is you're
16 basically posing some fairly severe limits on participation
17 in Bar committees and associations. What if you happen to be
18 the president of the -- Rick was the president of the St.
19 Louis Bar Association, for example.

20 MR. McCALPIN: And he is presently a member of the
21 executive committee of the Missouri Bar.

22 MR. HOUSEMAN: Right. And that's a lot of work. I

1 mean, I met him once at the Bar association's office, but I
2 also met him once at his office when he was doing Bar
3 activities. I was in for meetings that he had convened. And
4 people who were members of the Bar were there, which makes
5 sense, of course.

6 MR. McCALPIN: Let me ask you a question. Suppose
7 that the committee that the recipient's members are on is a
8 civil procedure committee and they're dealing with amending
9 the Code of Civil Procedure in the state? Would you still
10 say that you couldn't use the recipient's fax machine or
11 attend on your own time? It's clearly not an activity which
12 is proscribed by LSC legislation.

13 CHAIR BATTLE: If it's not proscribed, then there's
14 no problem. It is only those proscribed activities that
15 become a problem, it seems to me. So you have to really go
16 back. And that's the way this is -- once it's redrafted will
17 be written. You're talking about only proscribed activities.
18 But civil procedure rules are not proscribed, the rule making
19 on civil procedure.

20 MR. McCALPIN: Well, but then they may result in a
21 suggestion to the legislature to amend the statute.

22 CHAIR BATTLE: But that's not -- I think welfare

1 reform is proscribed. I'm not certain that civil procedure
2 reform is proscribed.

3 MR. McCALPIN: But lobbying is proscribed.

4 CHAIR BATTLE: But that's -- may result is, I
5 think, a little bit further down the line than your
6 participation on that committee. I mean, whoever lobbies for
7 that state Bar organization to the legislature is the person
8 in the position of actually doing the lobbying. If you're
9 involved in a discussion about it, I think that predates the
10 actual lobbying activity on it.

11 But I think that Alan's point is well taken,
12 because he raises a significant point about recipient
13 employees' abilities to fully participate as a member of a
14 Bar in various capacities, when you get into the knotty
15 questions that are raised by this section.

16 And I would read Congress's intent here as assuring
17 that Legal Services' employees do not utilize the Bar to
18 forward their efforts on prohibited legislative rule making,
19 but not to proscribe their ability to participate as members
20 of that Bar. And so I think that the limitations are only in
21 those areas that Congress has spoken on what's prohibited and
22 not in all other areas. I mean, that's the way I would see

1 it.

2 MR. McCALPIN: I think that's a very fuzzy line.

3 CHAIR BATTLE: It is.

4 MS. PERLE: But is that just welfare reform and
5 redistricting, or does that mean legislative and
6 administrative advocacy?

7 MR. McCALPIN: That's exactly right.

8 CHAIR BATTLE: Linda?

9 MS. PERLE: The other issue --

10 MR. McCALPIN: One is procedural and the other is
11 substantive.

12 MS. PERLE: I mean, I think the identity issue -- I
13 mean, if you wanted to say "identify the recipient" in there
14 to be a Bar association, I think that's perfectly
15 appropriate. I think the resource issue is a much more
16 difficult one. The problem is that a lot of program people
17 are wanting to serve on Bar committees because they are
18 members' staff of a recipient organization.

19 So that's where you have a problem. To the extent
20 that you can say, "I'm here as an individual member of the
21 Bar, and it's part of my professional responsibility to be
22 involved in the Bar" --

1 CHAIR BATTLE: Some of this is going to ultimately
2 just boil down to judgement calls that individual lawyers are
3 going to have to make about where that line is. And I think
4 all we can do here is to at least give a broad brush to what
5 our view of what Congress was attempting to get at with what
6 we have got before us on what's actually proscribed.

7 And the clearer we can define what's proscribed,
8 the better people can make their judgements about particular
9 activities that they find themselves in to decide whether
10 this is something I can or cannot do.

11 MR. HOUSEMAN: I mean, I think as a practical
12 matter, it's still going to be very difficult in a lot of
13 circumstances. I mean, Rick is willing to talk about it --

14 MR. McCALPIN: One of Rick's lawyers Chaired the
15 junior Bar -- young lawyers' division of the Bar Association
16 of St. Louis last year. She spent a hell of a lot of time on
17 a hell of a lot of issues, some of which fall within the
18 ambit of the Legal Services Corporation today, some of which
19 do not. Are we going to say that program lawyers can't Chair
20 significant divisions of a Bar association?

21 CHAIR BATTLE: I don't see anything in the statute
22 that says that. But I understand the implication of what

1 you're saying. It's a difficult call, because when you have
2 that chairmanship responsibility, it covers the ambit of
3 activities which may involve that kind of thing which
4 leadership calls upon you to do.

5 MR. McCALPIN: Do we really need this? I'm
6 beginning to think that --

7 MR. HOUSEMAN: Maybe the best thing is to just cut
8 it.

9 CHAIR BATTLE: Well, that's what I suggested about
10 20 minutes ago.

11 MR. McCALPIN: We may be better off just taking the
12 whole thing out. I'm persuaded by the conversation.

13 CHAIR BATTLE: Well, but --

14 MS. PERLE: I think the problem is that there's
15 something on the rule now, and taking it out is going to
16 suggest that --

17 CHAIR BATTLE: What does the say now? What does
18 the rule say now? Let's look at that.

19 MR. HOUSEMAN: Well, the rule says now you can't
20 participate --

21 MR. McCALPIN: What Section?

22 MR. HOUSEMAN: It's 1612 -- here it is. It's

1 1612.5 all the way to the end of 5(h)(4).

2 MR. McCALPIN: 5(h)(4). "Participating in the
3 meetings or serving on committees of a Bar association,
4 provided it does not include prohibited" --

5 CHAIR BATTLE: Now, why do we need to change that?

6 MR. HOUSEMAN: Well, because what this says is, you
7 can participate in Bars on anything that's restricted unless
8 you engage in grass roots lobbying.

9 So the line that -- this is -- the line that was
10 drawn in '85 on this regulation was a line that said, "You
11 can't use the Bar to go out and grass roots lobby for
12 something, but you can be a member of the Bar and participate
13 on its committees and do whatever any other member of the Bar
14 does on those committees." That was the line that was drawn.

15 MR. McCALPIN: You could also appear before a
16 legislative or administrative body to advocate legislation or
17 a rule change.

18 MR. HOUSEMAN: Right.

19 MR. McCALPIN: Now, we can't do that.

20 MR. HOUSEMAN: Right.

21 MR. McCALPIN: At least if you're on a recipient's
22 time.

1 MR. HOUSEMAN: Well, you couldn't do that --

2 CHAIR BATTLE: Doesn't the definition of "grass
3 roots lobbying" as it has been expanded now cover
4 sufficiently those things we need to cover? And if it
5 doesn't, what else do we need? And can't we just use what we
6 had in place and only depart therefrom if there's something
7 new that requires us to depart therefrom in that definition?
8 My suggestion is, stay with what we have and only depart
9 therefrom if necessary.

10 If "grass roots lobbying" as it is now defined
11 covers all of those things that we can't do as we participate
12 in Bar associations, then --

13 MR. McCALPIN: But doesn't the statute now require
14 that you refrain from all lobbying and not just grass roots
15 lobbying?

16 CHAIR BATTLE: But doesn't our "grass roots
17 lobbying" cover lobbying?

18 MR. McCALPIN: Well, I hope not.

19 CHAIR BATTLE: What does it cover? What's not
20 included?

21 MS. GLASOW: No. "Grass roots lobbying" is when
22 you're communicating with the public to go and influence

1 officials and agencies.

2 CHAIR BATTLE: Okay.

3 MR. McCALPIN: Not when you're appearing before --

4 MS. GLASOW: "Legislative and administrative
5 lobbying" is when you go directly -- you're not talking in
6 public. You do it yourself.

7 CHAIR BATTLE: So can we just say "legislative and
8 administrative lobbying -- grass roots, legislative, and
9 administrative lobbying"?

10 MS. GLASOW: Except that's -- I think that's what
11 we're trying to do.

12 MR. HOUSEMAN: That's what we're trying to do.

13 MS. GLASOW: All it's saying is, this was a special
14 circumstance that the prior Board found outside the intent of
15 Congress, that they felt that attorneys should be able to be
16 part of Bar associations and take an active part.

17 I would feel more comfortable allowing the old
18 language if in the beginning of this section where we say,
19 "Nothing in this part is intended to prohibit a recipient or
20 an employee of a recipient," if we took out "a recipient" and
21 just said "to prohibit an employee of a recipient from" --

22 MR. TULL: Although isn't part of the problem here

1 that this is -- of all of the exceptions under this part, are
2 activities which a recipient or employee will do as a part of
3 the course of their business representing clients, this is
4 the one which is really related to individual acting as an
5 individual apart from the recipient? It's not -- the
6 recipient is not going to be a member of a Bar committee.
7 He's going to be somebody who's a member of a Bar.

8 MS. PERLE: Maybe that should be (c).

9 MR. TULL: So it either becomes a new section
10 saying -- because this relates specifically to an employee,
11 or we treat this as really a regulation governing recipient
12 activities. This isn't about the person's activities on
13 their own time. There's all kinds of things people can do on
14 their own time that are not talked about here at all.

15 MS. GLASOW: It's almost a hat check.

16 MR. TULL: So we could just take it out of the
17 regulation itself and in the commentary note that it was
18 removed, but that was because it involves an individual's
19 activities, and an individual participating in Bar committees
20 is not proscribed; in fact, it's encouraged. But that's
21 something that --

22 MS. PERLE: It doesn't deal with the resource

1 issue.

2 MR. TULL: Well, we could say, "So long" -- I mean,
3 the commentary could say that.

4 CHAIR BATTLE: But the resource issue is dealt with
5 in other places. It's just not specific to Bar associations,
6 isn't it?

7 MR. HOUSEMAN: Yes. There's no problem taking it
8 out. But the problem is, what is our policy. And I don't
9 know if there's an agreement on policy or not here. So it's
10 easy to take it out and not have it here.

11 MR. MCCALPIN: That's fine, as far as I'm -- from
12 my point of view. What I'm not clear about --

13 CHAIR BATTLE: But we have to be careful about
14 taking something out that gives --

15 MR. HOUSEMAN: But we'll explain it in the
16 commentary, too. But the problem is, what are we going to
17 say? I mean, that is, are we going to say you can or you
18 can't go using --

19 MR. MCCALPIN: Well, what you can do and what you
20 can't do.

21 MR. HOUSEMAN: Right.

22 CHAIR BATTLE: If we proscribe for individual

1 employees what they can and cannot do, then we may not need a
2 specific section on how this relates to their Bar association
3 activities. We may be able to handle the Bar association
4 activities in the commentary. That's my view, because it's
5 not just Bar association activities.

6 I think Congress is concerned if you use your local
7 religious organization for the same purpose on recipient time
8 to go to meetings and to try to forward changes in welfare
9 law during the time that you're on the clock. The Bar
10 association piece of it is not as relevant as the activity
11 is. And the type of organization is not as relevant as the
12 activity.

13 So I say proscribe for employees in a section what
14 it is they can and cannot do and don't deal with Bar
15 associations exclusively, because that's not the only kind of
16 organization in which those activities may take place.

17 MR. McCALPIN: But suppose a member of the ACLU
18 participates in the activities of the ACLU on committees on
19 welfare rights?

20 CHAIR BATTLE: ACLU? We had a Greater Birmingham
21 Ministries group that worked very actively on welfare reform
22 issues. So --

1 MS. PERLE: I think the difference is that
2 generally, those are things that people would do on their own
3 time with ministries, but with respect to Bar association
4 activities, those are things that generally people are
5 permitted to do on recipient time.

6 I mean, I'm not talking about the restricted stuff.
7 I'm talking about just generally Bar association activities.
8 I mean, I used to be on the Board of Governors of the D.C.
9 Bar. I didn't take leave when I went to these meetings.
10 It's something I did as part of my responsibility as a staff
11 member or as a lawyer, whereas I think working with the
12 Birmingham Ministries seems to be leave.

13 CHAIR BATTLE: I think the leave issue only comes
14 up if you're involved with prohibited -- the prohibited piece
15 is the only piece which -- because that triggers the funding
16 issue. But I don't think that we're sending the message that
17 all of a sudden now, Legal Services' programs cannot allow
18 lawyers to participate in Bar association activists. What
19 we're saying is, if they get into this prohibited piece,
20 don't use any recipient resources for it, period.

21 You do what you do on your own time. Congress
22 isn't proscribing your own time, but they are proscribing

1 your use of recipient resources and its time. So to me,
2 that's the cut. Now, it's clear to me. It doesn't seem to
3 be clear to many other people.

4 MR. TULL: Well, I think the problem is because
5 when you say "use resources that have to be spent on your own
6 time," then that makes for --

7 CHAIR BATTLE: Yes. And I'm saying, if you are
8 about to engage in prohibited activities, you can't do it on
9 recipient time, that if you're attending a Bar association
10 meeting and you're dealing with an issue that is not related
11 to these prohibited activities, then this is not triggered at
12 all, that the real proscription by Congress in this has to do
13 with the recipient's resources, time, identity, anything that
14 has to do with the recipient being linked to prohibited
15 legislative and rule making activities.

16 And if that link does not exist, you can do Bar
17 association, you can do a number of other committees and
18 things that are just not proscribed. And somehow, we need to
19 figure out a way to articulate that in a way that it's clear
20 enough that as people make choices about meetings that they
21 attend, they can take this into account.

22 MR. TULL: Am I correct that --

1 MR. McCALPIN: I can't hear you, John.

2 MR. TULL: Well, the place where this issue is
3 addressed of whether you're undertaking an activity which is
4 proscribed while engaged in legal assistance activities, that
5 only addresses -- I mean, you can't engage in political
6 activities while engaged in legal assistance activities, but
7 "political activities" is defined generically.

8 MR. McCALPIN: One of the problems is, we amended
9 1608 because it never got published.

10 MS. GLASOW: 1608 generally deals with electoral
11 partisan activities, lobbying.

12 MS. PERLE: And we were suggesting the change to
13 1608 because it was so -- the way it's written now is very
14 difficult.

15 MR. McCALPIN: Right.

16 CHAIR BATTLE: While we're doing all the rest of
17 this work, we might as well call back up, Suzanne, 1608 when
18 we get the comments in on this next group and take it with
19 everything else, it seems to me. We at that point decided to
20 defer until we knew where things are. We pretty much now
21 know where things are. Let's -- as if we don't have enough
22 work to do, let's pull it back up.

1 MR. McCALPIN: Did we publish 1608 for comment?

2 CHAIR BATTLE: Yes. Suzanne would know.

3 MS. GLASOW: I don't remember. I've got a list of
4 the status of where everything was. I can pull that up at
5 lunch time and let you know.

6 CHAIR BATTLE: Yes. When we meet again maybe at
7 some point, we'll just get a report on the status of the
8 regulations before we really got into the 15 that we're now
9 doing. And that way, when we send these out for comment and
10 we start doing our editing, we might as well throw them back
11 into the mix, get them done.

12 But getting back to this point, I hope that at
13 least in my mind, it's clear what the proscription is all
14 about. It's not about Bar association. It's not about the
15 nature of the organization or the involvement. It is about
16 the identity of resources and the recipient with prohibited
17 legislative or rule making activities.

18 And if we can devise a section that speaks to that
19 for employees and gives them notice of that, then I think
20 they can flow that through all of their activities, be they
21 Bar association activities or other activities that they may
22 not have to take leave -- they may not have to take leave to

1 attend the Greater Birmingham Ministries meeting that might
2 take place in the middle of the day.

3 MS. GLASOW: Actually, that's the policy -- I
4 believe that's what number 4 says -- right now.

5 MR. HOUSEMAN: Aside from drafting problems.

6 MS. GLASOW: Once we fix the drafting -- and if
7 that's the policy, we could leave this in here and ask
8 comments on that.

9 CHAIR BATTLE: Yes. Except I'm inclined now to
10 take out "Bar associations" and just say "committees and
11 organizations." Because --

12 MS. GLASOW: We'll actually --

13 CHAIR BATTLE: I know that we had "Bar association"
14 before.

15 MS. GLASOW: I mean, LSC funds given for a grantee
16 are supposed to be used for the purposes that they're given.
17 And so, I mean, once you get out of that professional
18 responsibility, I mean, usually, in law firms, attorneys are
19 allowed to use part of their time to do their professional
20 work on Bar associations, but nothing beyond that, I would
21 imagine. Once you get beyond that, you shouldn't be using
22 LSC funds or resources for any other outside activities.

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1 CHAIR BATTLE: I'm not certain about that, because
2 you have a certain amount of responsibility to educating the
3 community, people about issues. And so --

4 MS. GLASOW: Well, that would be part of the LSC
5 grant purposes. I mean, we would allow them to use the funds
6 to have training, education.

