1985
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LEGAL SERVICES CORPORATION

OPERATIONS AND REGULATIONS COMMITTEE MEETING

June 27, 1985

2:10 p.m.

The Westin Hotel

Renaissance Center

Kent Room

Detroit, Michigan 48243

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Opera-Regula

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1 CHAIRMAN WALLACE: All right. If we may
2 call this meeting of the Operations and Regulations
3 Committee to order. We are a little bit late, and
4 we apologize to those who have been waiting for us
5 to finish our Committee meeting and get back from
6 lunch.
7 Notice has been duly given of this
8 meeting in the Federal Register, and it is pursuant
9 to that notice that we meet this afternoon.
10 In your Board Book, members, we have an
11 agenda that has been printed. We have had an
12 opportunity to examine the agenda. The Chair would
13 entertain the motion to adopt the agenda.
14 VOICE: I make the motion.
15 MRS. BERNSTEIN: Second.
16 CHAIRMAN WALLACE: Is there any
17 discusion or desired admendment to the agenda? I
18 want to give everybody a chance to find it.
19 CHAIRMAN WALLACE: We have got the lobby
20 regulations left to do, but given the amount of
21 material we have got today and the reception from
22 the Michigan Bar at 6 o'clock I don't see any
23 reasonable prospects of doing it.
24 Is there somebody at the end that would
25 like to talk about it? We'll give you a chance to

1 talk because I know it's a long way to Salt Lake;
2 but I do not anticipate any action on lobbying
3 today.
4 MR. SMEGAL: I would move the adoption
5 of the agenda.
6 That's been moved and seconded. If
7 there are no amendments I think we are ready to go.
8 All in favor say aye. Opposed? The ayes have it
9 and the agenda is adopted.
10 We have before us very detailed minutes
11 keeping in mind Mr. Smegal's discussion this
12 morning about happily brief the audit minutes were.
13 These aren't brief at all. I have read them all of
14 the way through, and I'm satisfied with them. But
15 members of the committee --
16 MRS. BERNSTEIN: I have been through
17 them and I'm satisfied with them.
18 MS. MILLER: I have read them also.
19 CHAIRMAN WALLACE: Looks like Mr. Smegal
20 has been through them.
21 MR. SMEGAL: Yes.
22 CHAIRMAN WALLACE: Any corrections or
23 additions to the minutes? Does anybody have any
24 corrections or additions they would like to make to
25 the minutes?

1 VOICE: Mr. Chairman There's an
2 ommission at page 3, fourth line from the bottom,
3 next to the last word on that line inserted --
4 CHAIRMAN WALLACE: (Interposing) "Be" is
5 out of order.
6 Well, what it is where they have it to
7 as be effective, it ought to be "to be as
8 effective." And by unanimous consent we will
9 transpose those words. Has anybody else found any
10 changes that need to be made? That's all we have,
11 is 25 pages. That's not bad.
12 MR. SMEGAL: On page 24, I'm not
13 suggesting it's not right, there's a sentence, "Mr.
14 Kazman proposed that the Corporation consider
15 interpreting the exception to cover only those
16 services which would constitute the unauthorized
17 practice of law if performed by a lay person."
18 Is that right? It doesn't seem to fit
19 with what we are talking about.
20 MR. DAUGHERTY: Yes, sir. Mr. Kazman
21 was arguing that the exceptions for -- in the
22 sentence in the Legal Services Corporation Act, the
23 lobbying position, the exception for those
24 activities necessary for representation in the case
25 should be read narrowly to mean only those

1 activities that, on behalf of the client, would
2 have to be performed by a licensed attorney; and he
3 was contrasting that interpretation of legal
4 representation with expansive interpretation uses
5 by Judge Parker in the WESTERN CENTER case.
6 CHAIRMAN WALLACE: That's my recollect
7 too Mr. Smegal, because I questioned him on it.
8 His argument was that if you have to have a lawyer
9 to do it, it's legal services, and if anybody else
10 can do it it's not legal service.
11 MR. DAUGHERTY: Not legal service
12 representation as one of the exceptions to the
13 prohibition on the lobby.
14 MR. SMEGAL: That's what he said.
15 CHAIRMAN WALLACE: I don't think anybody
16 on the panel took a position on that, but that
17 clarifies.
18 CHAIRMAN WALLACE: Is there a motion to
19 accept the minutes as printed in the Board Book
20 with the one amendment we have already made?
21 MR. SMEGAL: Moved.
22 MRS. BERNSTEIN: Second.
23 CHAIRMAN WALLACE: Moved by Mr. Smegal,
24 seconded by Mrs. Bernstein. All in favor say aye.
25 Opposed? Hearing no opposition the minutes are

1 think, in understanding how we got where we are
2 today, is the first item, the report by Earl
3 Johnson, who was the first Deputy Director of the
4 Office of Legal Services in Illinois. And the
5 second director, the director for three years in
6 the early years of the program. And his first
7 chapter that I have in interpreted here has a
8 section called containment at Judicare. And I
9 think it indicates -- points out the competing
10 class of staff attorney delivery and private
11 attorney delivery.
12 The first director Mr. Amberger is
13 quoted as saying, "We don't see anything but
14 Judicare ever again unless we do something about
15 it." This policy was adopted for funding staff
16 attorney programs rather a Judicare programs were
17 advocated by our State Bar Association for several
18 reasons, but the significant reason Mr. Amberger
19 stated in his speech that appears on the bottom of
20 page 119 and top of page 120. The English system
21 which is similar to Ajudicare is disadvantageous
22 because it can achieve no other goal than the mere
23 resolution of controversy.
24 The Legal Services Program, or OEO has
25 far better ambitions. We cannot be content with

1 the creation of systems that render free legal
2 assistance to all people who need it and cannot
3 afford it. This program must contribute to the
4 success of the War on Poverty. Our responsibility
5 is to marshal the forces to train the lawyers to
6 combat the causes and effects of poverty.
7 He did not think this aggregated private
8 attorneys handling the case at the time could
9 provide the systematic law reform that was the
10 focus and principal national objective of the OEO
11 Legal Services Program.
12 Under Roman Numeral II the first item is
13 the item Mrs. Bernstein mentioned earlier. The
14 report of the House Investigations Committee
15 Investigative staff.
16 I have excerpted several chapters of
17 that report which I sent to you in its entirety
18 previously. The most relevant chapter I think for
19 your discussion today, is Chapter 7. Chapter 7
20 discusses the expansion of legal services
21 practically tripling the size of the Legal
22 Services Program in the late '70's in which several
23 instances were cited where a local Bar Association
24 Legal Aid Society was notified only at the very
25 last moment of the Corporation's intentions to

1 expand its urban staff program into their
2 community.
3 I think this illustrates some of the
4 tensions tensions that led your predecesors to
5 decide that if those programs that they had
6 selected the staff attorney programs selected by
7 and large whatever legal services were to act upon
8 the delivery systems that are binding and involved
9 private attorneys and Segal Services delivery there
10 was indeed to provide the incentive of an
11 instruction.
12 CHAIRMAN WALLACE: This was a report to
13 the Committee by its staff? It was not adopted as
14 a report of the Committee, is that correct?
15 MR. DAUGHERTY: Not to the best of my
16 knowledge. It was incorporated in the hearings
17 documents for the 1984 appropriations. And it did
18 have some affect. There were some riders
19 throughout. In this particular area the
20 Corporation acted in response to the criticisms,
21 adopted a policy on expansion responsive to the
22 criticisms which had been made by this staff and by
23 the House Judiciary Committee. It was late in the
24 expansion period.
25 The next document that you have, 2A is a

1 memorandum from Mrs. Francis, and attached to it is
2 a directory of Legal Services Program utilizing
3 private attorneys dating from April 1, 1981. I
4 apologize that we don't have tabs at each of these
5 items, but if you follow the yellow sheets you will
6 see the dividers.
7 CHAIRMAN WALLACE: Mr. Smegal asked
8 whether Gail Francis is hear.
9 MR. DAUGHERTY: Ms. Francis is here.
10 She's the Director of our Grants and Budget Unit.
11 I asked her to comment on a number of private
12 attorney programs we had in prior to 1981. She has
13 a memo here summarizing those that were funded in
14 each year.
15 Following that is a paper prepared by
16 Ken Smith for the OFS legal research unit. It goes
17 through program by program and recites how they use
18 private attorneys before there was a requirement
19 that they do so, and you will see that the
20 overwhelming majority of them used from 1 to 6
21 attorneys on their contract, that we had a very few
22 programs that had a substantial Private Attorney
23 Involvement prior to there being a requirement,
24 That under Roman Numeral II the second document,
25 the second yellow dividing page introduces Ms.

1 Francis' memo.
2 And then you can follow in your memo.
3 CHAIRMAN WALLACE: I found it.
4 MR. DAUGHERTY: And there's -- but I
5 think that indicates its useful background for
6 understanding why there was a need for requirement.
7 Following that we had a different system study.
8 The response of the ABA consultant Mrs. Bernstein
9 alluded to earlier, Professor Schwartz. He was
10 under contract to both the standing committee on
11 the Legal Aid the General Practice Section of the
12 ABA the delivery system study for focusing too much
13 on policy issues, particularly what is it that
14 makes a program of any model successful in meeting
15 the needs of its clients.
16 Following that we have several examples
17 of several speeches by -- articles by persons who
18 ran LSC Judicare programs. In that period Mr.
19 Martin who you will hear from later today -- his
20 program started out primarily as a Judicare program
21 and substantially it covered a lot more. And an
22 article by Mrs. Hardin, (ph) who will be speaking
23 to you about PRO BONO, describing her experiences
24 with the Boston PRO BONO program. That's the last
25 item under number 2.

1 Under Roman Numeral III you have a
2 number of items concerning the 10 percent, 12 and a
3 half percent private attorney involvement
4 experience. You have the third -- item C under
5 that heading is the study by Kenneth Smith for
6 NLADA that Mr. Kazman alluded to on several
7 occasions.
8 I would draw your attention to Item D,
9 which is a survey that has been done by the the
10 American Bar Association Standing Committee on
11 Legal Aids and its incentive which Mr. Kazman also
12 urged you to give special attention to.
13 This was a survey of our grantees and
14 asking them how they were implementing PAI and what
15 they thought about PAI. And one of the principal
16 issues that your Committee has been examining is in
17 the absence of a requirement from the Corporation
18 would legal services grantees choose to -- would
19 they, with simple encouragement, decide to involve
20 private attorneys. A question similar to that was
21 asked in the survey.
22 The last question on page 3 of the
23 survey -- again, I'm looking at item 3D, the fourth
24 item under tab Roman III. The question was asked
25 would the program increase its allocations for

1 Private Attorney Involvement without being required
2 to do so by the LSC. Sixteen directors said yes
3 representing 11 percent. One hundred twenty-nine
4 percent (sic) said no representing 89 percent.
5 CHAIRMAN WALLACE: Eighty-nine percent?
6 Is this a final tally on the survey? Is
7 the ABA re-evaluating its data or is this what they
8 stand behind?
9 MR. DAUGHERTY: My understanding is this
10 is a preliminary document produced for the
11 Committee in December and cited by Mr. Houseman and
12 sent to you. Chairman McCalpin the Chairman of the
13 Committee has quoted from it on occasion, but I
14 believe it's their intention to issue a final
15 report following their July meeting.
16 MR. SMEGAL: You might direct the
17 Committee's attention to the prior -- to answers
18 and questions where the basis for the yes and no
19 comments you just pointed out is probably more a
20 appropriately --
21 CHAIRMAN WALLACE: (Interposing) There
22 was a question as to whether or not the opinion of
23 the grantees -- the allocation required by the LSC
24 constituted an efficient and economic use of funds.
25 7.34 percent responding said it was not. And they

1 indicated -- that's an increase to current
2 requirements requirement of 12 1/2 percent. 86.6
3 percent felt it was not sufficient. And the
4 majority apparently stated in response to that
5 particular question they could use 10 percent but
6 not 12 1/2 percent efficiently and economically.
7 The survey goes on to tell us how
8 programs are using their funds. And on page 9
9 there's a question that is asked of the directors,
10 "Are you using at this --" "Has the allocation of
11 funds helped you to serve more clients or fewer?"
12 More programs, 48.9 percent, said it
13 reduced, was fewer number of clients served rather
14 than said it increased. 65.6 percent said it was
15 cost effective to use private attorneys and staff.
16 And when asked about the quality of service
17 delivered by private attorneys, none thought
18 private attorneys were better than staff.
19 It's difficult for me to conclude from
20 reading the answers to this survey that our Legal
21 Services Programs would wish to increase or
22 maintain the current level of PAI in the absence of
23 the Corporation's departments.
24 CHAIRMAN WALLACE: So to require it we
25 have to conclude that they're wrong about the

1 conclusions they state.
2 MRS. BERNSTEIN: Or that they have other
3 interests involved beyond dissatisfaction of
4 clients.
5 CHAIRMAN WALLACE: It's not necessary to
6 assume vendacity (ph) but it is necessary assume
7 inaccuracy.
8 MR. DAUGHERTY: It's their opinion it is
9 not cost effective and the quality not as good.
10 That is contradictory to the study that found by
11 and large cost and quality components were about
12 the same than there was among models.
13 The difference in the delivery system
14 study found was in the area of impact; that only
15 three of the private attorney laws were tested
16 impact equally to that of staff attorney model; and
17 I think it's one last document I would draw your
18 attention to, you will find at 3D -- I'm sorry, 2C.
19 It's an article in the CLEARING HOUSE REVIEW by
20 John Dooley. Mr. Dooley was the former director of
21 Vermont's Legal Aid. He has co-authored several
22 workings with Mr. Houseman and consulted in the
23 Research Institute.
24 Mr. Dooley cites a lot of the various
25 contentions that were made for the staff attorney

1 model, for the private attorney model, reviews to
2 delivery system studies found.
3 He concluded that after 15 years of
4 National debate and expenditure of millions of
5 dollars on social science research has told us very
6 litle about the difference. Social science
7 research cannot be finally shown -- tends to show
8 us the complex equations that affect Legal Services
9 Programs.
10 CHAIRMAN WALLACE: What page?
11 MR. DAUGHERTY: I was reading from page
12 201, the second full column. The point that is
13 made again at the next to the last paragraph on
14 page 203. And Mr. Dooley says that Ajudicare, on
15 page 203, next to the last column, Ajudicare versus
16 staff debate has been emotional and highly
17 polarized exactly because it went to the heart of
18 legal service and turned structural, tangible
19 choices into surrogates for goals and political
20 philosophies.
21 I suggest that the decision as to
22 whether or not the private attorney models are
23 useful in legal services work is highlighted on
24 page 199. The staff versus Ajudicare is really a
25 debate about the nature of legal services;and that

1 takes me back to where I started with Mr. Amberger
2 and Mr. Johnson. The staff attorney program was
3 originally favored over private attorney models for
4 the cause of the feeling there was something else
5 to be done other than the representation of
6 individual clients, but there needed to be an
7 effective mechanism for pursuing major litigation,
8 law reform activities that had a major impact on
9 the community.
10 CHAIRMAN WALLACE:: Thank you, Mr.
11 Secretary. Any further questions?
12 MRS. BERNSTEIN: The only other thing I
13 was going to mention about the ABA survey is we
14 don't have any indication here, but I would presume
15 this survey was not -- was not meant to be a
16 scientifically supportable survey. It was an
17 opinion poll of a loose sort that there was no --
18 there -- in other words the questions, I think, a
19 social scientist might question whether or not the
20 questions were phrased in a completely and unbiased
21 and disinterested way whether or not the fact that
22 the programs could or could not respond on a
23 voluntary basis. The fact that there may have been
24 campaigns to elicit certain responses which went on
25 and was nothing preventing it. It's simply a mass

1 of figures that were collected from interested
2 parties.
3 MR. DAUGHERTY: In describing the survey
4 of the ABA Conference in March, Chairman, McAlpin
5 said it was not an attempt to be a scientific
6 survey, but an attempt to quickly gather
7 information from Legal Services programs to have it
8 available for this debate because they felt the
9 need to quickly gather the information more so than
10 taking the time to employ experts in survey design
11 or the required choice questions that had easy,
12 five possible answers as opposed to allowing for
13 any elaboration in order to have information that
14 could be quickly assembled for their Committee.
15 MR. SMEGAL: Sounds like the ABA uses
16 the same procedures we use.
17 MR. DAUGHERTY: They are one step ahead
18 of us.
19 CHAIRMAN WALLACE: The fact that the
20 survey tells you things you shouldn't be surprised
21 to learn -- I mean obviously you can attack any
22 survey for what it has done, but it tells people in
23 staff Programs think staff Programs do a good job
24 and they are a better way to spend money than other
25 possible ways to spend money; and that doesn't

1 surprise me a lot. I think you can spend a ton of
2 money for professional survey; and you would find
3 the same thing. The question is how much weight we
4 want to give to people in Staff Programs who think
5 Staff programs do a good job.
6 MR. DAUGHERTY: I think Mr. Houseman
7 will have an opportunity to highlight what he
8 thought was an important document for you. I think
9 that at least in terms of measuring people's
10 attitudes, which is part of the question you asked
11 about in terms of what the fact of mandatory versus
12 or oratory (ph.) regulations. It does talk
13 about People's attitude at a particular period of
14 time.
15 I do recall that it was the feeling of
16 John Oranga (ph) to who advised the ABA on this,
17 that possibly this time of year did have an affect
18 because it came to the end of the year when people
19 were feeling some difficulty in expending the
20 funds.
21 CHAIRMAN WALLACE: Thank you, Mr.
22 Secretary. We appreciate it.
23 Our next witnesss are from the Office of
24 Field Services. Ms. Paquette, are you going to to
25 testify together?