7 CHAIR BATTLE: Sure. So that's why I'm rolling
8 back to that, why Bar associations is not the only issue
9 here, because I think you do engage in other things that are
10 within the uses of LSC funds that may intersect with this
11 particular issue.

12 MR. HOUSEMAN: Last word -- I'm sorry. My last
13 word on this would be that there is just disagreement on
14 this. So I think it's better at this point to leave it in
15 with whatever language we want than take it out, because I
16 think it's going to give a signal if we take it out that --
17 it will give a signal to people that Bar activities are no
18 longer -- we're not encouraging Bar activities.

19 CHAIR BATTLE: That may be true. And in a perfect
20 world --

21 MR. HOUSEMAN: And the key to this Corporation is
22 encouraging Bar activities.

1 CHAIR BATTLE: In a perfect world, it ought to come
2 out. But in a realistic world, for two reasons -- one,
3 particularly now since we have the dues restriction, I think
4 maybe some mention here makes sense so that people understand
5 what they can and cannot do. And number two, I think that Al
6 is right, that we need to make sure people understand that
7 they can participate and that we're not restricting
8 participation. But in a perfect world, I don't think it's
9 necessary.

10 MR. HOUSEMAN: The other thing -- not now, maybe
11 later. Maybe Bill's with me, but I don't sense anybody else
12 is. I really hope -- in the real world, you need to try to
13 draw a line that's realistic. I don't think the line we're
14 drawing is realistic. But if you really, truly engaged
15 effectively in Bar activities, you're going to be in
16 meetings, and all of a sudden, something's going to come up
17 as a little, tiny part of the meeting.

18 And then you're going to go back to something
19 that's not -- and the something that comes up may be a
20 discussion of about legislation or a proposed rule. If
21 you're on the Board of Governors, you have an agenda. It's a
22 five-hour meeting. Ten minutes of the meeting, you're

1 talking about some proposed rule making. And then the rest
2 of the meeting isn't.

3 You're going to take leave for -- it's going to be
4 -- you're creating an awfully difficult proposition. Whereas
5 when you don't draw a different line -- and I understand the
6 different line may conflict with the legislation, but --

7 CHAIR BATTLE: But what different line could you
8 draw?

9 MR. HOUSEMAN: Permit it. I mean, you could draw
10 the grass roots lobbying on it. So you could even go
11 further, if you want. You could be a member of the
12 committee, you can act as a member of the committee, but you
13 can't speak for the committee for rule making or legislative
14 bodies, and you can't be involved in grass roots lobbying.

15 CHAIR BATTLE: And if you're the president of the
16 Bar association, then what do you do?

17 MR. McCALPIN: You defer it to the vice president.

18 MS. PERLE: Well, it strikes me that the more
19 significant thing is identifying the recipient.

20 CHAIR BATTLE: Which I keep getting back to.

21 MS. PERLE: I think that's an important
22 distinction, more important than the use is.

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1 CHAIR BATTLE: I do, too, Linda. That's why I keep
2 getting back to that. I really think that it's -- because
3 it's not the use of public funds in the sense that Congress
4 is concerned about it, when somebody sits through a meeting
5 and for five minutes, you discuss an issue that is prohibited
6 under this.

7 It's when it's the identity of these dollars that
8 we have sent down to you being used to undermine something
9 that we have done that they're concerned about.

10 MR. TULL: But I think Alan points to another
11 distinction that is a real one, which is, it's both the
12 amount of time focused on the agenda on a legislative issue
13 and it's the amount of participation of the employee in that.

14 Because if a person is involved in a three-day
15 meeting of a Bar committee trying to put together a
16 legislative package to present to the legislature on a whole
17 range of issues and is doing that on the program's time for
18 three days, that's very different from five minutes.

19 CHAIR BATTLE: Yes. And that's --

20 MR. TULL: And the person should properly take
21 leave to do that, I would think.

22 CHAIR BATTLE: Yes. And that's my point about

1 trying to draw the line in such a way that people are
2 instructed as to how to exercise their own judgement around
3 the issue. Because we aren't going to be able to draw a line
4 that will cover all those things, but we can certainly give
5 guidance so that if before you go to that three-day meeting,
6 you say, "Based on what we're going to be doing on these
7 three days, I need to take leave to do this," whereas if
8 you're going to a five-hour meeting and five minutes of this
9 pops up, I don't think that bears mentioning.

10 MR. HOUSEMAN: So are we left with it stays in and
11 the --

12 CHAIR BATTLE: Fix the drafting.

13 MR. HOUSEMAN: And the draft is fixed, and it would
14 be both not using recipient resources or identifying -- I
15 mean, basically, it's a confirmation of what's here, except
16 fixing the language; am I correct?

17 CHAIR BATTLE: Yes.

18 MS. PERLE: Would we get into trouble if we tried
19 to put in something like, "significant resources or more than
20 amendments," which is something we were struggling with when
21 we were doing --

22 CHAIR BATTLE: I think we just have to leave it up

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1 to the judgement of the recipient.

2 MR. TULL: Why don't we say "no recipient
3 resources," and then if we feel it's useful to address
4 that --

5 CHAIR BATTLE: Let's take the comments. Let's let
6 people comment on that. Let's move on. Let's move on.
7 Because you know what? We have discussed for an hour
8 something that we have resolved within this first five
9 minutes here. So --

10 MR. McCALPIN: Let me suggest one thing, and that
11 "may not participate in prohibited legislative or rule making
12 activities using recipient resources or identified" -- in
13 other words, I think it helps if you take the "prohibited
14 legislative" up and then modify it with the sources and
15 identified --

16 CHAIR BATTLE: That's a good point. That's a good
17 point.

18 MR. HOUSEMAN: That's a good point. "May not
19 participate in using recipient resources or identifying."

20 CHAIR BATTLE: That's a good point in terms of how
21 you structure it. 5. We leapt down to 7, Suzanne, and then
22 by the time we went back up to 4, we never made it, did we?

1 Let's go back to 5. Anything on 5?

2 MS. GLASOW: "Advising a client of a client's right
3 to communicate directly with an elected official."

4 CHAIR BATTLE: 6?

5 MS. GLASOW: "Participating in activity related to
6 the judiciary."

7 MR. McCALPIN: Do you want them to go back and
8 object to Bork again?

9 MR. HOUSEMAN: No, we didn't mean that. We have to
10 figure out a way to --

11 CHAIR BATTLE: Put in the commentary, "all but
12 objecting to Bork."

13 (Laughter.)

14 MR. McCALPIN: I don't think the selection of
15 judges -- I don't see how you can leave that in.

16 MR. HOUSEMAN: We can cover it in there. All
17 right. Why don't we take that out?

18 CHAIR BATTLE: That's always political, selection
19 of judges.

20 MR. HOUSEMAN: I think we can take it out. There's
21 an issue that comes up, and I think we can deal with it in
22 here, really.

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1 CHAIR BATTLE: Okay.

2 MR. HOUSEMAN: And it's an issue about somebody may
3 ask you -- the judicial selection committee may ask you your
4 opinion of a particular individual. I get asked all the
5 time.

6 CHAIR BATTLE: You've got to respond.

7 MR. HOUSEMAN: You know, that kind of thing.
8 That's what was trying to be conveyed by this language. It
9 wasn't for Bork stuff. That's for sure.

10 CHAIR BATTLE: That's actually when you're
11 requested to provide information. I think Congress doesn't
12 have a problem with you answering if somebody comes to you.
13 It's when you get out there and start lobbying for a
14 particular person to make it to the judiciary, because --

15 MR. HOUSEMAN: I think we can take care of it.

16 CHAIR BATTLE: Okay. Now, 7.

17 MR. McCALPIN: Wait just a minute.

18 CHAIR BATTLE: You still have something on 6?

19 MR. McCALPIN: "Participating in activity when the
20 creation of a judicial district created in the
21 reapportionment are created in the reapportionment" --
22 because we had that problem in Georgia, as I recall. But

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1 that's in 1632?

2 MR. HOUSEMAN: Right.

3 MR. McCALPIN: Okay.

4 CHAIR BATTLE: Okay. All right.

5 MS. GLASOW: And 7 we're taking out as unnecessary.

6 CHAIR BATTLE: Delete it.

7 MS. GLASOW: All right.

8 CHAIR BATTLE: 1612. What we're going to try to do
9 -- it's after 12 o'clock. My goal -- and it's -- well --

10 MR. HOUSEMAN: We may be through the hard stuff.

11 CHAIR BATTLE: Yes. Let's just try to clip along
12 and see if we can --

13 MS. GLASOW: A lot of the rest of this is old.

14 CHAIR BATTLE: 1612.5.

15 MS. GLASOW: This one, actually, I think we should
16 just take out "other" in the title and say "permissible
17 activities using non-LSC funds."

18 CHAIR BATTLE: Yeah. I think you're right.

19 MS. GLASOW: In (a), "If the conditions of (b) and
20 (c) of this section are met, recipients and their employees
21 may use non-LSC funds to respond to a written request from a
22 governmental agency or official thereof, elected official,

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1 legislative body, committee, or member thereof made for the
2 employee or for a recipient to testify orally in writing,
3 provide information, which may include analysis of or
4 comments upon existing or proposed rules, regulations, or
5 legislation" -- we would add a comma there.

6 And instead of "and," we would have "or" -- "or
7 draft such proposed rules, regulations, or legislation; and
8 (3) testify for" -- we would add the word "for."

9 MR. McCALPIN: F-o-r?

10 MS. GLASOW: Yes.

11 MR. McCALPIN: "Testify for" --

12 MR. TULL: Go before, "testify before."

13 MR. McCALPIN: What?

14 CHAIR BATTLE: "Testify before."

15 MS. GLASOW: Oh, "before." Oh. "Testify before or
16 make information available to commissions, committees, or
17 advisory bodies; and (4) participate in negotiated rule
18 making under the Negotiated Rule Making Act of 1990 or" --
19 and we would add "or comparable state or local laws."

20 And we will add in the commentary that these are
21 rule makings where there's a request from the agency or
22 whatever asking you to come and testify or participate. So

1 that's why that's allowed.

2 CHAIR BATTLE: So that you can cover that.

3 MS. GLASOW: Right.

4 CHAIR BATTLE: "Or (5)" --

5 MS. GLASOW: "Make representations to such
6 official, body, committee, or member."

7 CHAIR BATTLE: Okay.

8 MR. McCALPIN: "Make representations"? What does
9 that mean?

10 MS. GLASOW: As far as statutory language, I think.
11 It's out of the old rule.

12 CHAIR BATTLE: 1612 -- is that the same 1612.5?

13 MS. GLASOW: It's the same type of language that
14 was used.

15 CHAIR BATTLE: It's awkward.

16 MR. HOUSEMAN: We're just trying to cover other
17 types of things that will be responding to requests.

18 MR. TULL: Why is that different?

19 MR. HOUSEMAN: It isn't.

20 MS. GLASOW: We probably need to fix that. It's an
21 old word used. It means the same thing as the other.

22 CHAIR BATTLE: Okay.

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1 MR. HOUSEMAN: Why don't we just delete it?

2 MS. GLASOW: Okay.

3 CHAIR BATTLE: Can you just take that one out?

4 MS. GLASOW: Take out 5? Okay.

5 CHAIR BATTLE: Because it's really covered. (b)

6 -- when you say "such" at the beginning of (b), what are you
7 talking about? "Communications made in response to such
8 requests."

9 MR. McCALPIN: In response to a written request
10 from a governmental agency or official in (a).

11 MS. GLASOW: Shall I refer back to paragraph (a)?

12 CHAIR BATTLE: Yes. It just kind of leapt out at
13 me as --

14 MS. GLASOW: Okay. We'll refer to paragraph (a).

15 MR. McCALPIN: Do you really mean -- everything
16 after the word "request" in the second line of (b) --

17 MR. HOUSEMAN: We're going to cut it out.

18 MR. McCALPIN: What?

19 MR. HOUSEMAN: We're going to cut it out.

20 CHAIR BATTLE: Cut out starting where, now?

21 MS. GLASOW: On the third line after the word
22 "request," put a period.

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1 CHAIR BATTLE: Okay.

2 MS. GLASOW: Cut out "including but not limited to
3 requirements of a law or formal procedures for public
4 comment."

5 MR. McCALPIN: So you're putting the period after
6 "request" in the third line?

7 MS. GLASOW: Correct.

8 MR. McCALPIN: I was thinking about putting it in
9 the second line.

10 MS. GLASOW: Oh.

11 MR. HOUSEMAN: Well, here's the problem with that.
12 The remaining language was added to make clear that if you
13 were asked by say a Chair of a committee to testify and the
14 process of that committee is that you -- the formal rules on
15 that committee are, you're supposed, for example, to send the
16 testimony to other members of the committee, that you weren't
17 forced to say to the chairman, "I can't do what you asked me
18 to do to follow your formal rules."

19 Because it was meant just to cover the situation
20 where it's not -- where yes, you respond just to the request,
21 but that there may be some other situations where responding
22 to the request has to go beyond that, that you're not trying

1 to go beyond it.

2 MR. TULL: So it's a stronger standard than
3 "reasonable and necessary," it would be "required"?

4 MR. HOUSEMAN: "Required" would be fine.

5 CHAIR BATTLE: "Required."

6 MS. GLASOW: That's what you were trying to cover
7 by "requirements of the law or formal procedures."

8 MR. HOUSEMAN: It's not a big deal. We could cover
9 it in the commentary.

10 MR. McCALPIN: Would you mind not splitting the
11 infinitive?

12 MR. TULL: Thank you, Bill. I feel much better
13 having heard you say that.

14 (Laughter.)

15 MS. GLASOW: I've learned everybody's writing
16 habits in this process.

17 CHAIR BATTLE: You have so many people adding in
18 and taking out language that that's understandable. Well,
19 we're going to fix (b) and we know how to fix (b) now, right?
20 Everybody understands how we're going to fix (b). Let's go
21 on to (c). (c)?

22 MS. GLASOW: "No employee of the recipient shall"

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1 -- and we're going to take out "directly or indirectly" --
2 "solicit or arrange" -- and the reason we're taking out
3 "directly or indirectly" is because we feel that's implicit
4 in "arrange" -- "a request from any official to testify or
5 otherwise provide information in connection with legislation
6 or rule making."

7 CHAIR BATTLE: Okay. Good. (d)?

8 MS. GLASOW: "Recipient shall maintain copies of
9 all written requests received by the recipient and written
10 responses made in response thereto, make such request and
11 written responses available to monitors and other
12 representatives of the Corporation upon request."

13 CHAIR BATTLE: (e)?

14 MS. GLASOW: "Recipients may use non-LSC funds to
15 provide oral or written comment to an agency and its staff
16 for public rule making," period, and take out "proceeding,"
17 because it's already in the definition.

18 MR. McCALPIN: Is it "may" or "must"?

19 CHAIR BATTLE: "May."

20 MS. GLASOW: No, this is allowing them to use non-
21 LSC funds. "Recipients may use non-LSC funds."

22 MR. McCALPIN: But if you said they "may use non-

1 LSC funds," the suggestion is that they might use others.

2 MR. TULL: It's "may provide using non-LSC funds."
3 They're not required to use non-LSC funds.

4 CHAIR BATTLE: It should be, "Recipients may
5 provide oral or written comment to an agency and its staff in
6 a public rule making using non-LSC funds."

7 MR. TULL: "Using non-LSC funds."

8 MR. McCALPIN: Oh, okay. That's to my proffer.

9 CHAIR BATTLE: All right. Now, (f).

10 MS. GLASOW: "Recipients" -- we need an "s" there
11 -- "may use non-LSC funds" --

12 CHAIR BATTLE: Same fix.

13 MS. GLASOW: "To contact" -- and we need an "or" in
14 between "contact and communicate" -- so "to contact or
15 communicate with or respond to a request from a state or
16 local government agency, a state or local legislative body or
17 committee, or a member thereof regarding funding for the
18 recipient, including a pending or proposed legislative or
19 agency proposal for funding such recipient."

20 CHAIR BATTLE: Just fix the "use of LSC funds" in
21 there.

22 MR. HOUSEMAN: Yes. We got it fixed.

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1 MR. McCALPIN: Regarding funding -- and then what
2 does the inclusion add to the including? It seems to me very
3 limiting rather than adding to it. "Regarding funding
4 for the recipient."

5 MR. HOUSEMAN: All this is doing is tracking the
6 language that's in 504(b). That "including" phrase is in
7 504(b).

8 CHAIR BATTLE: "Including pending or proposed
9 legislative or agency proposal to fund such recipient"
10 tracking --

11 MR. HOUSEMAN: It's in 504(b).

12 CHAIR BATTLE: I say let's track it. Yes, let's
13 track it. "Grass roots lobbying." This was real simple.

14 MS. GLASOW: (6) is an absolute prohibition.

15 CHAIR BATTLE: Yes. No problem.

16 MS. GLASOW: "A recipient may not engage in any
17 grass roots lobbying activity," period.

18 CHAIR BATTLE: 1612.7, "public demonstrations and
19 activities."

20 MS. GLASOW: We have one change to paragraph (a),
21 just a stylistic.

22 CHAIR BATTLE: Okay.

1 MS. GLASOW: Take out "his or her" and put in "the
2 employee's."

3 MR. McCALPIN: "During working hours" -- then we
4 say, "No employee shall." So we don't need to substitute
5 anything in the first line, do we?

6 MS. GLASOW: This is the old rule. So
7 basically, --

8 MR. HOUSEMAN: Just cross it off. Sure.

9 MR. TULL: "During working hours" --

10 MR. HOUSEMAN: "During working hours" --

11 CHAIR BATTLE: "No employee shall."

12 MR. HOUSEMAN: Fine. That's a better drafting.

13 CHAIR BATTLE: Okay. Now, is this the same -- why
14 don't we just look at whether we have made any changes,
15 because if we haven't, I don't know that we need to in this
16 interim setting go through line by line. No changes? Any --

17 MR. HOUSEMAN: Well, they're just clarifying
18 changes.

19 MS. GLASOW: Okay.

20 MS. GLASOW: No substantive.

21 MR. McCALPIN: In the second line of (3),
22 "regulation" ought to be plural.

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1 MS. GLASOW: Okay.

2 CHAIR BATTLE: That's number (3) under (b)?

3 MR. McCALPIN: Yes, (b) (3).

4 CHAIR BATTLE: Okay. Is there anything else
5 anybody has a question about? If there are no substantive
6 changes and they're only editing changes, we have read it,
7 and I just would prefer the committee comment on their
8 changes for this one. Okay.

9 MR. McCALPIN: We use in (b) (4) "any political
10 activity." I think we do not define that here; is that
11 correct? We used to define -- I think we used to define
12 "political activity," but I don't think we do anymore.

13 MR. TULL: It's in the definitions.

14 MR. McCALPIN: Is it?

15 MR. TULL: It's in 1600.

16 MR. HOUSEMAN: No, it's in the -- "political" is in
17 the definitions in 1600. So --

18 MR. McCALPIN: Except that we changed that in 1608.

19 MS. PERLE: We didn't change it.

20 MR. McCALPIN: What?

21 MS. PERLE: We didn't change it.

22 MS. GLASOW: It's in the draft, but it hasn't

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1 been --

2 MR. McCALPIN: I understand that. But do we want
3 to rely -- do we in effect want to rely on 1600, which is
4 what you're doing with this?

5 CHAIR BATTLE: You need to say "as defined in
6 1600," because some of these definitions don't go from one
7 reg to the next. And if they do here --

8 MR. HOUSEMAN: 1600 does, though.

9 MR. McCALPIN: 1600 does.

10 CHAIR BATTLE: It's the definition for the whole
11 thing.

12 MR. McCALPIN: Except that I don't think that we as
13 a committee want to stick with the definition in 1600,
14 because we changed it when we drafted 1608.

15 CHAIR BATTLE: It means "That which relates to
16 engendering public support or opposition for candidates for
17 public office, ballot measures, or political parties, which
18 would include publicity or propaganda for that party."

19 MR. McCALPIN: I can't remember how we changed it
20 in 1608, but I have a --

21 MS. GLASOW: I think we were changing it to mean
22 electoral parties and activities, limit it to that, because

1 that's what the rule was all about.

2 CHAIR BATTLE: Let's say, then, "as defined in
3 1600." Because if we have got two different definitions in
4 the regulations, I think when we use a term, we need to say
5 which definition applies.

6 MR. McCALPIN: I don't think we want to stick with
7 the 1600 definition.

8 MR. BROOKS: Even for this one?

9 MR. McCALPIN: Even for this one. I think we want
10 to be consistent with what we mean by "political activity"
11 throughout the regulations.

12 MS. GLASOW: The definition in 1600 is confusing.
13 It generally deals with electoral partisan activity, but it
14 throws in a publicity or propaganda clause that's very
15 confusing.

16 CHAIR BATTLE: It does.

17 MS. GLASOW: Which is really lobbying that's
18 already prohibited under this rule. So if we want to fix
19 this, I would just say "any electoral or partisan political
20 activity."

21 CHAIR BATTLE: "Electoral" --

22 MR. McCALPIN: "And any partisan" --

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1 CHAIR BATTLE: "Electoral or partisan."

2 MS. GLASOW: "Electoral or partisan."

3 MR. HOUSEMAN: Linda raised with me just a
4 second --

5 CHAIR BATTLE: Finish -- wait a minute. Give us
6 the rest. "Electoral or partisan" what?

7 MS. GLASOW: "Political activity."

8 MR. McCALPIN: "Political activity."

9 MS. PERLE: But what I was suggesting is, this is
10 covered by 1608.

11 MS. GLASOW: That's right.

12 MS. PERLE: Why don't we just take it out of here?

13 MR. HOUSEMAN: What I was saying was, the reason
14 that it's in here is because the statutory section that
15 includes this set of activities expressly includes this
16 language; that is, the statutory exception that we're talking
17 about here includes this activity, too.

18 MR. McCALPIN: What section are we talking about?

19 MS. GLASOW: I think it was a mistake to put this
20 in this rule when they did it the first time, because it
21 really belongs --

22 MR. McCALPIN: But the mere fact that it has been

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1 there all the time is no reason to keep it.

2 MR. HOUSEMAN: Right.

3 MS. GLASOW: That's right.

4 MR. HOUSEMAN: I mean, maybe the best thing to do
5 is just take it out. I'm just telling you, the only reason
6 it's in there is it's in the laundry list of activities
7 that's covered in this rule.

8 MS. PERLE: And then in the commentary, we say
9 we're taking this out because it duplicates 1608.

10 CHAIR BATTLE: Let's say that. Let's say that and
11 delete it.

12 MR. TULL: So this is not reform of the
13 regulations?

14 CHAIR BATTLE: It's a technical change, no reform.
15 It's in 1608. (c)(1). Okay. Let's just go through. If
16 there are any other comments that Board members have about
17 any of the provisions in the remaining portion of (c), (1),
18 (2) --

19 MR. HOUSEMAN: Where are we?

20 CHAIR BATTLE: We're just finishing up this reg,
21 1612.7. Anything else? Any comments by any of the Board
22 members?

1 (No response.)

2 CHAIR BATTLE: If there are none, let's go on to
3 1612.8, "training."

4 MS. GLASOW: I don't believe there's any changes.

5 MR. HOUSEMAN: We have one change to make.

6 MS. GLASOW: Except a stylistic one.

7 CHAIR BATTLE: Tell us what that is.

8 MS. GLASOW: In paragraph (c), second line, take
9 out "in training, a purpose of which is" -- "by any person or
10 organization to train participants to engage in activities."

11 CHAIR BATTLE: Okay. Yes, that's good.

12 MS. GLASOW: It simplifies the language.

13 CHAIR BATTLE: That's right. And then everything
14 else is the same. Is that what you're telling me?

15 MS. GLASOW: Organizing's the same. We would
16 add --

17 MR. BROOKS: Wait a minute. That doesn't make
18 sense. "No funds of a recipient may be used to pay for
19 participation by any person or organization to train --
20 participation to train"?

21 MR. McCALPIN: "To train participants."

22 MR. BROOKS: But "participation by any organization

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1 to train" --

2 MR. McCALPIN: It makes sense. "Participation in
3 training" makes sense.

4 CHAIR BATTLE: "Funds used to pay for any person."

5 MS. PERLE: Why can't you say "can't be used to
6 train participants," and it can be anybody?

7 MR. TULL: Say that again?

8 MS. PERLE: "No funds received will be used to
9 train participants to train" --

10 MR. McCALPIN: You want to take out "to train for
11 participation"?

12 CHAIR BATTLE: That's the same, because it's
13 redundant. You're already covering that when you say "no
14 funds." That means you can't use the money.

15 MR. HOUSEMAN: Strike -- on the first line of (c),
16 strike everything up to starting there, "for participation by
17 any person or organization in training for purpose which is"
18 -- strike all of that.

19 CHAIR BATTLE: "No fund of a recipient may be used
20 to train participants to engage in activities prohibited by
21 the Act," period, and take out all the rest. That's good.
22 Okay.

1 MS. PERLE: You're going to take it out of --

2 CHAIR BATTLE: No, you leave that in. But I'm just
3 saying, take out "to pay for participation by any person or
4 organization in training."

5 MS. GLASOW: Oh, okay.

6 CHAIR BATTLE: All right.

7 MR. HOUSEMAN: Sure.

8 CHAIR BATTLE: Good. Anything else in 1612.8?

9 (No response.)

10 CHAIR BATTLE: Let's move on to "organizing,"
11 1612.9.

12 MS. GLASOW: I don't believe there's any real
13 changes there.

14 MR. McCALPIN: Let me ask a question. Do I
15 understand from this that you may use other public funds for
16 organizing?

17 MS. PERLE: Yes.

18 MS. GLASOW: Yes. There's no restriction in
19 Section 504 of the Appropriations Act. Or is there just a
20 section? I'm sorry.

21 MR. McCALPIN: Well, you're going back to the LSC
22 Act, which only prohibits --

1 MR. HOUSEMAN: Right. And LSC.

2 MR. McCALPIN: And LSC.

3 CHAIR BATTLE: So this remains the same is what
4 you're telling me?

5 MS. GLASOW: Yes.

6 CHAIR BATTLE: Organizing is essentially the same?

7 MR. HOUSEMAN: This is the same as before. This is
8 one of those sections --

9 CHAIR BATTLE: So we didn't touch it for interim
10 purposes is where we are?

11 MR. HOUSEMAN: Some minor just -- we made some
12 stylistic changes on how it's presented.

13 CHAIR BATTLE: Okay.

14 MR. McCALPIN: Wait. Let's back up. As a matter
15 of policy, do we want a recipient to use public funds to
16 "organize an association, federation, labor union, coalition,
17 network, alliance, or similar entity"? In other words, do we
18 want recipients to be able to do that?

19 CHAIR BATTLE: Well, at this point, I think what
20 we're attempting to do with the interim rule is to look at
21 what 504 and other provisions in the Appropriations Act has
22 caused us to look at to change our existing rules, and that's

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1 just not an issue before us right now.

2 My view is that we stay with the language in the
3 present regulation which implements our law. And if there
4 are other issues, we can cover them at another point. I
5 don't think that's an issue for now for us to discuss. We're
6 going to have a boatload of things to take to the Board and
7 additional policy issues that go beyond that scope or are not
8 related to technical changes to make the rule work better for
9 recipients, I think, are else out of the scope out of what we
10 need to do.

11 Let's look at 1612.10 now, "record keeping." Did
12 we make it that far? "Record keeping and accounting."

13 MS. GLASOW: We would add to the definition of that
14 section, "Record keeping and accounting for activities funded
15 with non-LSC funds."

16 MR. McCALPIN: "Record keeping and accounting
17 for" --

18 MS. GLASOW: "For activities funded with non-LSC
19 funds."

20 CHAIR BATTLE: Okay. All right.

21 MS. GLASOW: This is basically the same type of
22 record keeping and accounting requirements that come out of

1 Section 13(c) of the LSC Act that have been in there before.

2 CHAIR BATTLE: Okay. Any changes to the
3 particulars, (a), (b), or (c)?

4 MR. BROOKS: I have a question on the commentary.

5 CHAIR BATTLE: Okay.

6 MR. BROOKS: Page 16, the last -- third line on the
7 page.

8 CHAIR BATTLE: Okay.

9 MR. BROOKS: There's a period for reporting such
10 activities that has been changed from quarterly to
11 semiannually, "both to reduce the administrative burdens on
12 recipient" -- period.

13 MS. GLASOW: Okay. That's right.

14 MR. HOUSEMAN: No, both can't be --

15 CHAIR BATTLE: "To reduce." Take "both" out.
16 There are lots of "boths" in here. They're just like those
17 "as long ases." They're just sprinkled throughout, and we
18 don't need them. Thanks, John, for that one. Okay.
19 Anything else on record keeping either in the commentary or
20 on the rule?

21 (No response.)

22 CHAIR BATTLE: Okay. Then we're on to "recipient

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1 policies and procedures." We know how you feel about that
2 Bill. Okay. We have made it through this rule. Why don't
3 we -- it is now 12:30.

4 Let's take a lunch break. What I'm hoping we can
5 do over the lunch break is clear up those issues that we
6 discussed in the previous reg on welfare reform and give me
7 some proposals right after lunch. Let's take a 45-minute
8 lunch break, and we'll get back in here. We have got two
9 regs for this afternoon. What are flight plans like this
10 afternoon?

11 MR. McCALPIN: I go at 5:30.

12 CHAIR BATTLE: 5:30? And you have a --

13 MR. BROOKS: 7 o'clock.

14 CHAIR BATTLE: 7:00. And yours is -- you're here?

15 Okay.

16 (Whereupon, a luncheon recess was taken.)

17

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A F T E R N O O N S E S S I O N

(1:25 p.m.)

1
2
3 CHAIR BATTLE: We are now back on the record. And
4 we have before us Part 1609, "fee generating cases." This is
5 an existing regulation that has been revised.

6 MS. GLASOW: Yes. We basically revised this rule
7 to, number one, take out all the attorney's fees provisions.
8 We put that in a separate rule that we will discuss next.
9 And --

10 MR. McCALPIN: Is this a total replacement?

11 MS. GLASOW: Yes. I think it comes pretty close.

12 MS. PERLE: The changes that are in here are based
13 on what we were doing before we suspended.

14 MR. McCALPIN: My question is --

15 MS. GLASOW: Yes. I think you could say this is --

16 MR. McCALPIN: Is there any part of the existing
17 1609 that carries through?

18 MS. PERLE: Not -- I mean, I think there are
19 probably places in here.

20 MR. McCALPIN: Do we have to look two different
21 places to see what 1609 --

22 MS. PERLE: No.

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1 MS. GLASOW: This is a completely new rule in that
2 sense.

3 MR. McCALPIN: That replaces present 1609?

4 MS. PERLE: Yes.

5 MS. GLASOW: Yes. And the status of this rule is,
6 the committee had already pretty much looked at this rule as
7 a proposed rule before we tabled it, and this reflects that
8 to some extent, except we have taken out the attorney's fees
9 provision. So --

10 CHAIR BATTLE: We had actually gotten in comments
11 and done some red-lining.

12 MS. GLASOW: Those were internal comments. We had
13 not put this out for a proposed rule yet, because you were
14 just still looking at a draft of a proposed rule.

15 CHAIR BATTLE: Okay.

16 MS. PERLE: But the proposal on this is not to
17 issue this as an interim rule but to issued this as a
18 proposed rule?

19 MS. GLASOW: Because there's no new legislative
20 restriction dealing with fee-generating cases. So this --

21 CHAIR BATTLE: But we removed the things out of his
22 to put in the other one?

1 MS. GLASOW: Yes.

2 CHAIR BATTLE: Okay.

3 MS. PERLE: And we are incorporating some of the
4 changes that we have been discussing.

5 MS. GLASOW: You're right.

6 CHAIR BATTLE: Okay. So for interim rule purposes,
7 really what we're doing is picking back up on this
8 committee's work that we had already done earlier on on the
9 issue of fee-generating cases and because of the new law,
10 pulling out the attorney's fee provisions and putting them
11 all in one place. So for purposes of the interim rule, we
12 really don't have any interim provisions in fee-generating
13 cases.

14 MS. GLASOW: Right, even though someone asked,
15 "Well, you are taking out the attorney's fees provisions;
16 what would happen if you passed a separate rule as an interim
17 rule for attorney's fee provisions and the current rule until
18 you finalize this proposed rule? It still has attorney's fee
19 provisions." Well, the new rule, 42, would supersede that
20 and it would nullify the attorney's fees provisions.

21 MR. McCALPIN: We better say so.

22 MS. PERLE: It says so in the commentary.

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1 MS. GLASOW: I believe I've said it both places,
2 but if I haven't, I will.

3 CHAIR BATTLE: Okay. All right. So there's really
4 -- I'm trying to characterize the position of our discussion
5 today. We are -- the changes that we're looking at here are
6 changes that we discussed some time ago in fee generating
7 when we had already decided to re-do this rule, right? So --

8 MS. GLASOW: Right.

9 MR. McCALPIN: Most of the changes had to do with
10 what was now in 1632.

11 CHAIR BATTLE: Right. So we really don't have a
12 lot to do on this one.

13 MS. GLASOW: Right. I think it would be helpful
14 just to walk through each section generally.

15 CHAIR BATTLE: Okay.

16 MR. McCALPIN: This is one that we could have 60
17 days on.

18 CHAIR BATTLE: Yes.

19 Okay, Suzanne. Why don't we just walk through the
20 rule portion of the regulation?

21 MS. GLASOW: Okay. The first section is the
22 purpose, and the purpose of the rule is to ensure that

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1 recipients do not compete with the private Bar and ensure
2 that they do not use scarce Legal Services' resources when
3 private attorneys are available to provide effective
4 representation and to assist eligible clients to obtain
5 appropriate and effective legal assistance.