1 Ms. Paquette, let me thank you. I know
2 you have done a lot of hard work putting these
3 numbers together since the last meeting and to take
4 into account the objections made at the last
5 meeting. It's a big effort and I appreciate what
6 you put in. If you can tell us briefly what you
7 found, we would appreciate it.
8 MS. PAQUETTE: I think I would first
9 like to talk about the process that we went through
10 to verify the data that was presented in the
11 preliminary report at the last Board meeting. It
12 was mentioned that the report was distributed to
13 all of the Regional officers in all Field programs
14 and LSE. And PAC, to my knowledge proposes to get
15 in touch with LSE to report any discrepancies.
16 I received two phone calls and two
17 letters bringing to my attention discrepancies
18 which were corrected. And on our own behalf we
19 went through 50 percent of all of the data
20 prepared, plus all of the programs 12.5. Every one
21 employed over 60 percent of PAI expenditure was
22 rechecked, and to my knowledge that data is as
23 clean and accurate as we can possibly present to
24 you today.
25 Regional offices assisted in the new

1 report at the request of the Board or Committee,
2 that we look at case representations. So it was
3 the standard opinion include some case statistics.
4 And the draft of this report was sent to all
5 Regional officers asking their input for verifying
6 and helping us to spot some descrepancies.
7 Phone calls were made by regional
8 officers programs they weren't certain of.
9 I personally checked as I went through
10 many of the audits and verified some of the CSR
11 statistics and made phone calls to program
12 directors and discussed the audit figures where
13 there was some questions on a particular format
14 that was being conducted by a particular auditor so
15 that every opportunity to recheck this data was
16 exercised.
17 For one working day James Martin from
18 West Virginia Legal Service Plan, who will be on
19 the panel today, was invited to Washington, along
20 with Marty McDermott (ph) from the Virginia
21 Regional Office. And I went through my case
22 statistics and looked at computer data, talked
23 about how to compile these charts and received
24 input from areas that needed to be adjusted.
25 So with that in mind I'd like to take you to page

1 39 in your Board book, and that is a report similar
2 to the one that you saw at the last meeting. The
3 columns A, through I are the same columns and just
4 give you an idea of how accurate that report was
5 the last time although an individual program basis
6 you heard from a couple of programs, particularly
7 those reporting very low. The column FPAI Percentage
8 of Expenditures showed that average was 13.1 percent
9 on the National -- or on the groups being reported on.
10 With all of the adjustments that took place that
11 figure is now 13.0. So it's actually one-tenth of
12 one percent has affected the entire figure after all
13 of the adjustments were made.
14 But you're familiar with columns A
15 through I which we discussed at the last Committee
16 meeting. J through P are new categories, and I
17 have added foot notes to the statistical reports
18 explaining how each column is represented in this
19 report the figures and information that was used to
20 compile that data. So if there are any questions
21 about a particular column I think you will find
22 foot noted address these pretty carefully.
23 The report, in ascending order, column F
24 on page 39 shows that there still is 20.8 percent
25 of the program not at the 12.5 level of compliance.

1 So we still have that number of programs even with
2 the adjusted figures. And to my knowledge those
3 figures are accurate, and we can get them from the
4 audits.
5 I have included, beginning on page 33,
6 the same report for that is broken out by regions.
7 And that's for the persons who want to look at the
8 particular program. It's easier to find a
9 particular program by looking through regions. So
10 it's the same data. So instead of being in
11 ascending order it's broken out by region; and you
12 can look up any particular program.
13 CHAIRMAN WALLACE: Let me mention
14 something while you are there. And I know your
15 problem has been to compile the numbers and not
16 explain them. The thing that leaps out at me is
17 that region two is way under budget and most of the
18 other regions are at or above. I they are slightly
19 above 12.5, and I don't know why, although they are
20 certainly programmed within each region. But as a
21 group Region 2 is way under budget and there may be
22 some explanation. I ask if somebody knows and you
23 can tell me if you get a chance to talk.
24 MS. PAQUETTE: Region 2 has several
25 programs lower 2.8 or 4.7. That affects, they are

1 overall average because there's not a lot of
2 programs being reported in that group.
3 I would like to turn to page 49. We
4 have prepared some graphs which I think give a
5 better overall picture of what the PAI activity has
6 been by programs instead of looking at each program
7 individually and saying this should be adjusted by
8 $2.00 or in one way or the other this represents a
9 picture of the whole group.
10 On page 49, Appendix A, PAI expenses for
11 1984. The shaded area represents, as you see on
12 the bottom of the page the percentage of the
13 programs at 12.5 or above. So there's 79.4 percent
14 of the programs in programs that actually met their
15 PAI expenditure. The lighter area to the left is
16 those programs that did not meet their PAI
17 expenditures; and that represents 20.8 percent of
18 the programs in the group.
19 The next page, Page 50 which is
20 Appendix B. This chart was prepared specifically
21 at the request of Committee members wanting to know
22 of the programs that had met their 12.5 percent
23 compliance. What percentage of their caseloads
24 actually representing PAI cases. The Committee was
25 talking about a figure in its regulations language

1 of 20 percent and no one was able to say where that
2 20 percent was coming from.
3 CHAIRMAN WALLACE: I said where it was
4 coming from. I made it up. MS. PAQUETTE: Because
5 this graph shows that only of the compliance
6 programs, and there are 143 of those programs, the
7 average is 11 percent of the total caseloads
8 represents PAI cases. And if you look at the graph
9 a a little closer, for example 80 percent of the
10 programs have their PAI total caseloads ranging
11 betwee from 17 and 5 percent so that that's between
12 17 and 5 is for 80 percent of the programs so that
13 8 percent would be under that figure, and that was
14 the adjusgment so the Board can have a comparison
15 when making the decision.
16 MR. SMEGAL: Page 51?
17 MS. PAQUETTE: That's where I am.
18 CHAIRMAN WALLACE: All right.
19 MS. PAQUETTE: On Page 51 is the PAI
20 cost per case, and the non PAI cost for case. And
21 the charts I prepared are represented here in the
22 dollars per case versus PAI costs per case and the
23 number of programs. So the graph shows they range
24 right across the entire graph for cost per case for
25 PAI right up to just under $9,000.

1 CHAIRMAN WALLACE: These are all
2 Compliance Programs?
3 MS. PAQUETTE: The only chart that is on
4 compliance is Appendix B. That was specifically
5 prepared in that manner. All of the others in the
6 entire grouping we are looking at. So that the PAI
7 cost per case ranges across this entire graph with
8 the highest bar being between $100 and $200 range.
9 The non PAI cost per case which is what
10 we would refer to as the staff attorney model has a
11 different grouping. The PAI models will vary. So
12 there are all kinds of PAI plans being implemented
13 where the staff attorney model is more uniform so
14 it isn't surprising to see that that graph doesn't
15 go across to entire chart, but is focused more in
16 the $200 to $400 range, and that's where the staff
17 attorney model is represented for non PAI cases.
18 And if you have any questions that's
19 probably all that I would need to say about that
20 particular data. And it's the first time we have
21 now had statistics thats allowed us to look at the
22 audit, actual expenditures and compare it with the
23 CSR data and come up with cost per case.
24 In the footnotes I do talk about the
25 variables in the CSR data, and the variables in the

1 different plans and I do address that through
2 footnotes showing we do acknowledge the differences
3 in those plans. But based on the information that
4 we have available the CSR statistics and the 1984
5 order, that is pretty clean data for the Board to
6 look at, and pretty representative of what the
7 National picture of that group is.
8 CHAIRMAN WALLACE: I appreciate that.
9 Mr. Smegal we are on Page 51A. Do you have it?
10 MR. SMEGAL: These parts represent -- it
11 looks like to me 75 programs whose PAI cost per
12 case is 500 more and the lower was about 25.
13 MS. PAQUETTE: You're talking the upper
14 graph?
15 MR. SMEGAL: You referred to $200 and
16 $400. I'm looking at the bars above $400 in the
17 charts and trying to clarify how many programs
18 you're talking about. It looks like 75 total charts
19 beyond $400. Am I correct in assuming there are
20 about 75 programs that have a PAI cost above the
21 $400?
22 MR. PAQUETTE: You're probably about
23 right. That is correct. The figures on the left
24 are the numbers so that look like it's probably ly
25 about right, yes.

1 CHAIRMAN WALLACE: Any other questions
2 of this witness?
3 MRS. BERNSTEIN: I just want to clarify
4 something. I can't remember. I think I remember
5 from the last time we were addressing this issue
6 you that you said there were certain capital
7 expenditures that were allowed under PAI, and those
8 would be showing up maybe for the first time
9 during this period or not. I can't remember. I
10 remember something you were doing with footnotes
11 regarding what was--
12 MS. PAQUETTE: There was some question
13 about expenditures, purchases of equipment. That
14 is addressed separately in the audit. And for
15 purposes of meeting the PAI expenditure we counted
16 equipment purchases in the proportion that they
17 would have applied to the PAI expenses.
18 So capital expenses, purchase of
19 equipment were included in PAI expenses. And
20 likewise when we did the non PAI we also put
21 capital expenditures into that category. So we
22 were comparing them to apples and apples to the
23 extent we were able to.
24 CHAIRMAN WALLACE: Thank you ma'am. We
25 may have another witness tell us how to interpret

1 this data; but we are all working off the same
2 score card now, and I appreciate your hard work.
3 Mr. Keith Osterhage form the Program
4 Development and Substantive Support Unit.
5 MR. OSTERHAGE: I pick up with the
6 analysis that Pat Paquette worked on. We worked
7 from the same basic data for those 180 programs
8 clarifying some of the CSR and reporting an audit
9 information. And our staff tried to produce some
10 analysis from a slightly different perspective for
11 your consideration today.
12 We want to state at the outset that
13 staff who worked on this second report that was
14 submitted to you, we feel that productivity which
15 relates the -- in our report analyzed separately
16 are probably too simplistic for making any final
17 determination on any programs. And we don't mean
18 to have them reviewed in that respect.
19 However, we feel that the great extremes
20 between the highest and lowest ranges of these
21 programs and the continuous range they are in
22 indicates there are utilization questions that
23 should be addressed today. That's one of the
24 purposes of our on-going monitoring of PAI to know
25 what is being done and what is being done

1 successfully.
2 As such we undertook an analysis to
3 provide a series of rank order tables where we
4 attempted to rank order these programs. Tables 1
5 and 2 are similarly related. The indices were
6 slightly different. However, they are identical
7 rankings because statistically they're the same.
8 Table 1 ranks orders on costs for PAI
9 case basis based on the CSR.
10 Table 2 converts that into a
11 productivity index in terms of PAI cases for
12 $10,000 unit and expenditure.
13 I have to point out in the Board Book,
14 Table 2, the cases are misaligned.
15 The third table, finally is a
16 productivity index we constructed. We want to
17 repeat this is only one definition of productivity.
18 It is not the definition. It's one way of
19 examining the information whereby we attempted to
20 examine the percent of funds expended versus the
21 percent of cases produced. And this was on the
22 initial premise that we discussed in previous Board
23 meetings where we had looked at PAI data in an
24 aggregate sense and we have seen a learning curve,
25 or a participation where subsequent quarters.

1 Finally, I think the final quarter of 1984 we saw
2 for this quarter a condescending expenditure
3 requirement. The programs producing in an
4 aggregate sense 12 1/2 to 13 percent of the cases.
5 That to the index in Table 3 whereby,
6 for example a program spending 12 1/2 percent of
7 its money producing 12 1/2 percent of its cases.
8 Under the existing case reporting system you get a
9 score of zero. Zero not being bad. A positive
10 number indicated you were generating a larger
11 number of cases than you were expending on funds. I
12 want to return to Table 3 later in the discussion.
13 Tables 1 and 2 provides very elementary
14 correlation average PAI case and average costs for
15 each program. I would like you to note that
16 particularly on Table 2 the number of PAI cases for
17 $10,000 in PAI expenditures.
18 The productivity scores range from a
19 high score of 521.7 PAI cases for $10,000
20 expenditures to allow a score of zero, zero PAI
21 cases for $10,000 expenditure.
22 Even when you exclude the highest five
23 percent and lowest five percent of rankings,
24 because we feel that within a series of rankings
25 even a normal rank of distribution in those cases

1 on the end may tend to be skewed (ph) and there may
2 be some strange explanation. Even when you exclude
3 the upper and lower costs, they tend to range from
4 $147,000 PAI to 5.2 PAI cases PAI funding.
5 This range is continuous from highest to
6 lowest being no difference between the score of the
7 adjacent ranked programs. I think this is very
8 important because it's a program spread out across
9 a very wide range. They're not clustered very
10 closely around some common denominator or common
11 problem. It makes a very interesting question of
12 law. Is there a disparity? It may not be bad, but
13 it begs the question.
14 Once in a while we want to find out why
15 some programs can be much more productive along
16 this line in our definition of productivity.
17 I would also like to point out that
18 staff has noted in its previous discussion the
19 difference in case closure may account for some
20 difference in the number handled. We have to
21 explain that some may be in the data or may be
22 headed divorce cases which are common to our
23 discussion.
24 The most common cases are among those
25 handled by both staff attorneys and they vary from

1 simple uncontested dissolutions to complex
2 contested cases involving domestic violence, and
3 child custody. But their not disaggregate
4 according to complexity, and this has been a
5 continuing problem as we have been relying on the
6 our only basis, auditing in the cases services
7 report. And we also feel that -- also agree that
8 advice closures may be more complex than realized
9 and therefore, you may have some artificial
10 distinctions here.
11 In its review of this material staff
12 once again, with the construction of the CSR are
13 system has suggested that some sort of recognition
14 of above level complexity would be useful when
15 staff or other parties are attempting to do this
16 type of analysis. As such items such as time data
17 would allow more direct and accurate methods of
18 case complexity as time and resources allocate it.
19 One of the other things that we want to
20 take notice here. Even though once again these are
21 simple rank orders, we want to stress that we feel
22 we should investigate why a Legal Services Program
23 could average $2,000 of expenditures for each of
24 it's PAI cases, a figure four times the average for
25 the full cost of the program.

1 While such an expense may indeed be
2 justified such an expense is so much greater, so
3 much to one end of the range, the efforts of all
4 programs should certainly be reviewed.
5 Differences in program demographics may
6 in fact, contribute to cause, some of those. There
7 may be another bias here in terms of demographics
8 and program size and location with differences
9 being urban renewal and difference in strategy.
10 However, we went on to investigate the
11 programs which are in Mississippi. They are listed
12 on page 57. We have listed the range order out of
13 180 for the programs that we based on Table 2,
14 productivity scores based on number of cases for
15 $10,000 employment.
16 Of these 6 programs only Central
17 Mississippi -- it encompasses a large area,
18 Jackson. Thus there is an approximate equivalent
19 between the other five programs and they are all
20 pursuant to civil law and procedures which would
21 apply to those programs. Yet significant
22 differences still exist.
23 Once again these types of differentials
24 beg the question. What accounts for differences in
25 performance and productivity.

1 We would also like to note that the
2 limitation of the current data base itself could
3 prevent the necessary refining of analytical
4 techniques.
5 There was obvious concern about the
6 relevant bias and unfair bias and lack of
7 objectivity in this case closure analysis. Such
8 refined analytical techniques should be able to
9 differentiate between cases of differing complexity
10 and research requirements in order to fully and
11 fairly project the cost efficiency of the program
12 activities. That's something we were unable to do.
13 We have not done to date.
14 CHAIRMAN WALLACE: Let me ask you
15 something about data collection.
16 Are you saying you need time data on the
17 cases? I think that's to figure out how much time
18 lawyers put into it. Are we getting any reports
19 from the existing regulations? I think that we
20 have asked, we have asked people who want to charge
21 their personal time to PAI and keep time sheets.
22 Now I guess that's not part of the CSR process.
23 Maybe it part of the audit process. Are any of
24 these time sheets in?
25 MR. OSTERHAGE: It was not addressed by

1 this analysis, and it's not done in a uniform
2 fashion and not across the board for all cases. I
3 would like to stress we put that out on the table
4 for discussion in terms of one way of resolving
5 this issue. There may be other solutions in
6 addition or in lieu of that. We just offered that
7 for consideration.
8 CHAIRMAN WALLACE: Let me ask you about
9 that, because we may be voting here later on to get
10 get rid of time sheets for nonprofessional
11 personnel. Would there be a way to unify the time
12 sheet data with the CSR reports so that we are
13 getting the same kind of time data from everybody,
14 at least on PAI.
15 MR. OSTERHAGE: I think there's every
16 possibility, but it would have to be divided. The
17 uniform system is workable and that would impact on
18 it.
19 CHAIRMAN WALLACE: Okay. As I
20 understand what we are doing now the audit people
21 are better able to address this, but we tell them
22 if you want to count your personal time for PAI you
23 give us time sheets and we don't tell them how to
24 put those together, just do it in such a fashion
25 that you can reasonably substantiate what you're

1 doing.
2 MR. OSTERHAGE: Some months ago they did
3 provide us a copy of the program audit done.
4 CHAIRMAN WALLACE: I know.
5 MR. OSTERHAGE: We did provide to the
6 Board a copy of an example of one program's attempt
7 to link case production or case activity with cost
8 centers and case by case, and this was like the
9 audit function and we think the Corporation should
10 be -- maybe submission of direct tabulated data for
11 case production. To the extent tha's already been
12 done by some programs out there we think we ought
13 to look at some of these and see what the situation
14 is.
15 CHAIRMAN WALLACE: I wish you would.
16 MR. OSTERHAGE: If I can continue on the
17 final table, table three, which is the one
18 efficiency index we developed. There's one other
19 point other than the wide range of variability in
20 our analysis that may have to be pointed out to
21 you; and that is when we look at the productivity
22 and get zeros for the efficiency is a positive
23 number, meaning an efficiency of or greater by our
24 definition, I think it's very interesting to note
25 that of the 180 programs in sole rank order, 48 of

1 them, or 27 percent had productivity scores in
2 Table 3 indicating these efficiencies.
3 However, of these 48, 13 of them, or 27
4 percent in fact did not meet the 12 1/2 percent PAI
5 expenditure.
6 We think that under this semetric the
7 expenditure requirements alone possibly did not
8 produce deficiencies. It was very interesting to
9 us to note the number of programs spending possibly
10 8 or 9 percent of the funds were technically not in
11 conformance with the revenues produced, are
12 nonetheless 12 1/2, 13 1/2 or 14 1/2 percent of the
13 cases based on whatever PAI system they have
14 designed. We think the Board should be made aware
15 of that and take that into consideration as they
16 examine how thus regulation should apply.
17 CHAIRMAN WALLACE: That means they are
18 less productive with the rest of their money,
19 doesn't it? As I understand it if your case
20 closure percentages and your expenditures
21 percentages are the same you get a zero result and
22 somebody who is very productive with their PAI
23 money to get to the top of this list is relatively
24 unproductive with their non PAI money.
25 MR. OSTERHAGE: That's correct. I'm not

1 offering an explanation of what I have said. I'm
2 merely pointing out we have identified those
3 programs, and it might call for further review to
4 find out what the situation is and what the
5 explanation would be.
6 We also provided under separate cover
7 directly to the Board rankings which you requested
8 from Part 2 and 3 where we broke out programatic
9 rankings for each closure code, and there's data
10 for your review. I would be happy to answer
11 questions. I think that some of the information
12 provided by PAI in the basic analysis presented
13 here should provide you with a direction how these
14 things are coming out.
15 CHAIRMAN WALLACE: Okay. I thank you,
16 sir.
17 Are there any questions to this witness
18 from members of this Committee or members of the
19 Board of the PAI?
20 MR. SMEGAL: Raw data includes
21 equivalent activities.
22 MR. OSTERHAGE: That's a possibility,
23 and I would surmise that's probably the explanation
24 in most of those programs.
25 CHAIRMAN WALLACE: Anything further?

1 MR. SMEGAL: The staff program where they have to
2 pay the rent it costs probably much lower.
3 MR. OSTERHAGE: Yes.
4 CHAIRMAN WALLACE: Any further
5 questions?
6 As I understand it Part 2 is basically
7 raw data which we had asked to be compiled; and we
8 were interested in what sort of cases were being
9 closed under PAI by program and it all here. But
10 as I understand you haven't got any conclusions you
11 want to direct us to.
12 MR. OSTERHAGE: Those are the data
13 attachments by rank order to each case, parts 2 and
14 3. We feel that's the 3 short rank order tables
15 provide -- for example for Mississippi the analysis
16 is what we have been able to develop.
17 CHAIRMAN WALLACE: But if you want to
18 know how any program in the country is doing on
19 education cases, PAI, employment, you can find it?
20 MR. OSTERHAGE: You want more
21 sophisticated analysis to see how the rank orders
22 are consistant for a particular program. That
23 would be the next step, but whether it would be
24 medial I'm not certain. But we are prepared to go
25 forward if you want that.

1 MR. SMEGAL: And you did not carry
2 forward from the broad data all of the programs; is
3 that not correct?
4 MR. OSTERHAGE: In Tables 1, 2 and 3 for
5 the programs we had the audit data.
6 MR. SMEGAL: But there are programs in
7 your back-up data.
8 MR. OSTERHAGE: Those are for all
9 programs. The back-up data is for all.
10 MR. SMEGAL: How did you distinguish as
11 to who you were going to put in?
12 MR. OSTERHAGE: In the 180 programs we
13 are soliciting programs where we had completed
14 audit reports for that period. That was the
15 initial information that Pat gave you and the
16 discrepancies that were brought to our attention.
17 But for the remaining programs we did not have
18 complete audit data.
19 CHAIRMAN WALLACE: We have 180 which we
20 have --
21 MR. OSTERHAGE: (Interposing) We have at
22 least --
23 UNIDENTIFIED SPEAKER: (Interposing)
24 There are 273 basic needs programs. So you have
25 got two-thirds.

1 CHAIRMAN WALLACE: Those are all in part
2 2 and part 3?
3 MR. OSTERHAGE: Correct. The programs
4 were not specifically exclused from for some sort
5 of base, known or unknown. It was simply that we
6 did not have complete audit information.
7 MR. SMEGAL: Isn't there another group
8 excluded? Am I not correct in noting that you
9 excluded all of the poor PAI programs. I see my
10 Bar Association, and I am sure what you said is
11 correct they are in conformance.
12 MR. OSTERHAGE: I think Pat can speak --
13 MS. PAQUETTE: The pro bono programs
14 have had audits due December 31, 1984 were excluded
15 because their percentages were high, and we were
16 working to get averages on basically, he attorney
17 models to say what their statistics look like for
18 PAI. And if we have included those others it would
19 have destroyed our picture. So they were excised
20 for that reason.
21 CHAIRMAN WALLACE: Those programs are
22 all PAI. Not 100 percent?
23 MS. PAQUETTE: Exactly.
24 CHAIRMAN WALLACE: And these are the
25 programs we are worried about here for regulatory

1 purposes, one's that have some staff components and
2 come under our PAI requirements.
3 MS. PAQUETTE: A major portion is staff
4 components, yes. Does that clarify it?
5 MR. SMEGAL: I have some more questions.
6 First I want to note that my Bar Association is at
7 least 100 percent and in one instance about 66.67
8 percent. And I want to talk about that because I
9 don't know whether this is the most meaningless
10 statistic I have seen, but in education 1984
11 programs they have 26 PAI and a negative 23 staff.
12 How can you have negative cases?
13 MR. OSTERHAGE: Based on the data
14 reported to us we had descrepancies in the report
15 in the cases from the program in which the numbers
16 are pointed out to establish PAI versus non PAI.
17 They're extracted into raw numbers. We had this
18 problem.
19 MS. PAQUETTE: I didn't work on these
20 statistics, but in the reports we went through, and
21 in my footnotes I addressed, there's probably 28
22 programs in that particular grouping. The
23 instruction says when they present CSR data to LSE
24 they include the PAI. And then I also submit a PAI
25 submission which has just the PAI statistics, but

1 also part of the other report in some instances
2 programs do not include the PAI pictured in the
3 basic field reports. So what happens then is you
4 can get a negative figure which is what happened in
5 the program development staff provided. We went
6 through and adjusted 28 of those statistics because
7 we recognized that's what the Programs had done.
8 The instruction is a little confusing
9 beause they turn in the reports, and they are not
10 to include those in the basic report because they
11 turn in a separate PAI report. And so I think
12 sometimes staff get confused in the field when
13 they're preparing this because it's two complete
14 different sets of instructions and we found 28
15 instances.
16 MR. OSTERHAGE: That was in 180. We
17 make sure the information is complete and Pat
18 wanted to go through and line chart data and make
19 sure it was accurate. We did not have time to go
20 through for the balance and make notes.
21 MR. SMEGAL: It seems we want to get
22 instructions clear so we don't have ambiguities in
23 there. Clearly 886 percent is -- and 2 thousand
24 percent is not worth the paper it's written on.
25 Some how we have got to have everybody playing to

1 the same -- or understanding what it is.
2 MR. OSTERHAGE: The decision that the
3 CSR - seems in need of some improvement. As the
4 field gets and reports information, if we are going
5 to do analysis like this --
6 CHAIRMAN WALLACE: Let me make sure I
7 understand. For instance some of the $100 programs
8 in the data, it may not be that we have no audit on
9 those people, but we have audits that report
10 descrepancies to the extent we can't use them.
11 They don't make any sense to us.
12 MR. OSTERHAGE: Maybe I didn't
13 understand that. I'm not going to represent --
14 CHAIRMAN WALLACE: Let me --
15 MS. PAQUETTE: The auditor said I
16 checked the records of this program. They have met
17 the 12.5 percent compliance, and I'm satisfied they
18 are in compliance, period. No dollars, no
19 breakdown, anything. And one interpretation of
20 reading presently which would allow that to happen.
21 So those audits we did not use there was no
22 information we could extropolate from that.
23 MR. DAUGHERTY: It would be in error
24 that were there 100 programs that failed to submit
25 audits.

1 CHAIRMAN WALLACE: That's what I'm
2 trying clear up.
3 Let's get Mr. Nusbaum. He's next anyway.
4 MR. NUSBAUM: Dan Nusbaum, Director --
5 The requirements for programs did not begin until
6 January 1, 1984 for the reason for reporting the
7 183 or whatever the number is. These are programs
8 with calendar year ends and would be the first time
9 we are required to report PAI expenditures.
10 The reason the other ones haven't is
11 because they went on other fiscal year ends, either
12 June 30, September 30, and we anticipate their
13 audits will come this year for the first time with
14 PAI expenditures. So that's the reason. It's not
15 that they didn't provide them, it's because they
16 weren't required to.
17 CHAIRMAN WALLACE: And these were the
18 ones required to get it to us for the year ending
19 December 31, 1984, and this is what we are working
20 with here basically?
21 MR. NUSBAUM: Right.
22 MS. PAQUETTE: So we also have the other
23 date.
24 CHAIRMAN WALLACE: All right. Now that
25 Mr. Nusbaum is here, fine. But before everybody

1 else leaves do we have any further questions of
2 these witnesses?
3 All right. Thank you. You all hang
4 around. We may need you some more.
5 Mr. Nusbaum since you have been
6 introduced already I will ask you to proceed.
7 MR. NUSBAUM: Prior to giving you my
8 report I want to answer a question you raised
9 earlier regarding Region II, and I think if we look
10 at Region II on page 33 of the Committee Book you
11 will find this Region is basically dominated by two
12 major programs in New York and Puerto Rico, $22 --
13 $26 million for that region are concentrated in
14 those programs and is vastly under spent by almost
15 12 percent; and Puerto Rico was at least five
16 percent underneath. And I think those two alone
17 just bumped that whole region down. Taking the
18 other ones into consideration my percentage would
19 be higher.
20 MR. SMEGAL: All I can say is there some
21 explanation why?
22 MR. NUSBAUM: My feelings with PAI's in
23 New York, and I have talked to them about their PAI
24 last year and they profess to have a real
25 difficulty because of the amount of work that's

1 being done in New York already, The Legal Aid
2 Society, and they say they have a hard time
3 expending the funds. I haven't done any research
4 with that but that's what they profess to be the
5 problem.
6 In Puerto Rico I have no idea why they
7 would have --
8 CHAIRMAN WALLACE: (Interposing): But
9 those two programs together are what, two-thirds of
10 the money in that region, I guess.
11 MR. NUSBAUM: Right. The two biggest
12 programs in the country.
13 CHAIRMAN WALLACE: Thank you.
14 MR. NUSBAUM: My report -- at the last
15 Committee meeting I reported on changes I had made
16 to section 15.3E which modified and clarified the
17 funds associated with this regulation. And during
18 this discussion, Mr. Chairman you raised two issues
19 to which you requested further clarification. The
20 first answer was made on Page 11 line 7 of the
21 staff draft which should be on page 87 of the
22 Committee book.
23 UNIDENTIFIED SPEAKER: It's page 233.
24 CHAIRMAN WALLACE: Page 233. Is the
25 staff number at the top and the sequential number

1 is for the book. At the bottom of page 11 is the
2 staff draft and page 233 of the Committee book.
3 MR. BOVARD: Just one point. The second
4 and third sections are in the Committee books. The
5 books for the public don't include them.
6 Additional materials are available upon request,
7 but we didn't want to these and send them to 700
8 and some --
9 CHAIRMAN WALLACE: Especially since we
10 can't really tell what they mean.
11 MR. DAUGHERTY: Page 77.
12 CHAIRMAN WALLACE: That have --
13 everybody in the public has -- thank you.
14 MR. NUSBAUM: The first question raised
15 last time is non lawyer or non paralegal person
16 could allocate time spent on PAI activities toward
17 the 12 1/2 percent requirements and clearly we
18 intended it PAI would be and should be allocated.
19 So what we did is we added on to the final sentence
20 of the section which now reads this type of the
21 requirement does not apply to some employees as
22 receptionists, secretaries or bookkeepers.
23 However, personnel cost allocations for non
24 attorney or non paralegal staff should be based on
25 other reasonable operating data which is directly

1 documented. Basically the program would have to
2 exact language as a basis for allocating that time
3 other than requiring the detailed keeping of time
4 records.
5 The second -- on page 12 line 5. And
6 this was in response to your concern that we were
7 requiring recipients to establish separate bank
8 accounts from which they must expend the PAI funds.
9 And that was not intended. So we added a sentence
10 which reads as follows: "Recipients are not
11 required to establish separate bank accounts to
12 segregate funds allocated to PAI.
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1 CHAIRMAN WALLACE: That's because I
2 didn't know what separated funds meant. I'm sure
3 auditors are smarter than I am, but I'm glad to
4 have that sentence in there so we know what we are
5 talking about.
6 MR. NUSBAUM: I think we have addressed
7 your concerns at our Committee meeting and since
8 the Committee meeting this came up and I passed
9 this out earlier. It's a memorandum I wrote to Tom
10 Bovard On June 20. And the reason I wrote it is
11 that I had a discussion with Sam Davenport of the
12 Legal Services Corporation of Alabama. This is not
13 in the book.
14 CHAIRMAN WALLACE: I understand. I'm
15 just trying to see where we would plug it into the
16 book. It's on 16 of the staff draft and 38 of our --
17 MR. NUSBAUM: I numbered this prior to
18 knowing there was going to be another.
19 CHAIRMAN WALLACE: It's okay. Five is a
20 good place to put it. If we keep it we'll renumber
21 the other one six.
22 MR. NUSBAUM: But the rationale for this
23 waiver would be as follows. When a program for
24 recipient operated service, a PAI program what
25 they're doing is referring cases to attorneys and

1 paying them for when they complete the case. They
2 should be able to establish the number of cases
3 they would need to refer out in order to meet a
4 specific spending requirement, and you can refer
5 cases basically on an even level throughout the
6 year and anticipate expending that amount of money.
7 The problem arises primarily because the program
8 has no control, however, when the work will be
9 performed by the lawyer, and when the lawyer will
10 bill the program for the work. And because of that
11 you can have cases going out on an even level and
12 fluctuation in the timing of the expenditures and
13 we deal with a short fall. And I think number 4
14 where a program with short fall with encumberence
15 which would help them meet it, we take that in
16 consideration. This does the opposite and
17 considers the programs past performance. And one
18 year they were at 14 percent of the case time. The
19 expenditures, the checks where they come on the
20 11th we'll take that in consideration because of
21 the difference with the program that it just can't
22 control. And I think it just acknowledges that
23 there's, you know, there's variations in the
24 program has a hard time keeping under control. I
25 think it's a valid inspiration for considering the

1 waiver.