6 The historical legislative reason to prohibit -- to
7 only allow recipients to take fee-generating cases when other
8 representation is not available is because Congress did not
9 want Legal Services' attorneys competing with the private
10 Bar. If it could be established that a certain area of cases
11 or a certain case did not interfere with the private Bar's
12 practice, then our recipients could take it. So it was a
13 procedural thing they had to go through.

14 And then this committee decided to add the other
15 two basic ideas, that it would also be a way to assist
16 eligible clients to obtain effective representation and legal
17 assistance.

18 MR. McCALPIN: You know, "compete with the private
19 Bar" is not what in --

20 MS. GLASOW: No, it's in the legislative history.

21 MR. McCALPIN: It seems to me that --

22 MS. PERLE: We could --

1 MR. McCALPIN: That's not the most elegant way of
2 saying this. It seems to me what we ought to be saying is
3 that this is to ensure that recipients use -- do not use
4 scarce Legal Services' resources where privately funded,
5 private attorneys or other resources are able to provide
6 effective representation.

7 It just seems to me it's a more principled way of
8 saying that then a negative way that we're not going to
9 compete with the private Bar.

10 MS. PERLE: I think that's especially true because
11 today, whereas (**), that with the private Bar. And I don't
12 think we're really in that same place in terms of our
13 relationship with the private Bar for --

14 MR. McCALPIN: What we're really concentrating on
15 is the appropriate, effective use of scarce resources and not
16 to use them when other resources may be available to provide
17 representation.

18 CHAIR BATTLE: That's a good suggestion, and we'll
19 go with it.

20 MS. PERLE: That's fine.

21 CHAIR BATTLE: Anything else in the purpose?

22 (No response.)

1 CHAIR BATTLE: Okay. "Definition"?

2 MS. GLASOW: We defined "fee-generating case," and
3 we really only -- we didn't change the substance of the
4 definition. We simply restated it so it was a little
5 clearer. "As used in this part, 'fee-generating case' means
6 any case or matter which, if undertaken on behalf of an
7 eligible client by an attorney in private practice,
8 reasonably may be expected to result in a fee for legal
9 services."

10 And we need to make a technical change here. Take
11 the "(1)" and move it after "award." So it would be, "legal
12 services from an award, (1) to a client, (2) from public
13 funds, or (3) from the opposing party."

14 CHAIR BATTLE: Do you need a colon after "award"
15 when you list that 1, 2, and 3?

16 MS. PERLE: I don't think so.

17 CHAIR BATTLE: Not necessarily? Okay.

18 MS. PERLE: We just wanted to make it clear that
19 just because a fee came from public funds didn't mean it was
20 a fee-generating case, because there are situations where
21 there are other contract --

22 CHAIR BATTLE: It does not -- okay. That's good.

1 "It does not include a case in which, (1), a court appoints a
2 recipient or an employee of a recipient to provide
3 representation in a case pursuant to a statute or a court
4 rule, or practice of equal applicability to all lawyers in
5 the jurisdiction, or, (2), a recipient undertakes
6 representation on a fee-for-service basis under a contract
7 with a governmental agency or other entity."

8 MR. McCALPIN: Let me suggest a change in (2),
9 because I'm not -- when you talk about "fee-for-service under
10 a contract," I'm not sure that that isn't a fee. I would
11 suggest that you take out the "on a fee-for-service basis"
12 and substitute at the end of "under a contract with a
13 government agency or other entity which provides compensation
14 from the other contracting party for services rendered to the
15 client."

16 In other words, what you're getting is a
17 contractual payment and not a fee payment. You're getting a
18 payment as a result of the contract rather than as a result
19 of the precise representation of the client.

20 MS. PERLE: Wouldn't it be okay if we just said
21 "representation under a contract with a government agency or
22 other entity," period?

1 CHAIR BATTLE: Yes. I think that's best.

2 MR. McCALPIN: I think that would do it.

3 MS. PERLE: Okay.

4 CHAIR BATTLE: Okay. "General requirements,"
5 1609.3.

6 MS. GLASOW: Yes. What is now paragraph (a), we're
7 deleting; I mean just the first part, the introductory
8 clause. And (b) now becomes (a).

9 MS. PERLE: Because it's included in the 1609.4.
10 We're basically saying in two different places that you need
11 policies and procedures, so it's dupliciative (sic).

12 CHAIR BATTLE: It's duplicative.

13 MS. PERLE: Right.

14 CHAIR BATTLE: I've got it. Okay. (b) now is (a).
15 Okay and then --

16 MS. GLASOW: (b) now becomes (a), correct. And we
17 do have a change there, too. I'm sorry.

18 CHAIR BATTLE: Okay.

19 MS. GLASOW: "Except as provided in subparagraph
20 (b)," comma --

21 MR. BROOKS: At the beginning of (a)?

22 MS. GLASOW: Correct. "A recipient may provide

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1 legal assistance in" -- and it should be "a" --

2 MR. McCALPIN: "A."

3 MS. GLASOW: "Fee-generating case."

4 MS. PERLE: The reason it was "the," because it was
5 "the" in the old one where it was -- it was one of those
6 things we just didn't catch that should have been changed
7 before.

8 MS. GLASOW: Paragraph (c) becomes paragraph (b).

9 MS. PERLE: This is basically what's in -- well,
10 no. (b) (1) it's what's there now. The others are changed.
11 There are some changes.

12 CHAIR BATTLE: What do you do now with the
13 reference to paragraph (a) in (b)?

14 MR. McCALPIN: What? Where do you see that?

15 CHAIR BATTLE: In (c), what used to be (c), there's
16 a reference to paragraph (a).

17 MS. GLASOW: We'll fix that.

18 MS. PERLE: No, it's right. (a) is right. It
19 could have been wrong, but it's not. In other words, what
20 this is saying is that you don't have to -- well, no. You
21 know why?

22 CHAIR BATTLE: It's ahead of its time. Okay.

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1 MS. PERLE: No, actually, because paragraph (a)
2 says "the policies for referral." But it works both ways.
3 It works -- paragraph (a) is right now, but it would have
4 been right before, because it just would have been subject to
5 the policies that were --

6 CHAIR BATTLE: Were implementing the whole thing?

7 MS. PERLE: Right.

8 CHAIR BATTLE: Okay. I've got you. Anything else
9 in (b)?

10 MR. McCALPIN: Yes. The new (b)?

11 CHAIR BATTLE: Yes.

12 MR. McCALPIN: I'm not sure you need "only" there
13 and again in the next line. I think it's appropriate in sub
14 (1). I'm not sure that you need it up above.

15 CHAIR BATTLE: Since you've got "when" and you've
16 got a (1) and a (2) under "when"?

17 MR. McCALPIN: Yes.

18 MS. PERLE: It was said by the inspector general's
19 office as the "only" --

20 MS. TARANTOWICZ: Well, I think the "only" was
21 there in the old reg. It just -- the IG's office thought it
22 made sense in this regulation because it was kind of funny.

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1 In the statute, there's a prohibition on taking fee-generated
2 cases. And then there's an exception. So we had originally
3 thought maybe the reg should be put in that, a prohibition
4 and an exception.

5 But instead, it was decided to state it
6 affirmatively. So that if you're stating it affirmatively,
7 we should at least make clear that these are the only
8 circumstances where --

9 MR. McCALPIN: Okay. It's not worth arguing over.

10 MS. TARANTOWICZ: It's not that big of a deal.

11 MS. PERLE: I don't think we have any objection to
12 leaving the "only" in.

13 CHAIR BATTLE: Okay. "Only" back in. Was there
14 anything else in (b) (1) or (2)?

15 MR. McCALPIN: Mike?

16 CHAIR BATTLE: Mike?

17 MR. FERRY: I've got a comment on (b) (1).

18 MR. McCALPIN: Can you --

19 CHAIR BATTLE: Come to the mike so that we can hear
20 you.

21 MR. FERRY: Under the current version of (b) (1),
22 which I think is actually in 1609.4 of the current reg,

1 Social Security cases are deemed to be cases in which
2 adequate assistance is not available. And so for years, we
3 have been able to take those cases without having to go
4 through any kind of referral process.

5 It has worked very smoothly. No one has objected
6 to it that I know of. In fact, the Social Security offices
7 in our area refer people to us as a source of service. But
8 by adding the last phrase in paragraph (1), I think you're
9 creating a potential burden for us, by adding the requirement
10 that now we must determine the appropriate private
11 representation is available.

12 This is sort of in the category of something that's
13 not broken, and I would ask that given all the other stuff we
14 have to do with regard to these regs, that we not have to
15 start referring out all of our Social Security SSI cases for
16 some kind of referral process.

17 MS. GLASOW: The reason the committee put that
18 language in when they were working on this rule before was
19 because it's part of the statutory language in the Act that
20 was part of the exception to allow recipients to take these
21 types of cases. And so we were simply following the
22 statutory language putting that in there.

1 MR. McCALPIN: Basically what happened was, the
2 predecessor Boards determined in 1609.4(d) that there was a
3 presumption that other adequate representation is deemed to
4 be unavailable under Title 2 and 16.

5 MS. GLASOW: Right. So we can take it out.

6 MS. PERLE: We can take it out and just continue
7 that same --

8 CHAIR BATTLE: Why don't we continue that
9 assumption? I think that's a point well taken, Mike. I
10 don't see anything that has come before us to change that
11 assumption at this point in time, so let's just --

12 MR. FERRY: That will make it clear.

13 CHAIR BATTLE: Yes. Let's just continue it. Okay.
14 All right. Anything else in (b)?

15 MR. BROOKS: What are we taking out now?

16 CHAIR BATTLE: We're taking out the reference --
17 previously under (4)(d), there was -- certain Social Security
18 cases were deemed to be those which Legal Services could take
19 without having to refer to other attorneys for their
20 rejection.

21 And we haven't had any evidence to come to us to
22 change that underlying assumption that those cases need not

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1 be referred out, so let's just continue that. Okay.
2 Anything else?

3 (No response.)

4 MR. BROOKS: Anything else at all or --

5 CHAIR BATTLE: Anything else in (1), (2), or (3).
6 Let's just look through (1), (2), and (3). (3) just covers a
7 situation where you've kind of knocked your head up against
8 that brick wall enough times that you just don't feel like
9 it's necessary to do it again. Nobody wants the cases.

10 MS. PERLE: But you don't have an agreement -- you
11 haven't consulted with the Bar, per se.

12 CHAIR BATTLE: Right. But you've made those
13 efforts, and you've got documentation that you've made those
14 efforts. And so a program can deem certain cases based on
15 their history to be available to LSC recipients.

16 MS. PERLE: Right, certain kinds of cases.

17 CHAIR BATTLE: Okay.

18 MR. BROOKS: Now, there was a (3)(d) in the old --
19 the latest draft of the regulation which related to a
20 subsequent recipient being able to rely on the determination
21 of a prior recipient investigating the situation.

22 MS. PERLE: I'm sorry. What is your --

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1 MR. BROOKS: And it seemed to me that was a
2 practical provision to keep in.

3 MR. McCALPIN: Where are you?

4 MR. BROOKS: It's on page 19 of the --

5 MR. McCALPIN: What's the section?

6 MR. BROOKS: (3) (d).

7 MR. McCALPIN: (3) (d)?

8 MR. BROOKS: I'm looking at the draft of February
9 '95 that we looked on.

10 MR. McCALPIN: Oh.

11 MR. BROOKS: And (3) (d) in that says, "When one
12 recipient is determined that a case or a matter is not fee
13 generating or that other adequate representation is
14 unavailable, another recipient may extend legal assistance or
15 undertake representation in the same case or matter at the
16 request of the original recipient in reliance upon the
17 initial determination."

18 MS. PERLE: We took that out because that was -- we
19 put that in originally to deal with the situation where you
20 had a local program that referred a case to a support center.
21 Since the support center -- I mean, that was the purpose of
22 it. And since the support centers are no longer part of LSC

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1 or under the LSC eligibility restrictions or their fee-
2 generating case restrictions --

3 MR. McCALPIN: It seems to me if you refer it to a
4 level recipient, the same situation with respect to the
5 availability of private counsel may not be --

6 MS. PERLE: If it's in a different place.

7 CHAIR BATTLE: That's going to be a different
8 geographic area now.

9 MS. PERLE: Right. If say your client moves, for
10 example, and they move to another place in the state and they
11 want to have a lawyer closer to where they now live and so
12 you transfer it to another -- I think you might have to go
13 through that same --

14 CHAIR BATTLE: If it was in there for support
15 centers and we don't have them, that would be the only issue
16 where there's not a geographic difference in recipients. So
17 I think it --

18 MR. BROOKS: But with competitive bidding, you may
19 have a subsequent grantee in the same area.

20 MR. McCALPIN: It could be the same.

21 MR. BROOKS: And that may be little or not a
22 problem, so we don't need to worry about it. But they would

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1 go through the same investigation procedures.

2 MS. PERLE: I think that for purposes of this rule,
3 you would say "another recipient who takes the place of the
4 prior recipient would be the same recipient." I mean, I
5 think that LSC could just determine that -- in other words,
6 if they're taking over a case from a prior recipient who has
7 been defunded or is no longer sitting, and the case is
8 already --

9 CHAIR BATTLE: They don't have to redo that same
10 thing.

11 MS. GLASOW: Yes.

12 MS. PERLE: The history of that is --

13 CHAIR BATTLE: We can handle that, it seems to me,
14 with OGC opinions. If somebody actually asked a question
15 about a situation like that, John, I think we can handle
16 that.

17 MS. PERLE: The history of this really is that at a
18 time a number of years ago in the Corporation, the
19 Corporation was questioning whether support centers had done
20 the appropriate referrals and also eligibility
21 determinations. There were a number of places where that
22 issue came up.

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1 And it was sort of an effort to kind of look at
2 ways support centers were working. That's really where this
3 whole thing generated from. I don't think that the issue
4 that generates this is one that -- I think that can much more
5 easily be dealt with.

6 CHAIR BATTLE: Okay. Anything else that's in (3)?

7 (No response.)

8 MS. GLASOW: Paragraph (d) in (3) is --

9 CHAIR BATTLE: Which is now (c).

10 MS. GLASOW: You're right, now (c). Is basically
11 put there to give information to the field, who is used to
12 having the attorney's fee provisions in this rule, let them
13 know they have to look elsewhere for it.

14 MR. McCALPIN: That makes sense.

15 CHAIR BATTLE: Yes.

16 MS. GLASOW: It may be that timing wise, when we
17 get to a final rule, we won't need it. But we think we need
18 it right now.

19 MR. McCALPIN: I think we need it.

20 MS. GLASOW: Okay. And the next section on
21 recipient policies and procedures is -- I guess we'll decide
22 it when we do them all.

1 MR. McCALPIN: Designed to raise my blood pressure.

2 MS. PERLE: But this one, you really do need
3 procedures.

4 CHAIR BATTLE: Okay.

5 MR. McCALPIN: It occurred to me as I went through
6 this that it might be useful to have a sentence in that top
7 part of page 2 which would say, in essence, "Representation
8 of clients in fee-generating cases is not impacted by 1004-
9 134 but is controlled by Section 1007(b)(1) of the LSC Act."

10 We keep talking about here 104, 134, and that's
11 where -- you know, you can't find anything about this in
12 there.

13 MS. GLASOW: Okay.

14 MR. BROOKS: I would also suggest reference to
15 paragraph 13 of 504(a).

16 MR. McCALPIN: Where are you?

17 MR. BROOKS: Well, I'm on page 2, also.

18 CHAIR BATTLE: Where do we refer to 504(a)?

19 MR. McCALPIN: We don't.

20 MR. BROOKS: Well, we don't.

21 CHAIR BATTLE: Oh, you're just saying now?

22 MR. BROOKS: Well, we referred to 110 and 1321.

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1 CHAIR BATTLE: 504(a).

2 MR. BROOKS: I'm suggesting pinpointing it to
3 504(a)(13).

4 CHAIR BATTLE: That helps. That helps.

5 MR. BROOKS: And that's a generic suggestion, I
6 think.

7 MS. GLASOW: I'm sorry. I didn't hear that.

8 MR. BROOKS: I say that's a generic suggestion. I
9 think most of the time, we do refer to the specific clauses
10 in 504(a).

11 MS. GLASOW: Yes.

12 MR. BROOKS: And I think we should in all cases.

13 MR. McCALPIN: Well, of course, this regulation is
14 not based upon (a)(13). 42 is. But this one is not based on
15 (a)(13).

16 MS. GLASOW: Right. We decided when we got into
17 talking about why we're taking out attorney's fees on
18 something there.

19 CHAIR BATTLE: Anything else on fee-generating
20 cases? Mike?

21 MR. FERRY: On page 5, in the preamble or the
22 supplementary comments, I would suggest that the paragraph

1 toward the bottom that starts with the word "recipients"
2 should probably be deleted, because it doesn't reflect what
3 Rule 1642 at least now says.

4 CHAIR BATTLE: Yes. Because we have taken out the
5 reference to attorney's fees, let's take out that reference
6 in the comments.

7 MS. GLASOW: That's not necessary.

8 CHAIR BATTLE: Okay.

9 MR. McCALPIN: Where are we now?

10 CHAIR BATTLE: Page 5, the second to the bottom
11 paragraph that begins with, "Recipients should note that
12 whether a case now refers to attorney's fees," and attorneys
13 fees are no longer in this part.

14 MR. McCALPIN: Well, in case that is only relevant
15 to whether we --

16 MS. GLASOW: Actually, I meant to take that out and
17 just didn't.

18 CHAIR BATTLE: Did you?

19 MS. GLASOW: Yes.

20 MR. McCALPIN: One of the --

21 MS. PERLE: I think that the notion here, though,
22 the idea is one that we may want to kind of keep in some

1 place, in other words, that the potential for attorney's fees
2 is relevant to your decision about whether you can take the
3 case or not. It has nothing to do with whether you can take
4 the fees. I mean, I think that's really the notion of that.
5 Maybe this is not artfully written, but maybe we don't need
6 it.

7 MR. McCALPIN: We didn't look merely at -- I wasn't
8 following the commentary. But look on page 5. Is the clause
9 that starts at the end of the second line, "wherein the
10 statutory program" down through "claimant" necessary? "Other
11 similar statutory benefit cases, so long as the recipient
12 determines."

13 CHAIR BATTLE: Tell me where you are, because
14 Bill --

15 MS. PERLE: You're right. Take that out.

16 CHAIR BATTLE: Second line where?

17 MR. McCALPIN: At the top of page 5.

18 CHAIR BATTLE: Okay.

19 MR. McCALPIN: At the end of the second line.

20 CHAIR BATTLE: "Where the statutory" --

21 MR. McCALPIN: "Where the statutory."

22 MS. GLASOW: Yes. That's no longer relevant.

1 MR. McCALPIN: "The committee is aware that since
2 the 1977 amendment to the LSC Act" --

3 CHAIR BATTLE: Okay. That needs to come out, too,
4 really, the next section.

5 MS. GLASOW: Yes.

6 CHAIR BATTLE: All of that pertains to attorney's
7 fees. The second full paragraph on page 5 really pertains to
8 the issue of attorney's fees and Social Security cases. And
9 now, that's not really addressed in fee-generating, so it
10 needs to come out. And it can go in the attorney's fee rule,
11 it seems to me.

12 MS. GLASOW: I'm sorry, LaVeeda. I'm not sure
13 where you are.

14 CHAIR BATTLE: "The committee is aware that since
15 1977 amendments to the LSC Act, the rules governing fees in
16 veterans' benefits appeals have been changed to permit
17 attorney's fees to be taken out of a client's recovery of
18 retroactive benefits and decided that consistent with the
19 above-cited legislative history, those cases should be
20 treated the same as Social Security cases" for the purpose of
21 the attorney's fee provision, not a fee-generating
22 determination as to whether to refer the case out.

1 MS. PERLE: No, that is exactly --

2 CHAIR BATTLE: Just the opposite? Okay.

3 MR. TULL: It's for purposes of determining whether
4 it's a fee-generating case.

5 MS. GLASOW: Like a Social Security case, where you
6 can take it without referral. But we probably need to
7 rewrite this.

8 CHAIR BATTLE: Yes. Say that more expressly.

9 MR. McCALPIN: We have taken out what -- we have
10 reinstated the presumption of unavailability in Social
11 Security cases. So does that make the presumption available
12 to all although statutory benefit cases?

13 MS. GLASOW: No

14 MR. McCALPIN: Where we analogize it to Social
15 Security?

16 MS. GLASOW: No.

17 MS. PERLE: The way it's written --

18 MS. GLASOW: The Board decided at the time they
19 allowed the Social Security cases to be taken without
20 referral that those were the only type of cases like that out
21 there.

22 MS. PERLE: But that was in --

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1 MS. GLASOW: Right. We believe now there are other
2 types of cases like that, and we're trying to identify those
3 cases. And we probably should solicit comments on that. But
4 we need to --

5 CHAIR BATTLE: Tighten the wording up.

6 MR. McCALPIN: But you don't want to continue to
7 the same presumption.

8 MS. GLASOW: Right.

9 CHAIR BATTLE: There are two different issues. One
10 is the presumption, and the other is --

11 MS. PERLE: Because they're subsistence benefits.

12 CHAIR BATTLE: Yes.

13 MS. GLASOW: Because right now, the rule only lists
14 Social Security cases.

15 CHAIR BATTLE: Right.

16 MS. GLASOW: And we're saying, should there be
17 other types of cases like that.

18 CHAIR BATTLE: Yes.

19 MS. PERLE: See, but if you look at the language as
20 quoted here from the Senate report on page 4, "Such other
21 cases as the Corporation deems appropriate, because the only
22 recovery sought by the eligible client is the amount of

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1 subsistence benefits to which he or she is statutorily
2 entitled." That was the rationale for accepting the Social
3 Security cases.

4 And I think to the extent that applies to other
5 retroactive benefits, subsistence benefits -- not all
6 benefits, just subsistence benefits, that that same rationale
7 should apply. It probably even applies more in other cases,
8 because there are probably fewer private attorneys that
9 handle subsistence cases than other situations.

10 CHAIR BATTLE: Where there is no attorney's fee
11 generated from the case.

12 MS. GLASOW: Because the statute says that our
13 guidelines shall not keep recipients from providing legal
14 assistance in cases in which a client seeks only statutory
15 benefits.

16 MS. PERLE: That's what --

17 MS. GLASOW: Our Board decided the only cases like
18 that when they revised the rule were Social Security. We're
19 now trying to determine if there are other cases like Social
20 Security cases that fit that description.

21 MS. PERLE: I don't think that this really -- this
22 doesn't go at all to the question about attorney's fees.

1 CHAIR BATTLE: No. It really goes to which cases
2 come under that rubric. And let's just tighten, then, the
3 write-up to reflect that.

4 MS. GLASOW: We need to rewrite that.

5 MR. McCALPIN: Let me -- I should have thought of
6 this before. On page 10, they provide -- it's first
7 attempting to refer to -- maybe this goes to 1642. But
8 recently, I became aware of the fact that in a Social
9 Security case, you may -- an attorney may get a fee both
10 under the Social Security Act and the Equal Access to Justice
11 Act.

12 And you can actually get two fees in a Social
13 Security case, although the case law is that of the two, you
14 must rebate to the client the smaller. And maybe that
15 belongs in 1642.

16 CHAIR BATTLE: I think it probably does, because
17 that doesn't make a difference to what we're trying to
18 determine here.

19 MR. McCALPIN: No, it doesn't make a difference to
20 accepting the case.

21 CHAIR BATTLE: No, it doesn't.

22 MR. McCALPIN: But it does make a difference with

1 respect to seeking to -- because the EAJA portion of the fee
2 comes out of the government, not from the client.

3 MS. PERLE: Right.

4 CHAIR BATTLE: Yes. That's an attorney's fee
5 issue.

6 MS. PERLE: It's quite clear that you can't take
7 each.

8 MR. McCALPIN: I just stopped to think. It says
9 here we could take Social Security cases.

10 MS. PERLE: You can take the cases, but you can't
11 ask for fees under --

12 CHAIR BATTLE: Fees we're going to handle in the
13 next --

14 MR. McCALPIN: 1642, we should.

15 CHAIR BATTLE: Yes. We'll handle that issue, it
16 seems to me, Bill, in 1642.

17 MR. McCALPIN: I think you're right.

18 CHAIR BATTLE: Okay. Anything else that has to do
19 with fee-generating in our review of 1609?

20 (No response.)

21 CHAIR BATTLE: Now, as I understand it, Suzanne,
22 this is a proposed as opposed to an interim rule, right?

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1 MS. GLASOW: That's correct.

2 CHAIR BATTLE: Okay. And we're saying 60 days on
3 this one?

4 MR. BROOKS: Yes.

5 CHAIR BATTLE: All right. Anything else?

6 (No response.)

7 CHAIR BATTLE: Do we want to move straight into
8 attorney's fees, or do we need a minute break?

9 MR. McCALPIN: No, let's keep going.

10 CHAIR BATTLE: Is everybody ready?

11 MS. PERLE: Because 5-minute breaks turn into 20.

12 CHAIR BATTLE: Okay. We are now on 1642, our final
13 reg for review. And it pertains to attorney's fees. It is
14 new, isn't it?

15 MS. GLASOW: This is a brand new rule. We took
16 whatever provisions were in the old in 1609 and moved them
17 over, but it's basically a brand new reg.

18 CHAIR BATTLE: Brand new one. Okay. All right.
19 Tell us the history so that we know from whence we come on
20 this one.

21 MS. GLASOW: We have a new statutory restriction
22 that basically says that recipients may not claim or collect

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1 and retain attorney's fees. And this rule --

2 CHAIR BATTLE: Okay. Which specific section of 504
3 does that come from?

4 MS. GLASOW: (13).

5 MS. PERLE: (13).

6 MR. McCALPIN: (a)(13).

7 MS. GLASOW: "That claims or whose employee claims
8 or collects and retains attorney's fees pursuant to any
9 federal or state law permitting or requiring the awarding of
10 such fees."

11 CHAIR BATTLE: Okay. All right. Now, let's go to
12 the rule and start our discussion of the language in this
13 rule, starting with the purpose. 1642.1, "purpose."

14 MS. GLASOW: "This part is designed to ensure that
15 recipients or employees of recipients do not claim or collect
16 and retain attorney's fees available under state or federal
17 law permitting or requiring the awarding of attorney's fees."

18 CHAIR BATTLE: Let's look at definitions.

19 MR. BROOKS: You've reversed "state or federal."
20 It doesn't matter much, but the statute says "any federal or
21 state" --

22 MS. GLASOW: The statutory language says "federal

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1 or state law."

2 MR. BROOKS: "Any federal or state law."

3 MS. GLASOW: Yes.

4 MR. BROOKS: Might as well track the statutory
5 language.

6 CHAIR BATTLE: So you say "any federal or state
7 law"? Okay. He's just saying let's track the way it's
8 stated in the statute.

9 MR. McCALPIN: "Under any" --

10 MR. BROOKS: "Under any federal or state law."

11 CHAIR BATTLE: Anything else in "purpose"?

12 MR. McCALPIN: Can we take up the commentary with
13 each section as we go along?

14 CHAIR BATTLE: Yes.

15 MR. McCALPIN: At the bottom of page 2, top of page
16 3, we have left out "the awarding of." In other words, we
17 say "permitting or requiring such fees," and we left out the
18 statutory language about the "awarding of." I think that
19 should be included.

20 MS. GLASOW: I'll put that in.

21 CHAIR BATTLE: Okay. Anything else on "purpose"?

22 (No response.)

1 CHAIR BATTLE: "Definitions," 1642.2. The only
2 definition we have is attorney's fees.

3 MS. GLASOW: That's right. And that means -- I'm
4 sorry.

5 CHAIR BATTLE: And that's not in our 1600, is it?

6 MS. GLASOW: No.

7 MR. McCALPIN: No.

8 MS. GLASOW: Nor was it in old 1609.

9 MR. McCALPIN: No.

10 MR. BROOKS: Do we need to refer to administrative
11 body there as well as a court?

12 MR. McCALPIN: Where?

13 MR. BROOKS: The second line of 1642.2. "Means an
14 award by a court" -- no, I'm sorry. First line and the
15 second line. "An award made by a court or administrative
16 body." I just don't know whether "administrative body" --

17 MR. McCALPIN: We have already defined "litigation"
18 to include "only simple litigation in a judicial proceeding."
19 So that if we say "against an unsuccessful party in
20 litigation," we are limiting it to -- at least we have up
21 until now, except with the record of one exception where we
22 extended it to administrative proceeding, we have limited

1 this. Furthermore --

2 CHAIR BATTLE: Statutory history seems to --

3 MR. McCALPIN: At least in Social Security cases,
4 it's the exception rather than the rule that the
5 administrative agency awards the fee.

6 MR. BROOKS: Well, I guess my first question is of
7 the experts, is it customary or is it ever done that the
8 administrative body does, in fact, award fees in the
9 statutory situation?

10 MR. TULL: Well, administrative -- an
11 administrative body can enter an order which allows a fee in
12 a Social Security case. The question whether it's awarding
13 it or whether it's just approving it is one of the questions
14 that has been raised by commentators on this, as we have been
15 attempting to fashion this rule.

16 CHAIR BATTLE: Let me just mention -- I'm sorry --
17 as we get into it -- go ahead and finish the response to
18 that.

19 MR. TULL: So that the answer is yes, it is correct
20 that administrative agencies do -- fees do come out of orders
21 entered by administrative agencies. The question of whether
22 they're actually awarding them in a particular scheme of

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1 Social Security is a question which has been presented to us
2 as a legal question.

3 MR. BROOKS: We'll have it elucidated to us
4 shortly. But I -- just speaking of awards only from this
5 point, does an administrative agency make awards, or can that
6 only be made by courts?

7 CHAIR BATTLE: Let me just say before Mike comes to
8 the table on this that I received a copy of a letter that
9 Mike wrote, I think, to John Tull. And I also received a
10 letter from Victor Geminiani from the Legal Aid Society of
11 Hawaii on this issue of the attorney's fees and also a letter
12 from Roger McAllister on this.

13 So there has been already before we begin this
14 process wide comment on the specific issue of awards and how
15 it ought to be interpreted as it relates to the
16 administrative proceedings of Social Security administrative
17 law judges and what they do, as well as other cases.

18 MR. TULL: For the record, I have also received
19 which I believe you were not copied on, but we would be happy
20 to provide copies to you and the committee of letters from
21 Ira Zarov in Oregon. Dolph Barnhouse is the director of BMA.
22 Dick Wortman, from Tampa, as well on the signature -- all

1 made the same assertion --

2 MS. PERLE: And also there was a resolution
3 apparently passed by the Management Information Exchange,
4 which is an organization of project directors primarily of
5 large programs, but not entirely, around the country who have
6 a special interest in management issues, about the resolution
7 taking the same position.

8 I haven't seen it, but I've been told by Alan and
9 by Guy Lescault, who is the staff person on that, that that
10 resolutions was passed taking the same position.

11 CHAIR BATTLE: And all of them are raising this
12 specific issue of getting us to think very carefully about
13 how the statute -- how the appropriations bill uses
14 terminology which indicates award, which is generally what's
15 done in a court of law as opposed to technically the way that
16 the law which guides administrative proceedings takes place.

17 Mike, did you have -- and I cut you off, but I
18 wanted to just as a predicate acknowledge that you have
19 written to us about this issue, and so have others and have
20 raised some very salient points that I think we need to
21 deliberate on today as it relates to how we construct our
22 language around this issue. Okay. Go ahead.

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1 MR. FERRY: I was going --

2 MS. PERLE: Go ahead.

3 MR. FERRY: The normal way that the law uses the
4 term "award" is in the context of a court award, an award by
5 a court against a losing party in favor of the winning party
6 of funds to be paid out of the losing party's funds and not
7 out of -- in addition to any damages obtained by the winning
8 party.

9 You asked whether there was ever any agency
10 involvement in an award. I researched federal law. I found
11 I think 15 cases where the criminal law refers to awards of
12 attorney's fees. In all but one of those cases, they were
13 talking about awards by a court. The one case which was the
14 exception was the -- which awards out of the Administrative
15 Procedure Act, a separate federal law, which would allow an
16 award of fees by an agency of the same kind of award, an
17 additional award of --

18 CHAIR BATTLE: From the losing party?

19 MR. FERRY: From the losing party.

20 CHAIR BATTLE: So that the language that we now
21 have setting a definition to "attorney's fees" which sets out
22 an award made by the court would be consistent, it seems to

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1 me, with what Mike has said in how we're setting it out.

2 MS. GLASOW: And we feel that for an internal rule,
3 we shouldn't expand that meaning of "attorney's fees" that we
4 have here involving litigation and awards by courts, that if
5 we could be convinced otherwise from the comments process,
6 but we feel that basically, what Congress is talking about
7 and what the norm is is that it's awards by a court.

8 CHAIR BATTLE: Okay. All right.

9 John, does that address the concern that you raised
10 about the use of the word "court" as opposed to
11 "administrative procedure"?

12 MR. BROOKS: Well, not fully. I'm going back to 13
13 here. They talk about "attorney's fees pursuant to any
14 federal or state law permitting or requiring the awarding of
15 such fees." It doesn't say "by court." It doesn't say "by
16 administrative agency." And it seems to me the thrust of
17 your argument, Mike, is that it relates to the word "award"
18 as distinct from any agreement, in effect, by the client to
19 pay the fee out of the recovery.

20 MR. FERRY: I think that's correct.

21 MR. BROOKS: And I just wonder if we limit the
22 regulation to "award by a court" where, in fact, there may be

1 awards by an administrative agency, taking "award" in the
2 same sense in both situations, whether we have done our job
3 in relation to the statute.