2 CHAIRMAN WALLACE: So number 4 in the

3 Board book takes care of the case where all of the

4 checks, go out on January first, and number five on

5 this sheet takes care of the case where all checks

6 go on December 31?

7 MR. NUSBAUM: More or less.

8 CHAIRMAN WALLACE: I understand that

9 extreme statement. The idea is to look at a flow

10 over time and not just take still pictures.

11 MR. NUSBAUM: Right. And another way to

12 look at it you could possibly -- well Sam Davenport

13 proposed providing an offset where one year he

14 spent 14, and the next year we only required him to

15 spend 11. That's another possibility. If the

16 Committee wishes to consider that I think we do the

17 same thing. We can take into consideration the

18 variations without direct offset because we don't

19 want to encourage programs to spend 25 percent one

20 year and zero the next.

21 MR. SMEGAL: You're talking about this

22 separate piece of paper?

23 MR. NUSBAUM: Yes.

24 MR. SMEGAL: I'm sure it would be easier

25 to follow it if it was 6C 5.

1 MR. NUSBAUM: I numbered this based on
2 the last Committee book and it didn't --
3 MR. SMEGAL: So this would replace
4 subsection 5 on page 16?
5 MR. NUSBAUM: No.
6 CHAIRMAN WALLACE: Bounce that down and
7 it becomes 6.
8 MR. NUSBAUM: I wrote this after, not
9 nothing what was coming out in the Committee book,
10 and I don't know the number and sequence.
11 CHAIRMAN WALLACE: But it takes care of
12 the case where you didn't spend enough money this
13 year because you have got lots of cases out there
14 that are going to produce.
15 MR. NUSBAUM: That haven't been filed.
16 CHAIRMAN WALLACE: And five takes care
17 of the days where you billed a lot of cases last
18 year and you want that done because the work got
19 done in a hurry?
20 MR. NUSBAUM: Yes.
21 CHAIRMAN WALLACE: That's the case where --
22 MR. NUSBAUM: I was not responsible for
23 that one.
24 CHAIRMAN WALLACE: That's not an audit
25 problem. The local Board says we closed a bunch of

1 cases, and we can't spend this money sensibly and
2 would you give us a waiver. But that's a different
3 matter. More of a judgment call than a numbers
4 call. Four and 5 deal with numbers.
5 I thank you, Mr. Nusbaum. I appreciate
6 that.
7 Any further matters to report?
8 MR. NUSBAUM: That's all.
9 CHAIRMAN WALLACE: Hang around. Other
10 people may have things to say about your report.
11 Let me ask two representatives from the
12 General Counsel's office -- what I intend to do,
13 with the Committee's indulgence after the panel's
14 discussion is to go section by section of this
15 draft, and since I imagine that's what you want to
16 do I would think the sensible thing is to have the
17 panel discussion now, and we'll get you up here
18 and work through the draft together. Does that
19 basically make sense?
20 MR. BOVARD: Yes.
21 CHAIRMAN WALLACE: Let me have the four
22 members of the panel come before us at this point.
23 We have Mr. Grakso, Mr. LaDale, James Martin (verify)
24 and Jacqueline Mitchell who, I guess, are here. We
25 have got 4 chairs and 2 microphones.

1 At our last Committee meeting we went
2 over these numbers in such great detail. Mr.
3 Houseman suggested to us it might be useful to us
4 to get some practical information on how PAI is
5 working and how it ought to work.
6 I don't know why we listed the witnesses
7 in this order. I guess it's because they're
8 alphabetical and that's a good way. So Mr. Brakal,
9 if you go ahead and give us your views. I think
10 what I'll do is when each of you talks sequentially
11 and then I'll open it up to the committee for
12 questions. Mr. Brakal, if you will be so kind as
13 to proceed.
14 MR. BRAKAL: I appreciate the
15 opportunity. I have prepared a fairly informal
16 paper that I'm going to present pretty much as it
17 is because I think we don't have the time or
18 energy. So I'll just quickly abstract what I have
19 down here and maybe the paper itself, can be
20 entered into the record.
21 CHAIRMAN WALLACE: I think that would be
22 fine. You will give a copy to the Secretary before
23 you leave, Mr. Daugherty will see to it that it
24 gets into our record. Go ahead.
25 MR. BRAKAL: I'm not a person from the

1 field like some of the others. My views on legal
2 services are based essentially on research I did
3 for the American Bar Association Foundation. Some
4 of that work I did quite awhile ago involving 10 or
5 12 years ago. And from this research I developed
6 the view that essentially that in my perspective to
7 get ahold of the program as it correctly works.
8 And my views as the private Bar should not pay a
9 rule role, but the role in legal services for poor
10 persons. in that the staff program is a
11 (inaudible) function at best. From that
12 perspective it's based about 10 or 12 percent. My
13 perception is we ought to go much further than
14 that.
15 In the paper I tried to explain a little
16 bit how I came to this position, going into some
17 detail on the type of research I did in Wisconsin
18 and Michigan and trying to give you the main
19 findings of this research which I think, even
20 though they were conducted 10 or more years ago,
21 are still quite relevant today. These are not the
22 kinds of things that change over night.
23 I found basically three things. First
24 of all that lawyers in these areas are individuals.
25 They're a diverse lot. They have different

1 philosophies, different views about how much
2 support poverty causes are worth. But there's an
3 overriding thing that unifies them and that is that
4 they have a sense of professionlism. If clients
5 came to them with a case, a legally meritorious
6 case they would take it and handle it in their best
7 professional manner. That's one important plus for
8 involving the private Bar.
9 The other one, or the second one is that
10 in my findings it came very clear that the clients
11 much prefer service from local private lawyers. I
12 think this came out stronger than just about
13 anything in my work that clients continually
14 mentioned the fact that they were glad they were
15 able to choose a lawyer who was known to them, a
16 lawyer from their community, a lawyer they may have
17 used themselves in years prior to the Adjudicare
18 program and that friends or relatives of theirs may
19 have used. The appreciation on their part that the
20 foundation for their entire view about what kind of
21 programs made sense for poor people.
22 The third main finding had to do with
23 the cost of the programs. And I found that
24 Wisconsin Adjudicare and Adjudicare programs in
25 other parts of the country were imminently

1 efficient. I guess probably the thing that makes
2 them efficient is that many of the costs you have
3 to pay for separately in a staff attorney are
4 absorbed in the Adjudicare type program. All of
5 the equipment, overhead, secretary, paralegal,
6 space; all of these kinds of things are absorbed by
7 the private law offices. So the Adjudicare type
8 program winds up paying relatively modest fees to
9 lawyers on a per case basis. And this comes out
10 easily and efficiently in the staff attorney
11 program where you have to pay for all of the
12 overhead even though the actual salaries of the
13 staff attorneys may be not fully competitive.
14 Then my next point is to try to say that
15 even though my work had taken place primarily in
16 rural areas. There is much relevance to these
17 things for urban areas as well as suburban areas as
18 well. I don't think the situation for urban areas
19 is all that different. And low income clients in
20 urban areas are that different from low income
21 clients in rural areas. The lawyers in the city,
22 they're not all Wall Street type lawyers. Many of
23 them are community type lawyers, neighborhood
24 lawyers who do general practice work, divorces,
25 consumer law.

1 So you have the same -- you can develop
2 the same lomd of relationship between clients and
3 lawyers in urban area as you can in rural areas.
4 Another point is that in many of the
5 urban neighborhoods there are community lawyers,
6 and a lot of them are minority type lawyers; Black
7 lawyers, Hispanic lawyers who have long resented,
8 and in my opinion, rightfully so that business was
9 being funneled away from them by the outsider
10 program.
11 While I feel that Legal Services Program
12 should never become a welfare program for lawyers,
13 at the same time I see nothing wrong with keeping
14 that kind of business and enabling private lawyers
15 in the community to provide the services for
16 compensation.
17 And I tried to go into the larger issues
18 a little bit and what it is that makes private Bar
19 involvement important from a philosophical and
20 political point of view. First, I think low income
21 clients want equality of treatment. That's the
22 basic thing they want. They would like to be able
23 to use the goods and services anybody else uses.
24 To the extent that the the Government becomes
25 involved in providing for the poor they ought to

1 put poor people on an equal level where they can
2 buy with the subsidy the kind of service that
3 everybody else use.
4 It came to my attention only recently
5 that this involvement of the private sector goes
6 across the board in Government. There's no
7 directive that instructs Government agencies to
8 contract work out to the private sector. And if
9 they feel this kind of work should be done in-house
10 by Government type servants then they ought to
11 provide specific economic justification for doing
12 that. I have never seen this kind of justification
13 made in the legal services area. It has always
14 been a mystery to me why the burden of proof has
15 been put on the other side, why we have been put in
16 the position of having to justify the private
17 sector involvement in legal services as opposed to
18 that being the natural order of things and in
19 involvement of specialists or special Government
20 lawyers. the burden should be on them to prove
21 that.
22 Again going a little bit into the
23 history of the OEO and the Corporation's stance
24 towards private Bar involvement.
25 It's quite clear that from the early

1 days that the Legal Services program has been
2 antagonistic towards the involvement of the private
3 Bar whether for moral or philosophical reasons. It
4 has great support from the American Bar
5 Association. It wasn't until I guess the later
6 years of the Nixon administration that the first
7 rumblings began. But with the coming of the
8 establishment of the Corporation and the initiation
9 of the delivery system study, both critics and
10 supporters backed of for a while and decided they
11 would wait and see what the results would be of the
12 study. And it wasn't until 1980, the election
13 year, at the general practices session of the ABA
14 the grassroots section of the American Bar
15 Association pushed through the resolutions in its
16 annual meeting that called for substantial
17 involvement by the Bar as Legal Services put forth.
18 This resolution was a plus, very strongly plagued
19 by the old guard in the ABA, but eventually they
20 compromised and decided they would go with
21 substantial involvement language because they were
22 afraid what they felt were more dire alternatives
23 which were mandatory -- up to 50 or 55 percent.
24 They were amended at that point. So from their
25 points of view, the 10 or 12 -- concession -- On

1 the other hand the other -- those of the ABA
2 General Practices section who pushed for this
3 change meant a substantial involvement to be
4 precisely that. It meant substantial complicated
5 involvement.
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I received a letter just recently from Mr. Charmus of Salt Lake City, who is one of the main proponents of this substantial involvement language, and he writes me that the ten percent debate, twelve percent debate, in his opinion is over nothing. In his view, the substantial involvement is just that, substantial involvement, forty, fifty, seventy-five percent, and compensated involvement.

In the last part of his paper I deal very quickly with the way the debate has now turned into an argument over pro bono versus compensated, and the ten percent, and twelve percent, and I try to point out that the original staff attorney proponents now are making three basic points along the following lines. One is that private participation, if it's to occur, should be pro bono participation. Now, the problem with that is it's not what the original resolution in the Congress or the ABA contemplated, they were talking about contemplated participation.

The second argument is that the compensating of private lawyers reduces the pro bono efforts. There is probably some grain of truth in this proposition, but I think it's grossly overstated by the kind of

1 people who have an interest in overstating, that we
2 talked about awhile back. It's obviously an unbiased
3 kind of finding. I'm glad to see the corporation is
4 developing some information to some extent which rebuts
5 this kind of finding, but at the same time as long as
6 you're talking to staff program directors, you will
7 always have resistance to any proposition that may make
8 your expenditures go to the competitors.
9 The last line of defense, as it were,
10 for the staff attorney proponents, is that perhaps ten
11 percent was okay, with twelve and a half percent for
12 disaster, that is to me an absurd argument. I don't see
13 its need to be answered, except there are some documents
14 floating around that take the position very seriously,
15 and very vehemently. I think there is a piece by Ken
16 Smith that has gotten wide attention in the corporation,
17 and he makes the following points about the ten percent
18 guidelines. It concluded that the quality of service is
19 good, and the quality is not the only issue as a result
20 of the ten percent. Two, that modest gains in cost
21 effectiveness have been achieved nationally, and three,
22 there's been important tangible benefits, and four, the
23 likelihood of further gain is high. So that is a very
24 positive assessment. Two pages later the document gives
25

speculation about what would happen in the twelve and a half percent rule, and those completely opposite. It says "further program reduction in the number of clients, reduction in cost effectivess, further deterioration in quality served." That kind of information is not relevant. I would just make the two final points. I am glad to see the corporation developing information that can be used to get to the heart of what sort of services are being provided, that can sort of rebut some of these presumptions. At the same time I think we shouldn't forget to use common sense. We can manipulate numbers indefinitely, and at some point you just have to know that the idea that the services delivered by private bar, pro bono, for reduced fee increases program efficiency, is just not credible. Also the notion that service quality would suffer when you involve a regular practitioner seems to mock the legal services we have in this country, and finally, the prospect that private bar involvement may result in some disruption into staff attorney expectations, to me that's just tough. They're not constituents of the corporation, the clients are.

I think it's time -- high time for the corporation to make a bold move to privatizing the Legal Services Program. I think the political will, and pro-

fessional experience are here, now. Three hundred million dollars are not going to solve the problems of the poverty in the country. It may not be enough to assure the resolution of a very legitimate legal need presented by poor clients. But with a modest and rational and equitable program, I think you can come a long way.

MR. WALLACE: We appreciate it, Mr. Brakel.

MR. SMEGAL: I would like a little bit of background. In 1974 I assume you were with the American Bar Association?

MR. BRAKEL: Right.

MR. SMEGAL: In 1974 you did a paper? Did you do a follow-up paper?

MR. BRAKEL: No, I've done some smaller works, some in West Virginia.

MR. SMEGAL: Has it been published?

MR. BRAKEL: Yes. I published other articles in the ABA Journal. They're not based on the present research. They're sort of expansions of my views based on the initial work I did in Wisconsin, and then a little bit I did in West Virginia.

MR. WALLACE: Mr. Daugherty, are they

in the back of the bibliography?

MR. DAUGHERTY: They should be, I will look.

MR. WALLACE: You've been with us before, I don't know if you've been before this committee, I know you've been with some Board since we've been on it, formerly with the volunteer lawyers project in Boston and currently out in New Mexico; welcome to the north.

ESTHER LARDENT: Thank you. Since I have talked to some of the members, I would like to go ahead with Mr. Martin and I will follow up with some of the issues.

MR. WALLACE: All right. Mr. Martin, you're the director of the West Virginia Legal Services Plan. Go on ahead.

JAMES MARTIN: Well, I could be real, real short and say that our program is great and that I have some problems with the proposed regulations. I do have some things to say with regard to our program that I think that are important background in making the comments that I have to make. Our program was set up in 1973, and in very different ways what was described earlier today how programs are set up, we were set up

with the cooperation of the West Virginia State Bar, and the bar association, and we were set up to be a program utilized by both private bar involvement at a significant level, and with staff cases, and we were set up with cooperation from not just the bar, but the other programs as well. We were funded by the Legal Services at that time, not as part of the delivery system study or any special program, but as a regular field program.

Between the initiation of the program, in 1978, we offered in our Adjudicare program in various levels of sixty to forty percent of the cases and clients that the program saw. We reorganized in 1978 for a variety of reasons that had to do with how we did intake and control finances of the program, and the effectiveness of the services we were delivering. In 1979 when John visited our program and reviewed it, we were operating at a level of about ten percent, Adjudicare, and the remainder of the program was staff. We are now, and have been since 1980, operating at a level of twenty percent, and at twenty percent you can count the statistics any way you want, but twenty percent of our clients, twenty percent of our funds paid out directly to the private attorney, and twenty percent of the cases were reported to the CSR system, close to something like thirty percent

if we tried to count all the overhead that goes into the Adjudicare program, but we don't report that, we don't have to. And what that translates to into current funding for the Legal Services program, we have about a million point four in our basic field grant, we're talking in 1985 about spending around $275,000 in due payments on cases under our Adjudicare system. The balance of the money goes to support the staff and the overhead for the Adjudicare system. For us it's all an integrated system, we don't have separate people with Adjudicare responsibilities. Everybody in the program does a little bit of everything. We also have a small pro bono component that handled last year a couple hundred cases and we expect to do that this year, in 1985. We find that it's a little -- you have to do a little juggling to keep all the balls in the air, but it works well for us. It's a system that was developed in response to the need in our particular area, we reached about half of the state of West Virginia. It's a rural state with real serious problems as to access for people to go from one place to another. We have eight staff offices, one of those is primarily a back-up office and houses the administration of the program. The others provide direct service. We use our Adjudicare attorneys

in the counties where we have offices, but we try to reserve use of the Adjudicare attorneys for cases that are in the other counties, the other thirty counties where we are not able to provide a direct staff presence, except by sending people out. Our Adjudicare lawyers handle all kinds of cases in the program, and they handle them at all levels. Last year we reported fifty-one cases that were either appealed or class action cases. Of those, eleven involved private attorneys, either on a sole counsel, or co-counsel basis. Our experience with the quality of the work that private attorneys have done is fine, as good as the staff work. I wouldn't say it's better, I think our staff does an excellent job, too. Where it comes out with regard to the data presented is a little bit differently than what Pat reported. I worked with Pat on the preparation of that data, and I have to put an asterisk as to what I'm going to say. I'm not making a deep criticism of the data, it's a pretty good start, but for example in our program under the requirements we have to tell you we spend at least twelve and a half percent of our funds on private attorney involvement. We spend, I think it was, 20.8 percent on direct payments in 1984, so that's what we told you. We broke it down into how those payments were made. We did not

break down overhead costs, we maintained toll-free WATS lines coming into our offices for clients to call. We didn't try to allocate those funds, within the program we did do that. In Pat's report it showed our PAI cost, I think it was $188, and our staff cost per base at $213. In the program's internal management report, we find we run just slightly higher on the Adjudicare cost per case than we do for the staff. It comes out to around $200, and we also figure in hours of service, and units of service, we come up with very similar costs. Usually the Adjudicare is a little bit higher than any given year, or any given month it's maybe a little bit lower. The costs are fairly similar. Well, in 1981, when the corporation put in their ten percent guidelines, I thought that was a good thing. I was convinced that private attorney involvement in the program throughout the United States would be helpful service to the clients. I agree with some of the things, not all of the things, that John has said, that we try to honor our clients' preferences. Now our experience is different. We don't find many clients that have a preference for either staff lawyers or private lawyers. When they ask for it, we try to give it to them. Another benefit you get from private attorney involvement, is flexibility, the ability to have access

to people in areas we normally don't touch. We use our private attorneys for all of those things and for all of those reasons. I thought the ten percent guideline was really good. It allowed programs to retain the control themselves over their delivery system, and that is real important. We would not have been allowed to become the kind of program we are, I don't think, had LSC had the biases that were expressed in the form of regulations in the 1970's. If there were regulations that were as strongly in favor of staff programs mentioned here, we would have been told, "No, you can't use your funds that way", we would have lost the local ability of the program through its Board of Directors, and that Board, even in those days, was composed of more than fifty-one percent of the people named by our bar system, to control what we were doing.

Well, let me touch on about four of the items in the regulations, and then I will stop. The first one is the twenty percent compliance issue. There my problem is the twenty percent level. I know that figure -- how did you say it came out?

MR. WALLACE: I pulled it out of the air.

JAMES MARTIN: My problem is that I see

the private bar involvement as being one intended to leverage the resources. It seems to me that there is a great danger, that the easiest resource to leverage, if you're going for a number that will allow you to be in compliance without doing anything else is to leverage it by some counsel cases. It would be easy to set up a national system for everybody that hits twenty, or twenty-five percent of their cases, being private bar involvement cases, and spends only two or three percent of their funds, you could really go extreme on it. You can see some things that make you wonder about that in the data that is already before the Board. When you have cases -- when you have programs that are reporting a variation between eight thousand for private attorney involvement and nineteen dollars for private attorney involvement. You have to wonder if you have a workable definition of case, if you don't have a workable definition of case then setting an arbitrary level that is above the dollar level, I think it's a real invitation to minimal and low-level services by the private bar.

I already mentioned my concern about the difference between a requirement and guidelines. I think 12.5 percent is a good guideline. I'm troubled by it becoming an absolute requirement, because I think you

lose so much in the way of local control, you lose the flexibility the program has to respond to its own needs. It's really not an issue from my view of the data presented of programs not complying at all. It was 79 or 80 percent of the programs that were above the 12.5 percent already. So that I think that the programs themselves value what they're getting from the private bar -- I think because of my prior involvement with the Adjudicare and pro bono program, and working with others in this program over the last three years and in my experience, most problems are receptive to the development of private attorney involvement. It was a new idea when it came out, and it was one they did object to, and it took away from funds and caused problems and at the same time that funding was being cut back but they see the value of the services that are being given. I have two problems with the fiscal section, it's in 1614.3E2 and E4.

MR. WALLACE: E2 and E4 are on pages -- well, they're both on page 12 of the staff draft which is 234 of the committee book and I realize you have a different one, but it's 12 at the top of the page, right?

JAMES MARTIN: My problem with section 2 there is the first word in the second line, "It must be reported." This section requires reporting of all of the

expenses in support that we put in to pay it out, and for my program that would cost us to go through a lot of red tape that we now don't have to deal with.

MR. WALLACE: I'm not sure I understood that. I thought you said you do it internally for your own purposes.

JAMES MARTIN: We do it internally, but it doesn't meet the other requirements of this regulation for reporting to LSC. If we were trying to report to LSC, we would have to do a lot of new work.

MR. WALLACE: I understand.

JAMES MARTIN: And section 4 is a technical little thing, but at this point it needs to be addressed, it says, "All records pertaining to the recipient shall be made available." I think that should be all non-privileged or non-confidential records. Those are our clients, and we do maintain a lot of privileged information.

In section 1614.483, and that's on page 89, there is an added section here, "shall document that its annual plan had been presented."

MR. WALLACE: Actually that's on page 13.

JAMES MARTIN: This is the last phrase,

"shall document that its annual plan has been presented to all local bar associations within the recipient service area, shall summarize their response." We don't go to our local bar association every year and say we are going to continue what we've been doing in the past. We have members of our state bar association both, both the voluntary and integrated bar, on the Board of Directors and we include ex officios, and presidents and the operating officers of those two bars are members, and they're all elected from those bars, and they're aware of what we are doing. I think this is a real burdensome requirement to program -- to say every year you have to go back to your local bars and we might have thirty-seven. We don't, in fact, because in West Virginia those local bars are not active, but I know there are states where you have lots and lots of local bars in a large program service area, and this program regulation is telling you you have to go back to those people and tell them your plan, what you are doing. I think it's enough if you have an initial plan that has been accepted by the corporation and by the bar, and that you indicate that you are not deviating from that original plan.

MR. WALLACE: How often would you -- I would be breaking my own rule.

MS. BERNSTEIN: I was going to say if you're going to break your own rule --

MR. WALLACE: Yes, I will be quiet.

JAMES MARTIN: The last point I want to make about the proposed regulations, and I have to take the sting out of the comment that I was originally going to make, that the last section, I think it's 16 -- excuse me, it's 14.7. It's the section on sanctions. When I originally looked at what was proposed there, I thought it was a fish, it was like a litigation tactic where you offer something you're willing to back off from. It just seemed so outrageous. I'm not troubled with what is there now, in terms that it says -- another thing that the proposed regulation tells you what you need to do, if you're in a bad situation, you could ask for a waiver and so on, and it gives you leeway there, and it tells the corporation that they can put the requirement on for extending extra funds in the next year, and you have carryover, and so forth. I am, however, troubled by one thing, that is in the attitude of that section of the regulation, it seems to me that the purpose of the private bar involvement guidelines, and the continuation of it, was to encourage programs to involve their local bars into putting that money on those cases out in local

bars. If you start talking about taking it away, you're talking about upsetting the local program's priority, the operations of the local program. You have some interesting questions if you give the money out directly to the private bar about liability for malpractice, and so forth, and finally what you don't do is offer positive reinforcement to the program. If the program is at 12 percent, and it should be at 12.5, it seems to me the appropriate solution there is to talk to them about technical assistance, about help with getting the level up, you have to do something, if you don't put requirements on the expenditures -- if you don't do those things, then it's time to start talking about sanctions that are fairly severe. These are very severe sanctions to say it's the only sanction that you have available.

MR. WALLACE: Okay, thank you, Mr. Martin.

MS. LARDENT: You wanted to reserve the right to jump in.

Just a few things. One thing I want to comment on was the characterization by Mr. Gordon and Mr. Brakel of this raging debate between staff attorneys and the Adjudicare programs. I can't speak as to what was happening in the services before 1977, I was not involved

1 in that, but certainly the debates that they saw exist.
2 My experience has been the same as Jim's, and I think
3 I've probably seen more individual private attorney
4 involvement than anybody else for a variety of reasons.
5 People simply don't have the hostile feelings towards
6 private attorney involvement. The issue is not framed,
7 in terms of Adjudicare or staff program or pro bono
8 versus Adjudicare program. The issue is really at a
9 local level. What works best in the judgment of the
10 program is for administration, and I think that the
11 thought that somehow the resistance to the private bar
12 and the evaluation of the private bar that the hostility
13 is still out there, just is not the fact.
14 The second thing was that Mr. Daugherty
15 seems to indicate that the Havie (ph) survey results
16 would lead one to believe that if the program were not
17 mandated to spend a particular percentage on private
18 attorney involvement, you would see a drawback. I
19 think, actually, that the information that your own staff
20 have provided indicates that a considerable percentage,
21 in fact the majority of the programs spend above the
22 required amount. That says to me, again, we have a
23 function of local decision making, and finding an appro-
24 priate level. The resistance to the idea of the national
25

mandated level of expenditures in an area which is about as localized as any, in terms of decisions about expenditures and delivery activity.

One comment about the charts and statistics, I am really not a statistics person. I take a look at these pages and my eyes begin to glaze over. I think it instructs when the staff people carefully put this thing together were able to tell you was very little in terms of conclusions to be drawn, and again, I think what that reflects is that you're talking in terms of variations about so many local phenomenons about case priority, about programs that have elected legitimately to use other techniques to involve the private bar -- about the complexity of the cases that were referred out to the private bar, about the rural nature of the program. There are so many factors involved that vary, and very little can be said about why that variation exists. It was interesting to me, as I said, I am a fairly harsh critic and I want to see programs that really strive for excellence, and I look at the charts, for example, that dealt with productivity that I saw in there four or five programs that I have visited and that I found to be the finest private attorney involvement programs in the country, and they were on the very last page of their -- they

1 were the most inefficient, and least productive program,
2 and yet I have seen the casework, and have talked to
3 clients, and talked to judges, and talked to private
4 attorneys, and like I say, I think I am a pretty harsh
5 critic of this, and I am convinced that these are excel-
6 lent programs in every sense of the word. Some of these
7 statistics, if they're correct, should raise issues for
8 you, both on the low side of the case cause in that they
9 reflect simply -- the central aspects of the programs'
10 delivery, and what I think will happen when we go out is
11 you will see local variations, local choices and I'm not
12 trying to draw any conclusion, except that it's very
13 difficult to generalize a national mandate in this area.
14 Finally, with respect to a couple of
15 issues in the language itself, in many instances --
16 unfortunately, I saw the language just today, and it has
17 been revised for the last time. I think in many instan-
18 ces the changes are for the better, some of the changes
19 are helpful changes, and reflect some of the value of
20 these programs that don't do well, they're bureaucra-
21 tized. People have been talking about getting more
22 attentive time data to these programs. That is the one
23 thing I think could kill private attorney involvement.
24 If you have people doing cases pro bono, or at a reduced
25

fee, and they're also doing timekeeping for you at a rate of a tenth of an hour, I think we have just signaled the death note for that function of delivery. One is the joint venture, which I was particularly interested in in my past life. That's on -- let's see, I have trouble with it now. It's 16142B, on page 79 of my book. A couple concerns about that, except it hasn't been approved. First I don't know why joint ventures are restricted to programs for services areas, or co-determinants, or overlapping. There may be programs that are not, but whose bar association is co-determinant and overlapping. You may simply have a joint venture with respect to training, in which you have two private programs that do not abut each other which could engage in joint training programs, which could be appropriate. To me that strikes me as an unnecessary limitation, looking at practicality.

The second thing is that the joint venture must extend at least to twelve and a half percent. This may be a question of semantics, but programs may elect to do a joint venture that involves less than twelve and a half percent. Certainly that is the case in Boston, and in other areas. The important thing is that the total amount expended for private attorney involvement in the service area is at twelve and a half percent.

1 Another area, and I don't have the citing, maybe someone
2 else does, is part of the regulation that deals with
3 resolving litigation. I am mystified as to why it was
4 singled out as singularly inappropriate. I, frankly,
5 have not seen a great deal of problems or abuse with
6 those, but -- I've got it, page nine of my book, it's
7 1614.5. In general, I don't see the problem, but the
8 particular issue is C, which is a new provision which
9 requires in C2 that private attorneys request in advance
10 funds for litigation. Frankly, that would be relatively
11 unworkable. Jim and I talked about cases where the
12 attorney requests, when they close the case, two dollars
13 for certified copies. That's a very typical type of
14 expenditure that you don't want the private attorney to
15 bear, and in asking the attorney to do that in advance of
16 litigation would cost more than the reimbursement itself.
17 Programs have policies with respect to reimbursement of
18 costs, and certainly it's a useful and appropriate thing
19 for a program to request advance notice, and advance
20 approval for the cost, but I think you're getting your-
21 self into a much tighter situation than you want to, and
22 you're going to get in a situation where you document
23 cost more than the reimbursement in a number of areas.
24 Finally, just two things about -- one
25

about the approach in general. The additional waivers that the staff has added, I think are -- they're good. They certainly improve the waiver section and they speak to what I think is really the key theory, which is the local control decision making program by the bar. The difficulty that I have with the administration of the waiver provision is that I have been one of the unfortunate few -- well, maybe many whose program went through -- this corporation has lost a great deal of credibility with a great many bar associations with the kind of struggle they have gone through because of that provision. I am not convinced that that waiver provision is any better. What I think we have here is a situation where the tail wags the dog. You're essentially building more waivers to reflect the need for flexibility, and to reflect the need for local control. It seems to me, in terms of effective use of headquarters resources that are far better off to build that flexibility by having a guideline rather than a requirement, and then looking to your monitor to see if that guideline has been abused -- you are moving towards that, but you are creating a bureaucratic infrastructure that is going to be horrible, and it's going to create additional problems with respect to compliance because if it takes eight months to deter-

mine whether a waiver should be provided, which is not an untypical amount of time for approval, you are going to have a program going into, potentially, the next year, and not knowing the underspending -- you're going to create an enormous problem for yourself, which you don't have to create if you would just build in flexibility to regulations as a guideline, then look to your monitor in the process, and trust that process.

Finally, the failure to comply provision has been approved, but it still has the problem of creating an incentive, and also creating a bureaucracy that is more costly to the administration in the money that you have to give out. The bottom line is that your own information shows that there are not enormous profits (sic). Individual programs seem to be having trouble spending that money. I don't know if anybody has gone to those programs and asked them why, or if anybody has gone to those programs to offer technical assistance, and those issues should be addressed. It may be in some of those areas that twelve and a half percent simply is not feasible. It may be that the programs are not aware of the waiver provision. There have been so many changes in the regulations, that I don't know what program understands the regulations.