4 CHAIR BATTLE: Well, I guess what we are trying to
5 determine is, using the language in the statute and doing our
6 research as to where an award is permitted or required to be
7 made, I only heard Mike speak to one exception under the
8 Administrative Procedures Act, which I don't know whether
9 that was an administrative procedure that would ultimately
10 end up in court and you're exhausting administrative remedies
11 and you get it before you get to court or exactly what
12 that --

13 MR. FERRY: Well, I don't it would actually -- I
14 don't think that we could claim fees under the Administrative
15 Procedure Act under the language that's found in the interim
16 rule. So I don't think it's a problem. I don't think that
17 the current language in the rule would allow it. So I'm
18 concerned about allowance only that the statute permits.

19 MR. TULL: Can I suggest something?

20 CHAIR BATTLE: Okay.

21 MR. TULL: Because we have a complicated issue
22 which is involved in this definition, complicated because the

1 first question is what Congress intended with the language.
2 And I think that John is correct that this -- that the
3 restriction does not speak to litigation or to a court, it
4 speaks to an awarding of a fee under a federal or state
5 scheme permitting or authorizing or requiring that awarding.

6 So I think that John is correct that the issue that
7 Mike raises is a question of -- around the meaning of the
8 term "to award," whether that means, as has been suggested in
9 the correspondence to us, that the approval of an agreement
10 with a client is not an awarding, because the fee passes from
11 one to the other because it's an agreement; or whether
12 "award" means an action by the court or administrative body
13 approving that, whether it constitutes awarding. And we
14 don't know what Congress intended with regard to this
15 language as it applies to this.

16 CHAIR BATTLE: Well, is there a way to resolve this
17 by putting this out for comment?

18 MR. TULL: Well, what I was going to suggest is, it
19 becomes an issue because the policy of the Corporation has in
20 the past under general counsel opinions been that programs
21 could not collect Social Security fees, could not collect
22 fees in Social Security cases.

1 At the time that this committee and the Board was
2 considering revisions to 1609, we heard testimony -- the
3 committee heard testimony and that we also, the staff, were
4 consulted with by a number of persons who suggested as the
5 letters now suggest that we should change our policy, that in
6 a time of declining resources and a need to open up the
7 capacity to seek other funds, that the Corporation should
8 change its policy on that issue.

9 And that's a policy question that does need to be
10 addressed, assuming that we find that the language in the
11 restriction on taking fees would permit us to do that. And
12 the use of the term "award" becomes quite critical in that,
13 obviously. So what I would suggest is that we do seek
14 comment on that.

15 It isn't clear from my reading of the language and
16 any of our reading of the language just precisely what was
17 meant and what Congress intended, even with the conference
18 report, although it certainly suggests one possible outcome.
19 But I don't think it's dispositive of it.

20 We have a separate question which is before the
21 Board or before the staff, and I think it would be a Board
22 issue, given the fact that the Board has been engaged. But

1 certainly, it's a policy question that needs to be resolved,
2 as well, which can't be and shouldn't be involved in an
3 interim reg, that the reg should stay the -- track as closely
4 as we can the language.

5 We should not now change the policy regarding the
6 taking of those fees but should be open to the comments that
7 will let us know legally we can and at that point should
8 consider the policy question. And I think there are very
9 strong arguments to be made that we should change our policy
10 when we come to that because of the change circumstance
11 programs are in.

12 MS. PERLE: May I --

13 CHAIR BATTLE: Laurie -- wait just a minute.
14 Laurie is next.

15 MS. PERLE: Sorry.

16 CHAIR BATTLE: Go ahead, Laurie.

17 MS. TARANTOWICZ: I would just state that from the
18 OIG's perspective, since the statutory language is reflecting
19 that it's not really clear as to what is meant by "award,"
20 wouldn't it be appropriate to go to the legislative history?

21 And I think the legislative history is quite -- it
22 doesn't even use the term "award" as I can see and talks

1 about "collecting fees." And I think that's pretty much a
2 strict interpretation for "collecting awards" in any
3 circumstance.

4 And in addition, I would note that in 1609, we use
5 the term "award" in the old definition section, I believe,
6 and we include "from the opposing party." And I don't know
7 how that plays in, but I think that's something we need to
8 keep in mind when we're using that in 1642 in 1609.

9 MR. TULL: I believe just -- sort of two issues. I
10 think the legislative history, notwithstanding the language
11 which Laurie just cited, is a little less clear because the
12 early iterations of the restriction on the paying of
13 attorney's fees were limited to taking of fees from private
14 parties, that the concern that was originally expressed by
15 Congress was attorney's fees being taken from programs by
16 private parties who were, in the view of Congress, facing an
17 adversary whose legal fees were paid for by the government,
18 and it was an unfair relationship.

19 And the concern was that it not only was unfair,
20 but in some of those cases, that the individuals who were
21 defendants had a claim that it actually had caused severe
22 economic hardship to them.

1 The later iterations of an expanded involved
2 attorney's fees, but some of the debate around that was an
3 expansion to governmental attorney's fees. So it didn't --
4 although I think Laurie is correct that the language that the
5 inspector general saw was cited to the committee and to us in
6 their early comments on this is stated rather broadly, that
7 it's not truly dispositive of what they intended. And part
8 of the opportunity to put this out for comment would be to
9 seek some guidance on that.

10 CHAIR BATTLE: Well, I've got a question. If you
11 -- from what I'm hearing Laurie say and what I'm hearing you
12 say, if the language were read to me "an award to a
13 successful party against an unsuccessful party and from the
14 unsuccessful party," would that cover our concern? Because
15 really, it seems to me the awards we have concern about were
16 not instances where members of the public are made to pay to
17 a publicly funded entity dollars.

18 We're talking about awards that come from the
19 client's portion of their back retroactive benefits, which is
20 a totally separate kind of issue from the issue that I think
21 Congress may have been getting at with this.

22 Laurie, does that address the concern that you're

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1 talking about, fees? If you're talking about collecting fees
2 in that traditional sense from the unsuccessful party, then
3 whether it's a court or any other entity, there may be that
4 same concern from Congress's standpoint of view but not from
5 the kind of cases, veteran's benefits, Social Security cases.

6 We're not talking about an unsuccessful party,
7 member of the public, a citizen who pays taxes having to pay
8 money to a tax-supported entity, a government funded entity.

9 MS. TARANTOWICZ: I'm not sure I -- I mean,
10 "attorney's fees" in that situation would also be
11 significant.

12 CHAIR BATTLE: Well, I'm saying, you would prohibit
13 the -- this is my recommendation, that we say "attorney's
14 fees" means "an award to a successful party against an
15 unsuccessful party, an award to a recipient against an
16 unsuccessful party approved by a court or otherwise."

17 In other words, that what we're trying to proscribe
18 is an unsuccessful party in litigation or in administrative
19 proceedings having to pay money to a recipient in the form of
20 attorney's fees.

21 MR. McCALPIN: I don't think what you were saying
22 does that.

1 MS. PERLE: I think that makes it a little muddier.

2 MR. McCALPIN: I do, too. In the first place, the
3 award is not to a recipient, it's to the client.

4 CHAIR BATTLE: It's to the client.

5 MS. PERLE: Right.

6 CHAIR BATTLE: The client of a recipient.

7 MR. McCALPIN: But the implication, what I heard
8 you say was that it was going to come from the unsuccessful
9 party.

10 CHAIR BATTLE: What I'm saying is, that's what
11 Congress wanted to prohibit. But if it's coming from the
12 client's fees or coming from some other source, then that's
13 not really what Congress was after.

14 MS. PERLE: The concern that was expressed by John
15 was the administrative agency. I honestly think after
16 reading this several times, if you just added "by a court or
17 administrative agency," it would still not decide the
18 question about awarding; and second of all, it's against an
19 unsuccessful party in litigation. Well, a client who gets a
20 back award of retroactive benefits is not the unsuccessful
21 party in litigation.

22 CHAIR BATTLE: Yes. So we could just add "an

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1 administrative agency" here, and you would get the same fix.
2 And that would fix it from your standpoint.

3 MS. PERLE: I think that would work, and that still
4 would not answer the question that Mike's raising.

5 MR. BROOKS: The definition of "award"?

6 MS. PERLE: Of "awarding." Well, I would just add
7 "by a court or administrative agency," if that was what the
8 concern is, because I don't think that since -- if you leave
9 the rest of the definition --

10 CHAIR BATTLE: That probably does it.

11 Does it, John, from your standpoint of view?
12 Because we really -- this discussion hinged on your having
13 raised the question as to whether "award" can be from either
14 a court or administrative agency.

15 MS. PERLE: We're mixing the two issues.

16 CHAIR BATTLE: Adding it here, does that cover your
17 concern?

18 MR. BROOKS: I think it does. I mean, that's sort
19 of a threshold question. It leaves other questions still to
20 be answered.

21 CHAIR BATTLE: Okay. So now, we have covered
22 John's concern. Let's move on. Are there any other concerns

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1 that we have in the definition of "attorney's fees"?

2 MR. McCALPIN: It seems to me that the basic
3 question, the bottom line question at the moment is, after
4 the Board approves and we publish this rule, may programs
5 take fees in Social Security Title 2 and 16 cases?

6 CHAIR BATTLE: I think in the commentary, we can
7 raise that issue. Right now here --

8 MR. McCALPIN: No, no. What are we going to do?
9 Are we going to let programs do it or not? We're the
10 regulatory body. Are we going to let programs take those
11 fees after this is published or not?

12 MR. TULL: Until we make a decision about that as a
13 policy -- this is not dispositive of that.

14 MR. FERRY: Programs are doing it now. Some
15 programs are doing it now, and --

16 MR. McCALPIN: I understand that. But when 1642.2
17 becomes an effective interim regulation, may a program take a
18 fee in the Title 2 or 16 Social Security case? Yes or no?

19 CHAIR BATTLE: I don't think that this proscribes
20 it.

21 MS. PERLE: I don't think this proscribes it.

22 MR. TULL: This does not proscribe it, and the

1 position we're in now is that the policy of the Corporation
2 under general counsel's opinion has been programs cannot.
3 The fact is, some programs are. But we have not enforced
4 that policy traditionally because 1609 was being --

5 MR. McCALPIN: I disagree with you. The policy of
6 this organization is not set by the general counsel. It's
7 set by this Board adopting regulations, and the regulation
8 specifically permits the taking of the fee. The general
9 counsel opinion is just that. It is not the policy of this
10 organization.

11 CHAIR BATTLE: Why must we address that issue now?
12 That issue, it seems to me, based on the wording that we have
13 in 504(13) and the definition which tracks that languages
14 does not necessarily raise that issue.

15 MR. McCALPIN: Well, I agree with that.

16 CHAIR BATTLE: So that I don't think that we need
17 to do anything right now. What I think we need to do is what
18 we have suggested. We have given a definition that tracks
19 the language of the statute, and in the commentary, we can
20 raise this issue. And if at some point we want to clarify
21 this further for purposes of what we put in our regulation,
22 we can. I don't think we have to do anything.

1 MR. McCALPIN: When Roger McAllister calls in here
2 on the 15th of August and says, "May I take a fee in a Title
3 2 or 16 Social Security case now that 1642.2 has been
4 published?" what do we say to him?

5 CHAIR BATTLE: I think Roger has already been here,
6 and we have already addressed --

7 MR. McCALPIN: What do we say to him? How do we
8 answer his question?

9 CHAIR BATTLE: The same way we did before.

10 MR. McCALPIN: You let him take the fee? That's
11 what we told him before.

12 CHAIR BATTLE: I think that he had a contract with
13 an agency which allowed him -- and he was doing that work not
14 with LSC funds at the time as I understood.

15 MR. McCALPIN: Well, that's the difference.

16 MS. PERLE: That's the difference now.

17 MR. McCALPIN: That's the difference now. But now,
18 he --

19 MS. PERLE: Now, he can't use non-LSC funds.

20 MR. McCALPIN: We did it before on the grounds that
21 people were doing it with non-LSC funds. Now, we have got a
22 new law which says you can't do with non-LSC funds what you

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1 can't do with LSC funds. So what our regulation for at least
2 10 or 12 years has said, programs may take the fee.

3 CHAIR BATTLE: So have we changed it?

4 MR. McCALPIN: Well, we will have changed it when
5 we publish this. Or I'm asking whether we will have changed
6 it.

7 CHAIR BATTLE: I don't think there is any change in
8 that underlying policy here.

9 MS. PERLE: I think that's correct. The question
10 really -- I think that Bill is asking is, should we change
11 it.

12 MR. TULL: I think the answer to that is "no."

13 MR. McCALPIN: What?

14 MR. TULL: That we don't change it.

15 CHAIR BATTLE: No.

16 MR. McCALPIN: If we don't change it, what is the
17 policy?

18 MR. TULL: Well, that's the problem. It is a
19 problem which is that there have been opinions -- I'm not
20 arguing with what you just said. I'm just saying that the
21 reporting has --

22 CHAIR BATTLE: I think that's a Board level issue,

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1 though. I don't think this committee needs to take up that
2 issue of changing the policy without it being a Board
3 determination.

4 MS. GLASOW: I can give a real brief --

5 MR. McCALPIN: I don't think we are changing the
6 policy.

7 CHAIR BATTLE: No.

8 MR. McCALPIN: The only policy is that which is
9 contained in this regulation.

10 CHAIR BATTLE: Exactly. And all I'm saying --

11 MS. GLASOW: I can give a brief synopsis of that.
12 The only interpretations that have been issued from the
13 Corporation on this issue have come through OGC opinions.
14 The OIG has looked at that, and they basically pointed out
15 that the OGC opinions have only gone out to particular
16 grantees.

17 That policy not to allow taking fees out of
18 statutory benefits has never been promulgated as a rule.
19 It's not clear in the rule. It's not clear in the statutory
20 language. It was only an interpretation by OGC opinions. It
21 has been the policy of the Corporation to do that, but it has
22 never been formalized in essence.

1 I think certain Boards thought they were
2 formalizing it, but they didn't because the rule is not
3 clear. So we feel that policy, whether it was formalized
4 well enough or not -- because the OIG basically said it
5 wasn't formalized sufficiently to be substantively required
6 of the recipients.

7 So at this point, we feel it's a decision by this
8 committee and Board to decide where they want to go. And you
9 can do it today, you can do it later.

10 CHAIR BATTLE: My suggestion is this. Because
11 we're talking about examining a policy, I think that we can
12 solicit comments we can propose to the Board, let the Board
13 adopt a policy.

14 We'll implement it in the regulation before this
15 comes back in and we get the comments together on it, whether
16 we want to actually formalize it in the regulation. But I
17 don't think we should address this underlying policy at
18 present.

19 MR. BROOKS: We look at the old 1609.5, and it's
20 perfectly clear here, "The recipient may seek to accept a fee
21 awarded or approved by a court or administrative body."

22 MS. GLASOW: LaVeeda, I think the new statutory

1 restriction requires us to make the decision. Because what
2 we're deciding is, is this an attorney's fee or not. And
3 when we put out an interim rule -- I guess I'm agreeing with
4 Bill -- we have to tell our recipients --

5 CHAIR BATTLE: In my view, it is not an attorney's
6 fee. Now, that's my view. From what it is that we have in
7 our definition at present, a Social Security --

8 MS. TARANTOWICZ: But that's what you have to
9 decide, whether to change the --

10 MS. GLASOW: And we can make that clear in this
11 interim rule. And then if we're convinced otherwise by
12 comments, we could change it later. But in the interim rule,
13 we could make it clear that at this point, we don't consider
14 those to be attorney's fees.

15 CHAIR BATTLE: Well, why not in the comments?
16 Because you've got a definition.

17 MR. McCALPIN: They're attorney's fees. They're
18 simply not attorney's fees covered by 504(a)(13).

19 MS. GLASOW: That's what I mean. Right. That's
20 what I mean.

21 MR. BROOKS: So there's really no change if we
22 permit the awards to be continued, be accepted.

1 MS. GLASOW: And we can make that clear in the
2 comments.

3 CHAIR BATTLE: Let's make that clear in the
4 commentary.

5 MR. BROOKS: Fees but not awards.

6 CHAIR BATTLE: I don't think we should tinker with
7 the definition, quite frankly.

8 MS. GLASOW: Okay.

9 MR. McCALPIN: Let me complicate it a little.

10 CHAIR BATTLE: Oh, God. I know you wouldn't do
11 that to us.

12 MR. McCALPIN: I took the opportunity to talk to a
13 senior administrative law Social Security judge. He said
14 that while in most instances, the question of fee comes to
15 them on the basis of a contingent fee agreement between the
16 provider of service and the client -- and they don't award
17 the fee in that circumstance.

18 They simply decide whether the fee is within the
19 parameters of the regulation, I guess it is, which is 25
20 percent, not more than \$4,000, but that in some instances,
21 there is no contingent fee agreement between the provider and
22 the client, but at the end of the proceeding, the attorney

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1 files a petition with the ALJ for the awarding of a fee. And
2 his position was, in that circumstance, he as the
3 administrative law judge awards the fee.

4 MR. FERRY: That's actually -- in that case, the
5 fee that is given to an attorney comes from the client's
6 funds.

7 MR. McCALPIN: It does. Absolutely.

8 MR. FERRY: It's not an additional amount of --

9 MR. McCALPIN: I understand that. But it was his
10 view that he awards it, but it is not premised upon a
11 contingent fee agreement.

12 CHAIR BATTLE: If it's not premised upon a
13 contingent fee agreement and the administrative agency makes
14 the award, then it comes under this definition, it seems to
15 me. If the client doesn't agree to it but an attorney
16 petitions for it and gets it, it comes under this definition.
17 And I think our definition covers that circumstance by
18 including --

19 MR. McCALPIN: Now that we have added
20 "administrative."

21 CHAIR BATTLE: Yes, now that we have added
22 "administrative agency." So it's only when the client agrees

1 to it that it comes under the rubric that we have established
2 that would allow programs to be able to take the fee.

3 MR. BROOKS: I would like to ask Mike whether that
4 is a serious problem.

5 MR. FERRY: I don't believe so, because I think
6 that a program wanting to accept these clients would simply
7 enter into agreements with clients to allow --

8 CHAIR BATTLE: And if a client doesn't want to
9 agree to that, they're free, it seems to me, to turn it down.

10 MR. FERRY: To turn it down or whatever. Yes. The
11 same is true for ALJ, which is another way you can get --

12 MR. McCALPIN: You have to have a retainer
13 agreement anyway.

14 CHAIR BATTLE: Yes. And that's part of your
15 retainer agreement. Okay. Is there --

16 MR. FERRY: I don't think it will be a serious
17 problem.

18 CHAIR BATTLE: Anything else on attorney's fee?

19 (No response.)

20 CHAIR BATTLE: Let's move on. I want to move this
21 process so that we can get everybody that has got to catch a
22 plane out of here, if we can.

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1 1642.3, "prohibition." Anything? Let's just let
2 Board members with concerns raise them.

3 MR. BROOKS: Well, I was a little bothered by "no
4 attorney who receives compensation for a recipient." That's
5 the last line on page 6.

6 MS. PERLE: That's a Judicare attorney or a
7 contract attorney who's being paid by the program to take the
8 case?

9 MR. BROOKS: Say that again.

10 MS. PERLE: That's either a Judicare attorney or a
11 contract attorney who's being paid by the program to handle
12 cases as opposed to a pro bono.

13 CHAIR BATTLE: And it goes on to talk about
14 Judicare and PAI, contract or other arrangements.

15 MR. BROOKS: All right.

16 CHAIR BATTLE: And it puts the limitation on that
17 legal assistance.

18 MR. BROOKS: There should be an "s" on "provide"
19 there, I think. "No recipient or no private attorney which
20 provides" --

21 CHAIR BATTLE: Okay.

22 MR. BROOKS: And the first line on page 7, I would

1 suggest spelling out "PAI."

2 CHAIR BATTLE: Mike?

3 MR. FERRY: I'm sorry. Were you going to look at
4 the preamble sections in --

5 CHAIR BATTLE: Yes, if you have something to raise.

6 MR. FERRY: There was something that I think we
7 need to --

8 CHAIR BATTLE: Okay. All right.

9 MR. FERRY: I apologize. In the definition section
10 on page 3, the first paragraph of that sentence needs to be
11 revised. Looking at line 2, the words "or approve" I think
12 should be taken out.

13 MR. McCALPIN: What line are you in?

14 MR. FERRY: Page 3, the section 42.2., second line.

15 CHAIR BATTLE: "Which are awarded by a court or
16 administrative agency"?

17 MR. FERRY: Yes. The words "administrative agency"
18 need to be added. I think the words "approved" need to be
19 taken out regarding an ambiguity.

20 CHAIR BATTLE: That's fine.

21 MS. PERLE: We need to fix this.

22 CHAIR BATTLE: All right. We'll fix this.

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1 MR. FERRY: I just wanted to do that.

2 CHAIR BATTLE: Okay. All right. Good point.

3 Anything else in the prohibition?

4 MR. McCALPIN: Yes. In (c)(1) on page 7, "It does
5 not apply to cases or matters filed prior to April 26, 1996,
6 except that the prohibition shall apply to any additional
7 related or unrelated" -- the prohibition applies whether the
8 additional claim is related or unrelated.

9 MS. PERLE: I think that's the statutory language,
10 isn't it?

11 MR. McCALPIN: Well, even so, you can't take on a
12 new client.

13 MS. GLASOW: I think this is a related --

14 MR. TULL: We'll just take "related" out.

15 MR. McCALPIN: You can take "related" out.

16 CHAIR BATTLE: "Any additional claim."

17 MR. McCALPIN: Yes.

18 MS. GLASOW: Do you want to add a number 4 to that
19 section that we inadvertently left out?

20 CHAIR BATTLE: What's that?

21 MS. GLASOW: Number 4, that section.

22 MR. BROOKS: Before we get there in 2, shouldn't we

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1 put in "administrative body" in the first line?

2 CHAIR BATTLE: "Court."

3 MS. PERLE: Where are you?

4 MS. GLASOW: "Cases in which a court or
5 administrative agency" --

6 MR. McCALPIN: Well, do administrative agencies
7 appoint counsel?

8 MR. BROOKS: I don't know.

9 MS. PERLE: That's the question that Bill just
10 asked. I don't know the answer to that.

11 MS. GLASOW: I don't know if that happens or not.

12 MR. BROOKS: The expert is --

13 CHAIR BATTLE: Well, and the other thing is, since
14 we include in this state or federal, we don't know whether
15 there are state entities set up to do appointments, I mean
16 just across the board.

17 MS. PERLE: This is basically sort of consistent --
18 there's the notion that a court appointment is different
19 because you're doing it as a member of the Bar, an officer of
20 the court, and that runs through a whole bunch of these.

21 CHAIR BATTLE: That's probably right. You're
22 talking about court-appointed attorneys. Okay. All right.

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1 And you're really only appointed by courts.

2 MR. McCALPIN: And besides this, I don't think
3 there's the same onus on an agency appointment as there is on
4 a court appointment.

5 MS. PERLE: Right. I think that's right. We
6 really don't have probably the authority to compel you to do
7 it.

8 CHAIR BATTLE: Is there anything else, John, in 2?

9 MR. BROOKS: No.

10 CHAIR BATTLE: Okay. Suzanne, you were about to
11 add a 4?

12 MS. GLASOW: Yes. It would be "reimbursement of
13 costs and expenses."

14 CHAIR BATTLE: Okay.

15 MS. PERLE: Just to make it clear that they're not
16 attorney's fees. And that's the problem, not what was
17 intended by the --

18 CHAIR BATTLE: "Or reimbursement of costs and
19 expenses." Okay. All right.

20 MR. BROOKS: I think we go back to the preamble,
21 the commentary. Well, wait a minute. We have got -- part 5
22 relates to reimbursement.

1 MS. PERLE: That's reimbursement from a client.
2 That's different.

3 MR. BROOKS: Oh.

4 MS. PERLE: Maybe we ought to say "reimbursement of
5 costs and expenses from a party." I mean, in other words,
6 it's not the party you're representing, it's the other party.

7 CHAIR BATTLE: Yes. Okay. Anything else in .3?
8 Let's look at .4, "accounting for and use of attorney's
9 fees."

10 MS. GLASOW: This is simply an accounting
11 requirement.

12 MR. McCALPIN: Let me suggest that -- I was pretty
13 surprised to see that the division would relate to the ratio
14 of expenditures. I would have thought that it would relate
15 to the relative hours.

16 MS. PERLE: Well, I think that's the same thing.

17 MR. McCALPIN: Oh, no. "Expenses" I would regard
18 as out-of-pocket expenses. In other words, who put up the
19 court costs, the deposition fees, that sort of thing. I
20 would think that the division ought to be on the basis of the
21 hours put in by the program and the hours put in by the --

22 MS. PERLE: Well, I think if you read the whole

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1 thing, it says "total amount expended by the recipient to
2 support the work," so that includes salaries.

3 MS. GLASOW: Overhead and everything.

4 MS. PERLE: Overhead and everything.

5 MR. McCALPIN: I would think that hours is a much
6 easier way of doing it. And that's the way I have seen it
7 done in other situations.

8 MS. PERLE: I think hours is actually right,
9 because since we're excluding from attorney's fees
10 reimbursement of costs and expenses --

11 CHAIR BATTLE: Reimbursement of costs and expenses.

12 MR. McCALPIN: And since we have got time keeping
13 now required, it ought to be quite possible to do it.

14 MS. GLASOW: We can fix that.

15 MS. PERLE: I think that's right.

16 CHAIR BATTLE: Are the hours going to be tracked --
17 if you use hours, are you going to tie the hours to the
18 actual hourly rate based on salary or hourly rate based on
19 prevailing hourly rate?

20 MS. PERLE: It's based on that.

21 MR. McCALPIN: Two hours, five hours, six hours --

22 CHAIR BATTLE: Five hours -- come up with a

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1 percentage split and then do the dollars behind that. Okay.

2 All right. Okay.

3 MS. PERLE: But it's not to reimburse for the
4 amount of time, because that really doesn't bear a
5 resemblance.

6 MR. TULL: It's a cost allocation.

7 CHAIR BATTLE: Yes. It's a cost allocation. I've
8 got you. Okay.

9 MR. TEITELMAN: So let's say you have a Social
10 Security case and you have a 20 percent contingent fee on the
11 recovery.

12 MS. PERLE: That's not what we're talking about in
13 this. We're talking about a situation where you have a case,
14 half of it's LSC funds, and half of it's IOLTA funds that go
15 into it. And when you get an attorney's fee, you're
16 permitted an attorney's fee because it's a current case.

17 CHAIR BATTLE: You do an allocation back --

18 MS. PERLE: You're allocating 50 percent back to
19 LSC.

20 CHAIR BATTLE: Laurie?

21 MS. TARANTOWICZ: I'm not sure I understand. What
22 happens in the situation where you have based on hours a

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1 75/25 split, IOLTA 75, LSC 25, but then all of the other
2 expenses are charged -- I mean, does that hours include all
3 overhead, all --

4 CHAIR BATTLE: Expenses off the top, it seems to
5 me. Expenses are not determined --

6 MR. McCALPIN: This is attorney's fees.

7 MS. PERLE: This is fees.

8 MR. McCALPIN: This only relates to fees.

9 MS. TARANTOWICZ: Right. It relates to the
10 splitting of the fees if there are more.

11 CHAIR BATTLE: Well, but see, I think what she's
12 saying, oftentimes what you get is just a flat award, and it
13 may not break out your costs. So how do you attribute costs
14 in that when you get just an award that says, "Okay. I'm
15 going to award \$5,000 attorney's fees on this"? Well, the
16 program with LSC funds may have expended \$1,000 worth of its
17 resources on that case.

18 MR. McCALPIN: But you recoup those separately.

19 MS. PERLE: Not necessarily.

20 CHAIR BATTLE: Out of that five?

21 MS. PERLE: Not necessarily.

22 CHAIR BATTLE: Out of that five, you recoup it off

1 the top, your expenses, and then you allocate the rest, it
2 seems to me.

3 MS. TARANTOWICZ: Well, where does it say that?

4 CHAIR BATTLE: It doesn't say that.

5 MR. TULL: I'm wondering reading this why we have
6 taken the trouble in this particular case to describe the
7 formula when 45 CFR 1630 is the general cost allocation
8 regulation which governs the allowability and the allocation
9 of costs and has language in it which describes how one has
10 to allocate costs and --

11 CHAIR BATTLE: Why don't we do it there? Because
12 this is going to come -- the attorneys aren't going to be
13 worried about this. The -- whoever the --

14 MR. TULL: This is an auditing accounting issue.

15 CHAIR BATTLE: Yes, it is. I think you're right.

16 MR. McCALPIN: But that regulation would not relate
17 to fees, would it?

18 MR. TULL: It relates to how you --

19 CHAIR BATTLE: Charge backs.

20 MR. TULL: Charge activities to a fund. And this
21 has to do with derivative -- that this is income which is
22 derivative to the LSC fund, because it was supported by LSC

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1 funds. So it's an auditing question as to how much of the
2 award has to go back to the --

3 CHAIR BATTLE: Can we look at that section? Where
4 is that, John?

5 MR. TULL: I was just looking for it and then made
6 the mistake of speaking before I found it.

7 MS. PERLE: On page --

8 MR. McCALPIN: 1630.

9 MR. TULL: 1630.

10 MR. McCALPIN: It looks like it ought to be 4 or 5.

11 MR. TULL: It's 4 or 5.

12 MS. PERLE: But that's allowability of costs for.
13 It says allocation of costs, not allocation of income.

14 MR. McCALPIN: And frankly, I think of this in
15 terms of a case where both the recipient and outside counsel
16 are handling the case. And there comes in a fee which is to
17 be divided not between different accounts of the recipient
18 but by the recipient and the third party. And --

19 MS. TARANTOWICZ: I don't think this covers it.

20 MR. McCALPIN: What?

21 MS. TARANTOWICZ: I don't read this to cover that.
22 Is that what this covers? I thought this --

1 MR. McCALPIN: I think that 1642.4 does.

2 MS. TARANTOWICZ: I thought this was intended to
3 cover a charge -- if the recipient charges things to two
4 different fund accounts.

5 MR. McCALPIN: What?

6 MS. TARANTOWICZ: Charges things to two different
7 fund accounts; that is, its LSC fund and another one. That's
8 what --

9 MR. McCALPIN: Why doesn't it apply in the case I
10 mentioned?

11 MS. TARANTOWICZ: Because it says "attorney's fees
12 received by a recipient" -- that assumes it has already been
13 decided how the allocation is between any other attorney, I
14 think.

15 MS. PERLE: I think the court might make that
16 allocation, or there might be some contract between the two
17 to determine this.

18 MR. McCALPIN: I don't think the court does at all.

19 CHAIR BATTLE: I think that is. No, I think the
20 parties agree. When you co-counsel something, I think you
21 agree how you're going to handle what you get in from that
22 co-counseling arrangement.

1 MS. PERLE: That's right. But I think that
2 Laurie's right, is that this means after you've made whatever
3 allocation between counsel --

4 CHAIR BATTLE: The money comes in, and where does
5 it go in your accounting? I mean, how do you charge it back
6 to the various funds, and what funds did you use in order to
7 reap the successful result?

8 MS. PERLE: There's a lot of history on this
9 provision. And, you know, it may not make as much difference
10 now that all the funds are restricted.

11 MR. BROOKS: The trouble is, 1630 seems to apply
12 only costs and reimbursements of expenses.

13 CHAIR BATTLE: So you could figure out
14 reimbursement of expenses, but the attorney's fee portion --

15 MR. BROOKS: I don't think we can take it out of
16 1642, because it isn't in 1630. You've got to have it
17 somewhere.

18 CHAIR BATTLE: Yes. It can stay here, then.

19 MR. BROOKS: We can track the same theory as 1630.

20 CHAIR BATTLE: I think that Bill's suggestion about
21 using hours makes sense. We already have a cost allocation,
22 it seems to me, in 1630 that would deal with receiving back

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1 what you've expended in terms of costs. So the only question
2 is how you make your allocations on the attorney's fee
3 portion that doesn't relate to your expenses. If that's the
4 only issue left, I think Bill has resolved that by suggesting
5 that we use hours.

6 MS. PERLE: Well, maybe what we ought to do is
7 something about the same way that the costs were allocated.
8 That's what you get back, the same proportion --

9 MR. TULL: Well, that is the principle. For some
10 reason, it's not stated directly in 1630. But that certainly
11 is the accounting principle that applies. And an auditor
12 would insist on that application of it.

13 CHAIR BATTLE: Rick?

14 MR. TEITELMAN: In practice, we have received --
15 before this new Act, we received attorney's fees. And in
16 practice and what the orders have said and what Gerry Singen
17 has said, let's say we get \$100,000, what are we going to
18 cost per hour, what our commercial reasonable fee would be,
19 let's say it's \$50, if 20 percent of that were United Way and
20 30 percent were Legal Services, the money comes back, the
21 money goes back under fund accounting to those areas as for
22 the expenses.

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1 MS. PERLE: In proportion to the expenses, to the
2 total.

3 MR. TEITELMAN: In proportion to the expenses, to
4 the total. The total goes back to a portion of expenses of
5 those accounts.

6 MS. PERLE: But it's based on time.

7 MR. TEITELMAN: It's based on time. Because the
8 time, that's what you submit to the court. And the court
9 awards that regarding that unit -- you don't split your hour
10 up, say, "This part is" -- now, some other programs, and
11 that's all depending on the audits, that's why it's a local
12 type of thing, so other programs have basically put all the
13 attorney's fee cases under a -- those lawyers that would get
14 attorney's fees in past years under non-LSC funds, they had
15 non-LSC funds.

16 So the money would come back under -- the expense
17 would come back as allocated -- I mean, the income would come
18 back and be allocated according now to expenses.