1 MR. WALLACE: The one that still writes
2 the books.
3 ESTHER LARDENT: You're right. But it
4 has been an area of flux, and it has been an area where
5 the corporation, in the past few years, has not assisted
6 programs, it has not gone to find out what is going on.
7 It is my own feeling that the program should have maximum
8 private attorney involvement. I agree with Mr. Brakel, I
9 have an enormous respect for the private bar.
10 MR. WALLACE: Thank you, Ms. Lardent.
11 Our next witness is Jacqueline Mitchell, who is the
12 director of our regional office in Atlanta, and we thank
13 you for being with us. We look forward to any cause you
14 may have, and especially how this is working in your
15 practice from your perspective.
16 JACQUELINE MITCHELL: Okay, I will try
17 to be brief. A lot of what I was going to say has already
18 been said. I am concerned with knocking the private bar
19 and with the service lawyers in terms of initiation. I
20 personally think there is some communication problem,
21 however, there is an exemplary situation where the bar
22 has been always supportive, and continues to be suppor-
23 tive. When I started, we were all members of the bar,
24 but I do effect that there is some communication problem,
25

1 and those problems did in fact surface and in one real
2 way we want to get to the point of attempting to imple-
3 ment the original instructions. To respond to that, one
4 of the things we want to do -- in the southeast model,
5 that was a conference we set up essentially to get people
6 together to start talking about what was possible much in
7 the level of technical assistance, which has been refer-
8 enced here today. Once we went through that, we got very
9 good evaluations from the project. The then-president
10 left, all fired up, going back to develop the pro bono
11 program. He has in fact seen that program come into
12 creation. Once we went through that we still had lots of
13 work to do, because I think that because of those commun-
14 ication problems, because of the lack of familiarity
15 between what was called the private bar, which I find as
16 interesting. Interesting enough, when you look at some
17 of the realization of the problems we sometimes have
18 trying to get private practitioners to sit down and read
19 through everything, and try and figure out what we want
20 them to do. That event that I talked about to you, did
21 help in that regard. However, through those efforts, a
22 lot of things happened, supplemental training developed,
23 models were shared, and I brought it to where we are
24 today. Now, we are at a point where I think we should be
25

proud of this corporation, because I think that we have, through the private attorney involvement effort, brought more legal talent to help the poor people. There is one notable case that was handled by a private practitioner, that was a landmark case, in South Carolina last year --

MR. VALOIS: North Carolina. You said South.

JACQUELINE MITCHELL: That's right, I'm sorry. And I think we made more resources available to children and families across the country. On the compliance side, I have some difficulties with the data, and those difficulties have been enumerated by the people that came before me, however, I would add that as far as our data, I am concerned with comparing closed case data, that might have been four years old, might have been in operation for five years, with current funding. However, based on that data, and I think we had some "success" if you used your number. At the same time it's apparent there seems to be some real problems out there. There are apparently some people who are not doing what they're supposed to be doing, and that causes me some current concern, both from the prospect of the corporation and from those folks out there, and the majority are complying. I was talking to one of your staff people when I

made an acknowledgement that I pay taxes because I have to, and I know they're going to come, basically, and I comply with that.

I think you set yourselves up for failure. The majority of the people comply, you know, and others don't. I think at some point, as Jim said, you have to reward those people who are, in fact, attempting to leverage it out, of what we wanted them to do. I'm not suggesting at all that we should be complacent about what it is we want people to do. I think people should comply, however, at the same time, I think we have some problems, and one of the vignettes I have added to my remarks was a private attorney I met in Florida, whose bar association wanted to incorporate with the local program, but he was real concerned about what to do as a bar member, we don't have technical assistance available, and I think, in fact, he wanted to talk to another -- what I did was put him in touch, informally by phone, with another bar person, and that was the best we could do. I think we would appreciate it if we had that kind of project together, a kind of technical assistance together, and we could have offered him that.

We have got some of the first Adjudicare projects that were set up in a rural area, in Miss-

1 issippi and South Carolina, and in fact, one of the
2 Adjudicare projects that were developed was developed out
3 of an expansion system that was referenced earlier. We
4 have got a senior citizens projects that Swats (phon)
5 knows about, in Memphis, and I think that's a model
6 project that predates, in fact, our instructions of our
7 attorney involvement. We have models of law schools in
8 Arkansas and Tennessee -- we have a mix-up of models.
9 Basically, upon all of that, I think that what we have
10 done today we should not consider the bottom line. We
11 should take the wonderful things that we have done and
12 try to build on that. One of the things that I suggest,
13 in that regard, is the development of data, so we know
14 what we are talking about. I mean, we know the questions
15 that we have to ask -- and the staff, Pat, I think they
16 did the best they could with the data they had. We need
17 to think about that, in terms of what we want to know.
18 We've got a massive refunding application, and we have
19 all kinds of stuff for that. We are rearranging some of
20 those questions, some of those inquiries, without adding
21 additional administration costs, it might be helpful. I
22 think we need to develop ways to reinforce and to
23 exchange the value of the expertise that is out there.
24 That is in the public, and on the private side. There
25

are people that are -- there are private practitioners who know a whole lot, and I think they're valuable resources. I think we also need to develop creative approaches to capitalize on the experience of the local legal community who emphasized a local legal community. I think we should develop those mechanisms for technical assistance, and I think once we do all that, that once we say that this is what we want to do clearly, here is some assistance with doing that, and to the extent that we've done that, I think we won't have any questions at all about enforcing an appropriate sanction. We will know when that will happen. We won't be guessing as to whether or not the data is for this reason or that, we will know. We'll have the data, and we will have given technical assistance, and then we will be in a position to say enough already.

I was trying to summarize things I had to say with the time problem. I think I have said what I basically want to say. I would emphasize flexibility, I would emphasize standards, and technical assistance, and I would like to know when the compliance piece falls in. I mean it would be clear to everybody, you're going to say these are the rules, this is what we expect, and you know, those people aren't complying.

I thank you, and I want to pat ourselves on the back for what I think has been a project -- the PAI project has been a project that's brought us kind of back together, as we kind of were going apart. I thank you very much, and good luck in making a decision.

MR. WALLACE: We need the luck. Let me state the chair's intention at this point, I want to give the Board an opportunity and the community an opportunity to ask questions of these witnesses, and when we've done that, I want to take a ten minute break, because we are all tired, and I want to come back and start working through this text. The committee feels that it's ready to do so. With that, I will ask if there are any questions from the community for any of the witnesses that are before us. Ms. Bernstein?

MS. BERNSTEIN: I've got a list, but most of them are short. Jim, you were concerned about going back to the local bar every year, and as I understand my reading of that section regulation would simply be a requirement that the program get some sort of acknowledgement that they've seen that from the local bar, and that would be done with mass mailing. If you've got thirty-five different local bar associations that mail out what the current situation is, and you're open to

further involvement with a private bar, sign on the dotted line and send it back, and it seems to me, that that is a very small effort on the part of the program for a possible huge reward, in terms of communication -- increased communication, because bar leaders change from year to year, staff people change, and the program and priorities presumably would change year to year. It seems to me that one letter, that one, you know, bit of communication has such possible ramification in terms of increased cooperation, and that doesn't seem to be a huge burden.

JAMES MARTIN: My quick response is that you are already required by the earlier language, which I don't object to, to consult with and work with the clients, community, the private attorneys and the bar association and so forth, I think that together with those peoples' involvement in naming the members of the Board of Directors provides the bar the opportunity.

MS. BERNSTEIN: But the Board of Directors are named for three-year periods and those particular members of the local bar may, or may not be reflective of everything in the area, it might have been the only person they could get to volunteer every third Monday, or whatever it involved. I'm simply saying that

nothing I've heard would indicate to me that decreased communication is something that you ought to be dealing with.

JAMES MARTIN: I have just one more response to that, and then I will let Esther say whatever she is thinking. One other thing I have to say, and I'm speaking from my experience from my area, and we have over half of our local bar participating in the panel. They are aware of what we are doing, and I am telling you that even in light of doing that, I feel this would be real burdensome and troublesome for the program to go through that stuff every year.

ESTHER LARDENT: What I am concerned with is that sort of official documentation requirement, beyond what is already in the act you mentioned, the bar presidents change every year. In a city like Boston that is not burdensome, but in a place like Texas, for example, where you have a statewide pro bono referral program, and you have something like 212 county bar associations and the state bar association, and I think those letters going out to brand new bar presidents will either elicit no response or a lot of questions. There needs to be, I think, informal communications, but not in the sense of reopening the issue --

1 MS. BERNSTEIN: There is no question of
2 veto, that is what I'm trying to get across, in terms of
3 the way I'm reading this language. There's no question
4 whatsœver that we are offering a veto to the local bar
5 associations. Just as you pointed out, most bar presi-
6 dents have changes in leadership, and I think the one
7 thing that has -- and I have heard you say this on
8 numerous occasions, that the ten percent requirement
9 costs us --
10 ESTHER LARDENT: Sometimes, but I don't
11 always --
12 MS. BERNSTEIN: I will have to look it
13 up in the transcript. But the national move towards
14 private attorney involvement, as made in the policy by
15 the Board of Directors, was an encouraged program in
16 states like Mississippi, where the private bar didn't
17 talk to Legal Services attorneys. I am just simply
18 saying that I think we cannot stop -- I see that require-
19 ment of the sign-off as a very small matter, compared to
20 the great return we could get. And I see that we have a
21 disagreement on that, but that is my concern about that.
22 Okay, Esther, you were concerned as far
23 as -- you talked about some of the programs that have
24 been set up in terms of private bar even before we had
25

this, that the corporation had funded some programs and so forth, could you just give me some kind of response that John had talked about in terms of burden of proof. Can you just describe for me, in some sort of way, why we should come here as a Board and go through an incredible lengthy discussion just to find only the expenditures in a private attorney involvement program, and we have no justification, whatsoever, for continuing the status quo without looking at some sort of productivity, or capacity to deliver or whether there is good quality or bad quality, and I understand we are monitoring all programs, but what I am very confused about, and I have to say, I agree with Mr. Brakel on that. I have no way of understanding why we should set up a dual standard system.

ESTHER LARDENT: Well, I hope we are not here to talk about the question of whether it's justified to spend money on private attorney involvement, because I honestly don't believe there is anyone in this room that could say it is not justified. It may be because of the particular history of the corporation, and as I say, I am a latecomer, and private attorney involvement, in a sense, came late, and came with some idealogical aura that created some of the concern, but I don't think we are talking about that here. To me, I think,

the issue that we're talking about is where the decision about private attorney involvement is going to be made, whether it's going to be made nationally or whether it's going to be made at the local program level, and I think the decision about legal services, as in Jim's situation, needs to be made as well as at the local program level.

MS. BERNSTEIN: How would you have read the language of HR 3480, in which the Senate had the good sense, in all due respect to any Senator reading the transcript, if the Senate had signed onto that this year, what would have been your reading of the requirement that we devoted a substantial portion?

ESTHER LARDENT: I think, sometimes, I feel like Mr. Brakel and I were at different ABA meetings.

MS. BERNSTEIN: You may have been.

ESTHER LARDENT: I am a member of the general practice session, and Tom Green raised a perspective that I don't think is represented for the entire general practice session. It is my understanding that both Tom -- understood that a substantial requirement was to be defined as a guideline of ten percent, and it was not designed to be purely compensate -- in fact, the report talked about in terms of compensated -- you need

1 to understand that within the ABA the report itself does
2 not become -- many people object to the report, and there
3 is so much going on in the regulation --
4 MS. BERNSTEIN: Well, I guess my ques-
5 tion really, and without going into further avail by
6 allowing answers that weren't in response to my question,
7 but what I was wondering was -- I'm just trying to find
8 out if you feel that would have been a Congressional
9 directive toward our national making grants, or in other
10 words, should we be taking ten percent and giving it out
11 nationally to private attorney involvement, or the fifty
12 percent, or whatever it is, or should this -- or at least
13 the approach of allowing the contact within the program
14 service area, to be made by the program, the intended.
15 ESTHER LARDENT: I have not looked at
16 that legislation, but I think it's very clear that it's
17 intended to be clarified by the Lake (ph) resolution,
18 which was unanimously adopted by the House, a local
19 decision making process, and I think that -- at the same
20 time the column language was there, so that for those bar
21 associations that felt they had not had an opportunity,
22 those opportunities were brought back into the picture --
23 but I think if you take a look at, and I'm doing this
24 from memory, from the House, and what the ABA does
25

include with respect to the language. It's very good, and they were satisfied with a ten percent structure, and the key to it was local control.

MS. BERNSTEIN: In all fairness to historical respect, do you have anything additional to add?

JAN BRAKEL: No, except that I have been very close to the people in the general practice session, and I know for a fact that people like Tom Green, and several others, who were the original proponents have determined that the compensated is far more, and have talked about it being substantially more than --

ESTHER LARDENT: There has been a lot of history since 1980, and I don't know if Tom Green is going to run --

MS. BERNSTEIN: I have one more question. I guess a concern that I have had is that you said you felt that the waiver provision was unnecessarily burdensome, and so forth, and you likened it to the sub-grant procedures, and I guess it's not so much a question, but as to respond to that. I believe two things. One, I am not sure the sub-grant procedures were carried out as quickly as they might have been. Secondly, I think the sub-grant procedures perhaps install an imposed

higher burden on the operation to make sure that they are properly carried out, since they imposed a new fiduciary relationship on the corporation, and therefore, we were not simply in a waiver position regarding a compliance situation. I don't think it's a particularly analogous situation, and therefore, the burden, I don't believe, would be as great, and as long.

ESTHER LARDENT: I am not an expert -- you could argue as to the higher burden that is placed on the waiver of the regulatory function. I don't think that is the case -- I guess what I am speaking about is two things. One is that if you are going to have flexibility, and as I say, I think this is about a fourth staff draft, then definitely you're going to get better, because of the recognition. What I don't understand is why create this massive amount of paperwork, when you can implement that principle up front. Second of all, it wasn't a slight delay, for example, the program I used to run --

MS. BERNSTEIN: I didn't say it was slight. Jackie, I have one question, and you may not have the answer, or if maybe somebody else from Field Services may have the answer. What is the total amount of money that the corporation expended on private attor-

1 ney involvement in field programs both through LSC direct
2 grants, and twelve and a half percent?
3 JACQUELINE MITCHELL: You are going to
4 have to get that information from OIM.
5 MS. BERNSTEIN: Is there anybody who
6 could give me that, and I'm not going to equivocate over
7 cents. It is my understanding that we are not expending
8 even twenty percent of the total granted $5,000,000 for
9 private attorney involvement at this time. That's for
10 both direct plus twelve and a half percent that the
11 programs are expending indirectly. We are expending
12 indirectly throught the program.
13 UNIDENTIFIED SPEAKER: You have about
14 eighteen programs, ten of which are another project, and
15 I would say the total funding of the project comes to
16 less than $3,000,000, so you are, I think, well within
17 your twenty percent.
18 MS. BERNSTEIN: Okay. I guess what I
19 would like to state is no particular question, but just
20 in response to what has been said, is that the division,
21 that 80/20, and I think 20 is very high myself, and the
22 80/20 division would set up purposefully, systematically,
23 and to exclude private attorneys, and if we bent over
24 backwards just a little bit to correct that by requiring
25

a certain expenditure, I think it's just perfectly justified. We have reports, including the analysis that was made, and Alan Houseman's very thorough history, including Earl Johnson's very thorough history, which says we didn't want the private attorneys involved with the Legal Services delivery, so we set it up so they couldn't be. This is something that has been documented, it's not conjecture, it has been documented, but if we bend over backwards to make sure that we are correcting that vast disparity in delivery, then I think that is justified, especially when our figures show the the twelve and a half percent involvement is a reasonable figure at this time.

MR. WALLACE: Thank you. Mr. Smegal, any questions?

MR. SMEGAL: Well, speaking of private attorney involvement -- I am probably the one on this Board that pays your salary. My question of you, Esther, you are concerned about lawyers keeping hours, and it seems to me that they must be doing all right, if they're in programs that do complex litigation, they're surely being paid hourly, by hourly time records if they're in contract programs where they're getting $100 or whatever -- they obviously have put some thought into how many

hours it takes them to do one of those to come up with a $100 bid, so I don't see that much of a problem. I don't know how it fits into -- that part of it --

ESTHER LARDENT: No, the question was whether or not you can get a clear idea of the disparity. I don't think you can. I think you can torture this data as much as you can, and in reality you can only find out what is going on by going to the program. But in answer to a question, I think it's interesting because -- I think Jim wants to comment on this, too. I think many of the attorneys, but certainly not all that I worked with in the pro bono program, the attorneys were in large firms, and they kept all of their time, and had to keep all of their time, and it was computerized, and that information was probably available, but when we asked them for it, and got the information, that was fine, that was not terribly troublesome. If we had asked them for their paper computations, it goes to something of the spirit and flavor of these programs. If you're asking people to do work for you pro bono, you want some sense of what they're doing, you do not, however, want to turn this into a bureaucracy, and have them see your program as an arm of the federal government, to ask them to report their time. It really goes to the relationship of

the attorneys, and I suspect that attorneys in rural areas do not keep time, and certainly some of the practitioners we worked with still didn't.

MR. SMEGAL: Who are paid?

JAMES MARTIN: Yes, we require our attorneys to give us a time statement, or there are just a few cases they can receive any payment for at all. There are two factors there. One, and it's surprising to me, how many lawyers don't send a time statement and get a third of what they would get, and we're paying $20 an hour anyways. The other thing is that when we went to the requirement for time, we did it by talking to all the attorneys and there was nothing at that time -- or at that point, that caused more discussion than our going to a timekeeping requirement and what we had to do was allow them to send us the time statement they used, and we couldn't go, we found, to the tenth of the hour, or the quarter of the hour. We had to tell them that we had to have a time statement, you send us whatever you develop, and if we try to tell them the corporation said you have to give them a quarter of an hour breakdown, we would lose a lot of lawyers.

MR. SMEGAL: Well, that isn't limited to your type of practice. I have the same type of prob-

lem, I have 42 lawyers in my firm, and it's harder than hell to get them to keep time records. I don't think the problem is specific to what we are talking about, but it seems to me, if they're getting paid, they've got time records. We have got a managing counsel out in San Francisco and we talk about this all the time. All those firms keep records, they all want to know what their associates are doing.

JAMES MARTIN: It does have something to do with the area that you practice in. The firm that I was with was a 25-attorney branch, and we were also the third largest firm in the state and --

MR. SMEGAL: This is more about what we were talking about this morning, about the dollar, and an hour in New York should be just the same as an hour in West Virginia, unless you have a different clock, too --

MR. WALLACE: Anything further? I have one question. The question I asked last time, and the question I said I was going to ask this time, and I haven't heard anybody answer it in the last two and a half hours. The thing that was the greatest concern to me was that we've got twenty-some-odd percent of our program out of compliance and our records show about four programs that have been in contact with the Legal Ser-

vices Corporation about why they're not in compliance and what can be done. At least one of those, according to the figures, is in compliance, and I said what I want to know is why we hadn't heard from these people and why they're ignoring the regulations, and there are other people -- I mean, do we have bad data, are there other people we've heard from, or have we got 20 percent of our grantees, less than these four programs, ignoring our regulations. I haven't heard any answer to that question. Does anybody have an answer for me?

JACQUELINE MITCHELL: I think the answer is going to vary. I know one program in my region -- I know a program, for example, where you look at the percentage of cases which are higher. One of the things that I neglected to say, when I spoke earlier, is that I think we need to decide how we are going to count success. And I think the question becomes, is success twelve and a half percent above, or twelve and a half and above twelve and a half percent of the cases, you know, which way, and I'm not suggesting a bias towards either factor, but I think it might be wise --

MS. BERNSTEIN: My mind is blank as to why you're asking the question -- the regulation, as it currently stands, is that you will expend twelve and a

half percent of your dollars. Now, why have not the programs -- and I'm just restating your question, and forgive me for jumping in, but why have the programs that have not expended their twelve and a half percent, why haven't they been in contact with the corporation?

JACQUELINE MITCHELL: Okay, in one instance, I know that they haven't been in contact with the corporation. Another instance I know of, the reason I was given was because they could not get the bar to cooperate.

MS. BERNSTEIN: That is communication. We're talking about the ones -- Mike, am I saying your question right?

JACQUELINE MITCHELL: What I understand, you have been in touch over the last year, with most of the programs in the region, because you are required to monitor them, so I got feedback from most of them, whether it's directly to me -- most of the time it's not like calling you up, or calling headquarters up and saying I'm not in compliance, and these are the reasons. A lot of the time data is gained through the monitoring process.

MS. BERNSTEIN: As I read the regulation, it's the affirmative duty of the program to be in

compliance, and they should take it -- it's not for them to wait until we catch them. It's for them to make an affirmative statement to the corporation that we've got specific problems because we are A, rural, or B, urban, or C, we've got everybody used up in our pro bono program. As I see it, it is the affirmative duty of the program.

JACQUELINE MITCHELL: There is one program in my region that is on the list as being out of compliance, that communicated non-compliance, and that was in 1983. I mean they said we want to do this or that --

ESTHER LARDENT: Let me say this. Something somewhere is wrong, some computer glitched, so I think you cannot assume from the data that is there what is happening --

MR. WALLACE: But they have had this data for a good six weeks now. I mean we sent it out, and we said if you've got a glitch, tell us where it is. There comes a time when you've got to be able to rely on our data and people are not correcting it.

JAMES MARTIN: To some extent the corrections that are asked for, are not easy corrections to make. Some of the programs may be responding the way

we are. Now, the data isn't correct, but I don't feel any particular burden.

ESTHER LARDENT: I worked for a couple of programs that were listed as being out of compliance. I don't know what communication means. They have been at least discussing the situation with their regional offices. This may not be communication in particular to this data, but their program may have had problems in the past, and they're talking, that's true. I don't know if their information has been made available to you.

MR. WALLACE: Well, here is the situation. I announced at the last meeting what communication meant to me; we had communication from John Meyers' memo, we've got correspondence to back it up, and I said -- I told the corporation to make it available, go see John Meyers' memo, these are the programs we heard from, if you think that you made a good effort to tell us your problems and you're not on there, tell me why. Now, I realize with 280 grantees, they're not all -- you know, they didn't all hear me, but we've had the people here from Haig, and Mr. Housman was here representing several groups, and I'm doing the best that I can, and I haven't got an answer to that question, and I got to assume that at some point when the data has been on the table for a

month or so, and nobody is going to tell me what is wrong with it, I can work on that data.

MS. BERNSTEIN: The other problem that I see, is that we're dealing -- Jackie is in a position to offer information with regard to the one regional office, although it's not something that's in the form of a communication, you know, a document, either it's on a sheet that she kept by saying I talked to X today, and they gave me these reasons, or a letter from them that would be a documentation. Now, what we are really dealing with here is hearsay regarding, you know, the fact that people realize that they're in compliance, and they're talking among themselves about it, but that is not the way to run a railroad. In order to improve communication, I think -- I will tell you, I think Mike bends over backwards.

JACQUELINE MITCHELL: And you are outraged.

MS. BERNSTEIN: I'm not outraged.

JACQUELINE MITCHELL: Okay. I posed that to you, because that seems to be something that is emerging from your discussion, as I listen to you. That is not retrospective to think about. You know, it could be a double standard, is what I am suggesting. You could

1 look at two levels, and one should make those decisions --
2 I go on site a lot, and there are ways, I know, that you
3 could have 2,500 referrals that you send to the private
4 practitioner, and it goes back, and you give people four
5 or five hours to look at the case, and send it back. I'm
6 sure that's not what you want to be done. You mean
7 actual and real involvement.
8 MS. BERNSTEIN: I think -- unless I'm
9 missing it, I don't think we're really talking about --
10 I'm talking more in terms of how we enforce this, unless
11 we -- it was very clearly stated that some of them dis-
12 agreed with it, they did not comply with it, but it seems
13 to me, the least we can expect is a communication of that
14 fact, and a document of that fact, and that burden rests
15 not with the corporation, but is a burden that is an
16 affirmative burden by accepting the grant.
17 JAMES MARTIN: Do you know that twenty
18 percent of the programs have not requested waivers at
19 all, because this data doesn't say this.
20 MR. WALLACE: This data doesn't say it.
21 I asked the staff to compile for me, the communication
22 that we had, and Mr. Meyers did that, put it in a form of
23 a memo, and I announced at the last meeting that -- I did
24 not want to release peoples' names, and communications,
25

but I said that if you wanted to know about it, go to the corporation, get John's memo, and see who it is, and we have not gotten anything in our headquarters, other than these four programs who have been in touch with us. If there's more out there, we haven't heard about it, and we've asked for it.

It's now 5:00 o'clock, and if no other members have any questions, we're going to recess for ten minutes, and we're going to come back here, and maybe the people that were not on the agenda that want to say something can make brief opening remarks, and then we will start working through this regulation. I thank you all for your patience and your efforts.

(At about 5:00 p.m. a recess was taken.)

(At about 5:15 p.m. proceedings reconvened.)

MR. WALLACE: I am going to reconvene this hearing. Would you identify yourself for the record?

JAMES NEUHARD: My name is James Neuhard and I am representing the Michigan Bar Association, I am member of the TAG (ph) Committee, and I'm here in that official capacity, and I can't help note

that I am a public defender. I run the State of Michigan Public Defenders Office and I am attempting to comment personally from my experience as a defender because I see the debate that is going down is similar to the one that has occurred on the defenders' side. I'm afraid you are going to find out some of the problems we found out the hard way. First, I want to speak officially of EBA. They had one primary concern that was communicated from our letter, or actually a memo, dated February 4th, which I believe you received. It reflects the most recent action in the house of delegates. They unanimously emphasized -- and I think it's fair to say that of all the things they talked about, the most concern was about local control of the decision making process as it relates to ten percent and the twelve and a half percent. Without debating the niceties of the ten percent, and the twelve and a half percent ought to be the case, they principally were concerned with it not being a mandatory allocation, but rather that if you left it up to the localities to design and develop the most effective mechanism from that locality's standpoint. I heard a lot of discussions about the errors that might have been made, in terms of the denial, if you will, made a decade ago, of the involvement of the private bar. I'm afraid that

1 any denial of local constituents making their own
2 decisions, I think they're making the error now in the
3 reverse direction, again taking away from the local com-
4 munity to design their best and most effective delivery
5 mechanism and dictating it from Washington, and I think
6 that is doomed for failure for a variety of reasons.
7 First, the relationship of the lawyers
8 doing a local duty for meager or no funds, either pro
9 bono or some form of Adjudicare, is very fragile. In my
10 experience in the Defenders Office it's exactly that,
11 that if you place a large number of dictations from
12 Washington, the high level of bureaucracy in the process
13 of that representation, the lawyers will walk away from
14 that. They don't need that kind of grief, particularly
15 what you've got is now a very, perhaps, movement, if you
16 will, of reinvolvement -- or involvement for the first
17 time in private bar in a large way. To dictate from
18 Washington that they shall deliver that service on some
19 arbitrary percentage basis is doomed to have a lot of
20 friction, particularly when you already require that the
21 local Board be dominated by the predominant bar associa-
22 tion from the locality, and comprises more than half of
23 the current Board. They make the decision if they want a
24 hundred percent Adjudicare, or a hundred percent staff
25

1 program, or something in between, and give them the level
2 of compliance that you are having right now with the
3 voluntary -- that probably is a more flexible and local
4 requirement that will meet the needs of every community,
5 whether it's a minority bar association, or others that
6 are available, but to leave that decision in the local
7 jurisdiction. If there is some strong pressure in that
8 local jurisdiction for a particular form of program, let
9 them make it. Presumtively, they will make it, they will
10 make it continually to meet their local needs, and you've
11 got that corporation that allows it to work. That's
12 number one.
13 Number two, I notice that there are
14 several new requirements that have come out that the
15 American Bar has not responded on, particularly in
16 terms of non-compliance, and the redistribution of funds
17 in the future years that were not complied with before.
18 They instructed me to say that they will comment on that.
19 Briefly, one of the problems within it, would be to set
20 up a competitive process to redistribute those funds
21 through some of the mechanisms, either through the
22 regional office or from a national, would exacerabate the
23 friction of what is -- the decision made by the Board,
24 and the best delivery mechanism to set up competition
25

among the bar associations in the future, is to set up some other structure to deliver the services.

MR. WALLACE: Do you want to take a look at the sanction, because I think what you are addressing is something we talked about, and we could go back to it but we talked about a month ago of taking it directly to private attorneys and what we decided, and I think for the reasons that you're saying, is that it would be a problem, and the present proposal in the Board book says it will be competitive, competitive solicitation, but it will go to field programs. The field programs we've got now, so it's not a question of inviting anybody to come in off the street and solicit these funds. To say here's one field program that is not doing a good job, we'll let other field programs compete for it, that may have some problems, too, but it's not all problems. In particular, we were presented by last month's model --

JAMES NEUHARD: When did that get released? I didn't get an opportunity to design a response to that. As I said, I will attempt to respond on some of the statements Mr. Brakel made from a defender's perspective in terms of what you are talking about here. Our experience has been from the defenders'

side and much the same issues are being debated here, the conclusions based purely on economic decisions have been away from the private bar single ad hoc involvement, if you will, and towards the collective involvement through a variety of sources -- but what it essentially amounted to was defenders' offices of staff programs, either full-time or part time. Based on the economic model, and the quality model, it's exactly the opposite, and the ABA is dealing with that rather explicitly, in terms of what is the standard and criteria for meeting that requirement, but more importantly from our experience on that side, what we have found out when we have gone out to evaluate programs, in South Dakota, or California or Michigan or New York, that the local decision making is absolutely important in having an effective program. That cooperative effort as designed by the lawyers and by the judges and by the local community in designing what they want is important, even in the face of where we have documented -- they even get higher quality, more efficiency, for the like, from a statewide model where there --

MR. WALLACE: Who makes the decision in public defender circumstances?

JAMES NEUHARD: Well, it varies dramatically from literally city to city, county to county,

trol. The first thing we did on the defenders' side was to develop benchmark figures to go in and look at, in terms of how many misdemeanors should we handle, felonies, death penalty cases and et cetera, and broken into component parts, have a benchmark -- go in and look at localities, and then look at the local court rules, what the results are in sentencings, what the results are compared with private bar and public bar, and et cetera.

MR. MENDEZ: Tell us how you have quality?

JAMES NEUHARD: As I said, you've got the criteria, depending on who you are responding to, but you would talk to the judges, the prosecutors, the clients, the people within the program itself, to look at those structural issues, and then you look at the results that are being obtained, not necessarily against a national norm, because each jurisdiction will change, but within the past years' criteria, two or three years' criteria, see if there has been an improvement and look at the private bar to see if cross issues are involved, but that requires an on-site look, but to know where to look in this diverse area you have got to have national standards, not the highest number, but what are reasonable figures is what you start with, and then you go in

and see if something is grossly out of whack and look at it closely, and if you see too high numbers then you have a plea bargain, and they're pleaing in the face of any reality, just to get a plea. But you look at that, and if the numbers are out of whack, they shouldn't be able to do what they say they're doing, but you have criteria against what you measure and you don't arbitrarily say the largest number is good -- I think any lawyer that knows, and can see that happening starts having real questions as to how they're dealing with their clients, but you can't start with arbitrary numbers, you have to start setting them. And when you get the case -- you cannot do it successfully unless you have people who keep time sheets. You can't do it only with the time sheets, but you can't do without them, and there has to be uniformity within the jurisdiction that you're looking at, not nationally, but within the jurisdiction because of the diverse issues.

MR. WALLACE: You have struck a chord.