19 CHAIR BATTLE: And that makes good accounting
20 sense. And this to me, it seems, is an accounting issue we
21 can address here by just saying, "Hours is a good way to do
22 it," and make that suggestion here. But I think that

1 programs are going to have to figure out a way based on how
2 they do their accounting to assure that everybody gets back
3 what they put out.

4 MS. GLASOW: We would like to suggest that we work
5 with Gerry and come back on the 19th with the appropriate
6 language pursuant to your concerns.

7 CHAIR BATTLE: Okay.

8 MS. PERLE: It may be that without this language,
9 there's just -- maybe we don't need this language because
10 there are accounting principles that would cover it.

11 MR. TULL: I think that is correct. But we need to
12 verify that.

13 CHAIR BATTLE: Yes. Why don't we do that? And
14 Laurie, what am I hearing you say on that?

15 MS. TARANTOWICZ: I think that's fine, as long as
16 we get a chance to look into it.

17 CHAIR BATTLE: Okay. IG, Gerry, and staff, let's
18 get back and let's make this work.

19 MS. GLASOW: We'll either have something new or
20 have it deleted by the 19th.

21 CHAIR BATTLE: Okay. 1642.5, "acceptance of
22 reimbursement." Anything from -- go ahead and give us some

1 background.

2 MS. GLASOW: "Acceptance of reimbursement from a
3 client."

4 CHAIR BATTLE: Okay. I like it when these titles
5 make sense by themselves.

6 MS. GLASOW: It helps.

7 (Laughter.)

8 MS. GLASOW: Half the battle's the title sometimes.

9 CHAIR BATTLE: All right.

10 MS. GLASOW: This basically is the same thing that
11 it has always been in the law, that "When the case or matter
12 results in recovery of damages or benefits, the recipient can
13 accept reimbursement from the client for out-of-pocket costs
14 and expenses incurred in connection with the case or matter."

15 I believe there is one small change. Do you want
16 to explain that one?

17 MS. PERLE: The difference between this and before
18 was before, it said, "When a case or matter results in a
19 recovery of damages except for statutory benefits where a
20 recipient may accept reimbursement." And so this was done --
21 because we had been hearing from programs that statutory
22 benefit cases often involve a lot of expenses for expert

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1 witnesses and medical tests and stuff.

2 CHAIR BATTLE: Vocational experts.

3 MS. PERLE: They should be able to get that back.

4 And so that's the only change there.

5 CHAIR BATTLE: Okay. Anything else in that
6 provision?

7 MR. McCALPIN: What is the requirement of 1609 that
8 has to be met?

9 MS. PERLE: Because it says it's "a recovery of
10 damages or statutory benefits." In other words, if it's a
11 case which was a fee-generating case and they couldn't get an
12 attorney to take it, they have to meet those requirements in
13 order to take the case. But, of course, maybe since --

14 MR. TULL: It's true that a program could accept
15 reimbursement from a client out of -- for any case. It only
16 happens to be that they do in an event where they recover
17 something.

18 MS. PERLE: Well, what this says is that you can't
19 accept it unless they have recovered something, but you could
20 require them to pay court fees, which has always been in
21 here.

22 MS. TARANTOWICZ: So you can only accept it if it's

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1 fee-generating.

2 MR. TULL: Or a statutory benefit case.

3 MS. PERLE: In other words, the only time you can
4 ask a client to reimburse you is when they got some money.

5 MS. TARANTOWICZ: Right.

6 MR. McCALPIN: I believe there are situations in
7 which programs ask clients to advance fees.

8 CHAIR BATTLE: Advance fees or expenses?

9 MR. McCALPIN: Deposit for costs.

10 CHAIR BATTLE: Costs.

11 MS. PERLE: Court fees.

12 MR. McCALPIN: Costs.

13 MS. PERLE: Well, this only says "court fees," so
14 this --

15 MR. McCALPIN: I think the word "fee" is
16 inappropriate there, because only courts charge fees.

17 MS. PERLE: "Court costs"?

18 CHAIR BATTLE: Yes. Okay. Anything else in (b)?

19 (No response.)

20 CHAIR BATTLE: 1642.6 is your final opportunity,
21 Bill, to let us know how you feel about it.

22 MR. McCALPIN: I thought we were going to discuss

1 it.

2 MS. GLASOW: Maybe it's that time.

3 CHAIR BATTLE: Okay. Do we have any other
4 business? I wanted to -- let's just take a break, a five-
5 minute break, and then we'll wrap.

6 (A brief recess was taken.)

7 CHAIR BATTLE: Let's gather around. We're going to
8 wind up. Where is Suzanne?

9 MR. McCALPIN: I think she's out there doing a copy
10 of something.

11 CHAIR BATTLE: One thing we talked about doing, and
12 that is, going through seeing which one of these ought to be
13 30- and which one ought to be 60-day regs.

14 MR. McCALPIN: You go ahead and decide.

15 CHAIR BATTLE: If you all will give me the
16 authority, I will get with Suzanne and I'll decide.

17 MR. McCALPIN: You're going to give me the 30?

18 CHAIR BATTLE: Yes. And I'll give --

19 MS. WATLINGTON: Based on this, you'll have a
20 better position to decide.

21 CHAIR BATTLE: Okay. So I've been delegated by my
22 committee the authority to determine which ones ought to be

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1 put out for 30-day comment and which ones ought to be put out
2 for 60-day.

3 I will be guided this way. To the extent that the
4 regs are -- the interim rules really pertain to only an
5 extension of an already existing, known to our grantees
6 restriction that now extends to their non-LSC funds so that
7 it's not any new information, I think 30 days is probably
8 appropriate.

9 To the extent that there are regs that go into some
10 other issues that are technical that will require their
11 spending some time commenting, we'll probably put those out
12 for 60 days. But we'll go through and see which ones fit
13 into which pile and get that process started in discussions
14 with Suzanne very quickly so we'll know how to put the final
15 language in what we look at in our next committee meeting.

16 MS. PERLE: You're not going to do that right now?

17 CHAIR BATTLE: No, we're not going to do that right
18 now. And we -- that was one housekeeping matter. One other
19 housekeeping matter, we are now on the point of other
20 business for our committee and -- I'm sorry.

21 MR. BROOKS: Excuse me. Do we want to go back to
22 the --

1 CHAIR BATTLE: Minutes. Yes, Suzanne will get back
2 on that. While we're waiting for Suzanne to get back, on the
3 February 23, 1996, minutes, we had one further --

4 MR. BROOKS: Well, my name was "John F. Brooks."
5 They need to correct it to "John G. Brooks."

6 MR. McCALPIN: Why don't we just put our names on
7 it?

8 (Laughter.)

9 CHAIR BATTLE: Let's amend our earlier approval of
10 the February 23rd minutes to include what John has brought to
11 our attention in his meticulous review of those minutes.

12 M O T I O N

13 MR. McCALPIN: So moved.

14 CHAIR BATTLE: By acclamation, we have done it.

15 Now, what we have before us is a listing of the
16 policies, procedures, and record keeping. The particular
17 regs that have these requirements for policies, policies and
18 procedures, policies, records, and those that have none.
19 This is for our information.

20 And I think during our discussion earlier on, we
21 asked the staff to get this up. So I just want all of the
22 Board members to take note of this listing so that we have

1 it.

2 As we were discussing the final reg, which has to
3 do with attorney's fees, John brought up an issue that I
4 think we need to quickly get back to, and it's an editing
5 issue on the -- that final page.

6 John, can you tell us what it is?

7 MR. BROOKS: Yes. 1642.5, which appears on page 8,
8 the question is whether to delete (a)(1). We had a little
9 discussion about it, and it seems to me that the requirements
10 of 1609 as relevant really aren't relevant here.

11 CHAIR BATTLE: Okay. So we should delete -- (a)(1)
12 should be deleted. Okay. All right.

13 MR. BROOKS: And change (2), eliminate (2) so just
14 (1) is alone, "If the client," et cetera.

15 MS. PERLE: Can I ask a question on (b)?

16 CHAIR BATTLE: Okay.

17 MS. PERLE: It's something that just came into my
18 mind, I think as John was mentioning. It says "It may
19 require a client to pay court costs when the client is not
20 qualified to proceed in" -- does that mean in advance, or
21 does that mean even if they don't recover? I guess it means
22 even if they don't recover --

1 MR. McCALPIN: Either way.

2 CHAIR BATTLE: Either way.

3 MS. PERLE: Just leave it that way. Okay.

4 CHAIR BATTLE: Okay. Anything else on 1642?

5 (No response.)

6 CHAIR BATTLE: So we may now close that one out. I
7 appreciate that additional editing. I am told by Alan that
8 we have a welfare reform draft for all the members to take
9 with us to review in light of the discussion we had this
10 morning.

11 We certainly won't have time today to continue that
12 discussion, but I hope that you will take the drafts that
13 will be provided to you which address some of the issues that
14 we discussed this morning and take the opportunity in the
15 interim to discuss any concerns you have about that draft
16 with the staff, so that what we get next week will be
17 reflective of our thoughts, as well as the drafts that have
18 come out of the discussion that we have had today.

19 One other item of other business. I know on our
20 agenda for next time, we're going to deal with some things
21 that we have been addressing that have to do with internal
22 personnel policies and procedures.

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1 Joan, if you'll come forward for just a second and
2 tell us where we are and what we will hear from you on the
3 next time up. And specifically, I was interested on that
4 travel policy that we discussed at our last meeting.

5 MS. KENNEDY: Thank you, Ms. Battle. The personnel
6 issues work group has continued to work with the U.S. Office
7 of Personnel Management. We have been meeting regularly, and
8 we have moved into phase two, which includes the -- some
9 steps that I think we have shared with you that include
10 revising all of the occupational hazard job descriptions for
11 the entire Corporation, developing performance standards,
12 ultimately resulting in a revised personnel manual. And we
13 are working toward having that project complete by September
14 30th.

15 CHAIR BATTLE: Okay.

16 MS. KENNEDY: We plan to come before you at your
17 next meeting on the 18th to provide an interim status report
18 on exactly what things have been accomplished at this point.
19 OPM will be here and will be available to help us with the
20 presentation and to respond to any questions that you may
21 have.

22 I know that there was a concern at the last meeting

1 that because of several things that were going on, we didn't
2 have much of an opportunity to interact with them in the way
3 that we wanted to, so they're prepared to be here as long as
4 we need them to be here at the next meeting and to provide as
5 much feedback for you as you desire to give ourselves a
6 better clarification of where we are with phase two.

7 CHAIR BATTLE: Okay. And on that travel policy,
8 where are we?

9 MS. KENNEDY: The travel policy? I think we shared
10 with you at the last meeting that during the time that we
11 were asked to defer any action, we would be working with a
12 software company that has a piece of software that will help
13 us analyze all of our travel to date, staff or consultants as
14 well, see what kind of activity we have, and make a
15 recommendation as to what kind of policy based upon our
16 activities might be feasible for us.

17 They're in the process now of doing that analysis.
18 As a matter of fact, I was on the phone with them when you
19 sent for me, and they are going to have the analysis complete
20 by next Wednesday. They'll immediately get it to us.

21 We'll have that to share with you next Friday. And
22 they will be on the phone by conference and available to

1 answer any questions that are not clear and a report that you
2 may have.

3 CHAIR BATTLE: All right. Is there anything from
4 the Board members about it?

5 MR. McCALPIN: I would simply suggest looking at
6 the agenda that we have just seen for the 19th. And in order
7 not to waste the time of the OPM people, may I suggest that
8 you set a specific time to hear them, and we would take them
9 up on the agenda at the appointed time so that they aren't
10 sitting around all day waiting for us?

11 CHAIR BATTLE: Where are they? Now, their report
12 is first. They report -- we approve the agenda, and we take
13 them first up. So they have the opportunity now to be the
14 first thing on the agenda. And once we finish with them,
15 they're free to go.

16 MR. McCALPIN: And we're going to start at 8
17 o'clock?

18 CHAIR BATTLE: Yes. We're starting at 8:00. Now,
19 I would just as soon -- the inspector general is involved in
20 that process still; is that correct?

21 MS. KENNEDY: No, the inspector general is not
22 involved in the process right now because of some competing

1 priorities. And we may want to speak to that, but they are
2 not involved in the process.

3 MS. SZYBALA: By "the process," you mean the OPM --

4 CHAIR BATTLE: OPM stuff, yes.

5 MS. SZYBALA: We are involved to the extent any
6 other organization within LSC is involved; that is, as a
7 organization of LSC. I don't think we have any further
8 involvement in that. This is really developing of a
9 corporate policy for the administration of the organization,
10 and that's really not an OIG thing.

11 CHAIR BATTLE: Well, the committee --

12 MR. McCALPIN: The organization including the OIG.

13 CHAIR BATTLE: Yes, but the committee that we set
14 up, that's the issue. I think there's a -- didn't we set up
15 -- there was a working group to put this together to bring it
16 back to the Board that I expected that there would be OIG
17 input into that working group on all of this.

18 MS. SZYBALA: Well, we should probably discuss it,
19 then. The OIG received a reg early on in the working group.
20 We commented on the reg. We never thought we were a party to
21 the working group, other than the OIG has always been a
22 commenter on things that the Corporation does.

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1 CHAIR BATTLE: Well, I think we may have a
2 difference of viewpoint on that. My expectation,
3 particularly since these policies will apply across the board
4 to everyone, is that everyone had their opportunity to give
5 input before the Board made its decision on the policies.

6 MS. SZYBALA: We would have opportunity to give
7 input. I mean, I haven't seen any policies yet, but when we
8 see them, we'll provide input. You know, your statement that
9 they apply across the board depends, frankly, on how they're
10 made applicable. I mean, it's a matter of law.

11 CHAIR BATTLE: Well, this isn't a matter of law.
12 It's a matter of a working group that we asked to work
13 together to put something together to come back to us and
14 present to us. It's not a matter of law, I don't think.
15 It's a matter of procedure, something that we put in place.

16 MS. SZYBALA: I don't want it to be confusing. The
17 truth is, I have no knowledge of the Board ever asking us to
18 be a working group. I know that Joan told us that she wants
19 us on a working group.

20 MR. McCALPIN: I think that we quite specifically
21 said that we expected OIG participation in the development of
22 the policies.

1 CHAIR BATTLE: I don't know whether you were
2 present or Ed was present, but I think we did do that. So
3 I'm just hoping that this process will work real smoothly so
4 whatever it is that we get, we'll be able to know that we
5 have had an opportunity for input from all aspects of the
6 Corporation, and we can as a Board make our decision about
7 it.

8 I wanted to thank the OIG, the Office of General
9 Counsel, Linda Perle, John Tull, everybody for their
10 involvement in pulling together 15 regs and getting them
11 before us in the manner that you did -- in the professional
12 manner in which you did so that we could in three days, which
13 I didn't think we would be able to do, get through them and
14 get them back to you as you have. You all have done a
15 commendable job, and you are to be commended for it.

16 MS. PERLE: I would like to say thank you for that.
17 And I would also like to say that -- and Alan and I did do a
18 lot of work, John did a lot of work, but I think the lion's
19 share of the work was done by Suzanne, and I think she
20 deserves a standing ovation for it.

21 CHAIR BATTLE: Well, let's give it to her.

22 (Applause.)

1 CHAIR BATTLE: Did you get that on the record, all
2 the claps?

3 MS. GLASOW: And I would like to thank the Office
4 of Inspector General for -- I think they did a yeoman's job,
5 too, and they worked very hard to respond very shortly and
6 their comments were very helpful. And I really appreciate
7 their work. And really, the teamwork of everybody who served
8 a part in this --

9 CHAIR BATTLE: It was awesome. It really was.

10 MR. TULL: And I add kudos to the Chair and the
11 committee for --

12 CHAIR BATTLE: All we did was come in at the last
13 minute and comment, but you all did really the work.

14 MS. PERLE: You were very strained compared to the
15 task that --

16 CHAIR BATTLE: I've never seen anything like it
17 since we have been a committee. So I also commend our
18 committee for the work that we have done. I really do
19 appreciate it.

20 I will now entertain a motion to adjourn.

21 MR. McCALPIN: Why don't we let the newest member
22 of the committee, the most newly appointed member of the

1 committee, make the motion.

2 M O T I O N

3 MR. BROOKS: Most newly retired member of the
4 committee? I shall be back, but I should move to adjourn.

5 CHAIR BATTLE: Thank you so much. And we certainly
6 do appreciate John being with us, giving us the diligent
7 review and perusal and suggestions that he has to make this
8 work. We are a real team up here, and we couldn't have done
9 it without you. So thank you.

10 MR. BROOKS: Getting better all the time.

11 CHAIR BATTLE: That's right. That's right. Do I
12 hear a second?

13 MS. WATLINGTON: Second.

14 CHAIR BATTLE: It has been moved and seconded. All
15 in favor?

16 (Chorus of ayes.)

17 CHAIR BATTLE: We are adjourned.

18 (Whereupon, at 3:15 p.m., the meeting of the
19 Operations and Regulations Committee was adjourned.)

20 * * * * *