JAMES NEUHARD: Well, there is another method of doing it, because you don't keep time sheets because of the enormous overhead costs in collecting them, particularly when they don't generate funds in a private law firm. If you're doing that, generating data

without using it, you're in a fool's game, because the cost of generating that and tabulating and breaking it down is enormous, unless you have a computer program driving it, plus agreement on the definition within each section, within an office, of how lawyers log their time, in terms of what they call preparation time, versus motion time, versus appearance time, versus travel time, you've got to have a lot of time spent on agreement, not on a national basis, but within that jurisdiction, within that court system, because each court differs. You could go from Landlord-Tenant to District, to Common Pleas to Circuit, they all differ in the significance of each of those time expenditures, but it's a long road and we've been at it for twenty-five years now, working at it, and we've got some beginnings on it, so when you go to a jurisdiction you take the law and use those as benchmarks -- in other words, look for problems, and your experience teaches you that. Again, what I would say, once you get that under control, which is a side issue, what system is appropriate for their jurisdiction may not, according to your taste, be cost efficient. Number one, they may want a more costly system, but it satisfies their needs, what their needs are. That is very important to people, and the confidence people have in their justice system. It's

very important to people, not to just the clients, but it has to look, feel and taste like something people have confidence in results generated, and if you don't have that, you are not providing justice. The majority of clients, as the recent studies have shown, don't look at the results, they look at the way they are treating the process, and how they measure the quality of the service. The judges may look at whole different criteria -- the results are obtained the way they thought, the way the judges thought, the way they should have been obtained, the more efficiently it's done, they might have looked at that. Appellate judges look at a different set of criteria. You have to go to each constituent group and know what you're looking for and then measure and aggregate it, but having said that, and we've done that, people have still rejected the conclusion because they wanted their system to look differently, not that it provided quality, but it looked and walked differently than it would have looked in downtown New York. Everything over the East River -- Hudson versus the way it looks in Upper Michigan. They want something that is personal to them, and they have confidence.

MR. WALLACE: Any questions, members of the Board?

MS. BERNSTEIN: Yes. With regard to the Board making a decision that they want their system to look differently, and the only response I would make to that is that our local boards, the trustees of the grantees, are presumably making a decision based on what is in the best interest of the client in that geographical area. The only reason there is any grant for that Board to exercise any fiduciary duty, is because taxpayers have been demanding funds which the government then has, through us, sent out, and I guess what I am concerned with is that despite the allegations, and I can understand the ABA's position regarding local flexibility, and local control, and I understand that and I support that, in terms of fiduciary responsibility. I guess what I am, however, differing with is the policy direction in terms of giving incentives and whether it's given as a mandate of twelve and a half percent to the local board to decide how they want to spend the twelve and a half percent, whether it's given that way or whether the national program would expend twelve and a half percent, a policy decision regarding moving more towards private competition and the private sector as opposed to bureaucratized kind of office, mentality of delivery is a policy decision. Now, there is obviously

1 a variety of opinions here regarding that, and you are
2 concerned about number crunching, whether you look at a
3 case -- the number of cases, or the number of complaints,
4 or whatever we are going to do to try to measure the
5 differences in the two systems. You said you didn't feel
6 that the errors, which were begun ten or fifteen years
7 ago in blocking out the private attorney needed to be
8 corrected. My position is that you really are not even
9 giving us the opportunity to come in with a clean slate,
10 which is the way I prefer to look at it, is that we are
11 trying to look at things from an open standpoint, and
12 really, if you're going to look at it openly, it would be
13 open competition every single year, and if a private
14 contract -- a private law firm or a bar association came
15 in and bid on it and could do it cheaper, therefore, we
16 would have more dollars per -- we would have more clients
17 served for the dollar we have available. I think that's
18 the way we ought to look at it, if we're going to look at
19 it really in an unbiased way. We are looking at it in a
20 biased way, to the extent of eighty-seven and a half
21 percent of our funds that are going out, we are giving
22 the status quo the benefit of the doubt, and I guess what
23 I am really, again, concerned about is that if the
24 fiduciary responsibility of the Board is subservient to
25

the policy decision made on the national level.

JAMES NEUHARD: You made a couple of allegations that I would like to respond to. One, I don't think that any of my statements should be construed as a statement -- number one, that I am supporting any particular delivery model for any particular jusidiction, but rather that the decision of the best model should be made at the local level. What I objected to -- the mistake that was made earlier, was to the extent that to make that decision locally may have been tampered with ten years ago, it ought not to be reversed and put down dictates that are arbitrary, and hamper the local areas to make the decisions that are appropriate to them.

MS. BERNSTEIN: But if the local areas have been set up to support its specific model, then in order for us to open with a clean slate then we would all have to put it out for competitive business, otherwise all the forces of momentum, on the one hand and the inertia on the other hand in the local level are going towards protecting the status quo.

JAMES NEUHARD: I think what you can put in are incentives for different models and give options within the local community, rather than setting up arbitrary, mandatory limits which must be reached, as

it is right now with the method that was in existence before when eighty percent of the programs are already exceeding the twelve and a half percent, and are meeting it in very diverse ways in each community, so you're not getting -- it's not as though the policy put in motion has not begun beyond the twelve and a half percent, some programs are way beyond that.

MS. BERNSTEIN: But that was the minimum requirement.

JAMES NEUHARD: Well, what I'm suggesting is what is working now is working, you're getting that kind of compliance rather than focusing on restrictions -- and I can say a couple of things about -- and I want to re-emphasize, if you start laying on in terms of presumptions and attitudes that put burdens on the private bar involvement that is there today, that is supposed to be laudatory by your standards, you will see a diminution. It's a fragile relationship of lawyers committed and willing to do this kind of work, both on the criminal and civil side. And as the recent cases decided by the U.S. Supreme Court, when a lawyer wrote a letter to the Eighth Circuit and said that I've had it, I am not going to jump through hoops anymore to do this federal assigned work, he was held in contempt. And the

U.S. Supreme Court just reversed his contempt saying that those reactions with the bench outside the courtroom were not subject to the contempt, but it was his reaction to it. To get his fee under the federal act, he had to file more and more requirements and he said, enough, even though it's mandated in the Constitution, I'm not going to do it anymore, take my name off the list.

I will assure you that in this work the meager fees that are paid even under Adjudicare, there is a fragile breaking point if you push it. You are going to find this current fad of momentum -- and I wonder what it will be like three years from now, in terms of the move to involve private lawyers, at these rates and these fees, that you may kill the fatted calf, if you will, if you put too many restrictions on it. Right now you've got corporations, probably a better relationship from eye distance, looking at it from the defenders' side, between the private bar and the civil side, than it has ever been, and it's going and it's getting better in each jurisdiction, but if you start laying in the same bureaucratic requirements, the lawyers will say, do I need this. Traditionally, in Adjudicare it's the better-off lawyers doing the work, and they're just not going to do it. They'll bail out. Then you'll be back to what --

because you will never pay a lawyer, in Adjudicare or anywhere else, the kind of money they can earn, particularly when you look at the number of law students coming in reduced by twenty percent as that market dries up for the lawyers that are available to do this kind of work. You may find this situation, a willingness of lawyers to do this kind of work for all these groups versus what they could earn on the modest paying cases. The temptation would be too great.

MS. BERNSTEIN: Well, we must read our figures differently because as I see it, there is 125,000 new lawyers out there and this simply makes people more willing to provide services because there's additional legal competition.

JAMES NEUHARD: It's going to drop.

MR. WALLACE: Are there any further questions? We thank you, Mr. Neuhard, and we appreciate you waiting all day to talk to us. Are there any further remarks that anyone would like to make while the subject is before the committee? If not, the committee should be prepared to get through this, unless there is an objection from the committee, and we've been wrestling with this for several months. I think it's time to begin with part 1614, and start working through the big issues.

1 We've got Tom Bovard and Terry Duga
2 from the Office of the General Counsel here, and their
3 draft is in the book and it speaks for itself. The big
4 issue is in 1A. 1A is where we decide how much money
5 we're going to spend, and whether it's going to be
6 mandatory or guideline. The reasons I think I've been
7 stating all day and the reasons I think Jackie Mitchell
8 used, we need standards and flexibility. We've got
9 twenty percent of our program out of compliance. We
10 haven't heard from them, they're lawyers, they can read
11 the requirement and it hasn't been much. I think it's
12 necessary for this committee to set some standards and
13 that will be my motion, since General Counsel has told me
14 that the Chair can make motions. We'll put it on the
15 floor, and we'll see where we go. The flexibility will
16 come in the waiver section, when we've only got twenty
17 percent of the program, I don't think it's a monstrous
18 staff to administer in the course of the year. This is
19 the way 1614.1A would read under my motion:
20 "This part is designed to insure that the
21 recipients of Legal Services Corporation
22 funding encourages the involvement of private
23 attorneys in the delivery of legal assistance
24 to eligible clients. Except these provided
25

1 hereafter, a Legal Services -- a recipient of
2 Legal Services Corporation funding shall devote
3 an amount equal to at least twelve and a half
4 percent of the recipient's LSC annualized basic
5 field award to the involvement of private
6 attorneys in such deliveries of legal services."
7 That's the end of the section. That means on my motion
8 we would cut out the twenty percent requirement, that
9 action will no longer be available, the reasons have been
10 amply stated to us. It's going to be twelve and a half
11 percent mandatory, and that's my motion and if there is a
12 second for it --
13 MS. BERNSTEIN: I will second it.
14 MR. WALLACE: We're just talking about
15 A. The first sentence is written exactly in the Board
16 book and the second sentence begins,
17 "Except as provided hereafter, a recipient of
18 Legal Services Corporation funding shall devote
19 an amount equal to at least twelve and one half
20 percent of the recipient's" --
21 and we go back to the Board book.
22 "The LSC annualized basic field award to the
23 involvement of the private attorney in such
24 delivery of legal services."
25

Put in, "except provided hereafter." Later on here we've got some programs that are not mandated, and we've got a waiver section where people can get themselves out of it, but the basic standard is twelve and a half percent mandatory, exactly what it is now. That's my motion, and it's been seconded. I'm ready to hear any debate from the committee. Mr. Smegal?

MR. SMEGAL: Well, we've had a lot of testimony in the few months, and I'm not persuaded that we need to go to a mandatory standard. We've got at least eighty percent complying with the twelve and a half percent. It's not clear why the twenty percent are not. I think we've heard ample testimony that persuaded me that a mandatory provision, such as this, is not necessary. I will vote against it.

MR. WALLACE: Is there any further debate on the motion? If anybody has sat here for the last three hours and the last six months, I don't think the lack of debate indicates the lack of thought. We've been debating with each other for a long time.

The question has been called; all in favor of the motion say "Aye."

MS. BERNSTEIN: Aye.

MR. WALLACE: All opposed?

MR. SMEGAL: No.

MR. WALLACE: The motion carries. I would move that the rest of 1614.1 be adopted as exactly in the Board book.

MS. BERNSTEIN: I don't know whether you plan to put this someplace else but as I understand the decision, and I forget what court, we are presumptively not required, for state and national support, to devote any of their -- or we would not be allowed to require that. I have argued earlier, and I still maintain, that to the extent that they're doing direct delivery, I think that the coordination of the private attorneys is important. However, to the extent that it would violate an interpretation of our appropriation, I am willing for it to be listed here now. I don't know, since we don't want to redo these right every year, is it necessary to put in as another exception under recipients of Native American and migrant funding there to provide involvement, and could be put in state and national support in the same kind of way?

MR. WALLACE: Let me ask the people -- that Ms. Bernstein -- as I read these rights, we're not directing, then, and the first section that we just adopted said all recipients.

MS. BERNSTEIN: Right.

MR. WALLACE: Let me ask the General Counsel's office where we stand because some riders we used to be under, we're no longer under for the last week or ten days, but this is one of them so I don't know where we are with state and local support center, as a matter of law. The way this reads right now is everybody comes under this, except hereinafter provided. If we don't have a specific exception to state and national support centers, what they come under, whether or not we could enforce that, depends on the court order. Now, is that what we're saying here?

TERRY DUGA: Would you restate that for a second?

MR. WALLACE: Yes, A says, "Except hereinafter provided a recipient of legal services appropriation funding shall devote twelve and a half percent." Now, state and local -- state and national centers are recipients of our funding and they would be required by that language to go twelve and a half percent unless we have an exception for them. I don't think there is an exception.

TERRY DUGA: Except for the fact that the second sentence -- the sentence requires them to

devote at least twelve and a half percent of their annualized big basic field award and that automatically excludes state support because that is not a basic field and that would exclude national support.

MR. WALLACE: They do not come under 1A at all. I thought the language was supposed to exclude them. I didn't know if that is how it does it.

MS. BERNSTEIN: I would like to still have an answer to the question you just asked, which is under the current appropriations rider, would the -- are we restricted from imposing such a condition?

TERRY DUGA: My understanding, and I will shoot from the hip in remembering the case and the rider, but I think I'm solid on this, I believe that you could not impose it starting today, or starting this year prospectively now that you are confirmed. I believe you could impose it starting --

MS. BERNSTEIN: It's part of the grant condition we threw out.

TERRY DUGA: It comes under that theory which means the change of the terms and conditions, which I believe that case and decision was based on.

MS. BERNSTEIN: So one of the grant conditions could read, to the extent that you are

involved in direct delivery, and you will comply with section 1614?

TERRY DUGA: Yes, or part of the regulation could read, "Starting January 1st, 1986" --

MR. VALOIS: Wherever permitted by law.

TERRY DUGA: Subject to whatever the new appropriations are.

MR. WALLACE: We could do it. The language we have now does not do it. We could do it as Mr. Valois says, subject to other provisions.

MS. BERNSTEIN: I don't want to change it at this time. I wanted it clarified as to where we are standing.

MR. WALLACE: I appreciate the clarification, but I don't think it's something we want to consider today because it hasn't really been before us in the six months we've been wrestling with this. So my motion, which has not been seconded --

MS. BERNSTEIN: I second it.

MR. WALLACE: Okay. We will adopt 1614.1 as printed in the Board book, and that is B, C, and D. There's a move to second it, any discussion on this provision? If not, we are ready to vote.

MR. SMEGAL: Well, let me understand

this. The staff has moved B and moved B to C and C is as it was. The old C is now D.

THOMAS BOVARD: B is just the sentence that was formerly --

MR. WALLACE: It used to be a sentence in A --

THOMAS BOARD: It moved from there, and it could be B and C again.

MR. WALLACE: There is no dispute there, that I know of. Ready to vote? All in favor say "Aye."

MS. BERNSTEIN: Aye.

MR. WALLACE? Opposed?

(No response.)

MR. WALLACE: That provision passes. We'll move on to 1614.2. Now, the main thing here has to do with joint ventures, and I think Mrs. Valdez and Mr. Housman's memo makes sense to me. There is no reason that joint ventures should be coterminant or overlapping. I would add adjacent to that -- I don't see -- if they're not adjacent it sounds like you got all kinds of problems with it, and I'm willing to be convinced at a later date that non-adjacent programs work as adequate joint venture program --

1 MS. BERNSTEIN: You're talking
2 adjacent --
3 MR. WALLACE: I would say areas are
4 adjacent -- in the case of recipients, the service areas
5 are adjacent, coterminus or overlapping. That's what you
6 all suggested, and that would be fine with me. The other
7 thing you said was that the joint venture must spend at
8 least twelve and a half percent of the -- and I agree
9 with what you said. What we want to do is say partici-
10 pants in joint ventures -- I'm not sure how we want to
11 say this. We don't want to say that joint venture is the
12 only way you spend your money.
13 TERRY DUGA: If I may, to start with
14 the total amount of expenditures of the participants in
15 the joint venture must equal at least twelve and a half
16 percent of the aggregate.
17 ESTHER LARDENT: If you strike that,
18 they're under an obligation in any event to spend the
19 funds. This doesn't create any new obligation, I think
20 if you struck that language --
21 MR. WALLACE: Here's the thing, without
22 this language each project is individually under an
23 obligation to pay twelve and a half percent. The whole
24 point of the joint venture is to say that one project can
25

spend twenty percent and another five percent and as long as it added up to twelve and a half, the total grant --

MS. BERNSTEIN: If that's what it says, I like striking it better. If that is what it says, and as I understood it, each individual grantee -- I can't support it any other way.

MR. WALLACE: Okay. The joint venture must expend at least twelve and a half percent to the aggregate.

MS. BERNSTEIN: I would suggest that we make a change so it would read,

> "The participants in the joint venture must expend at least twelve and a half percent each of their individual grant."

I agree with Esther, I think it would come --

MR. WALLACE: If you struck it, that's what you'd get. I don't know if that would be a problem, or pushing the money from one program to another would be --

MS. BERNSTEIN: The only reason I can support it is because I can see where there would be a situation where the economy -- in providing a support system coterminus adjacent service area in the support mechanism, but because of the various bar associations in

their various areas, I don't want to put all of the emphasis in one area, in terms of expenditures.

MR. WALLACE: It's not a question of where it would be spent, it's a question of whose bank account it would come out of. If you worry about emphasis within the area, look over on the top of the next page.

MS. BERNSTEIN: I understand this provides an opportunity to involve private attorneys, but that does not -- I don't think you would have to say the same situation if you're going to have a commitment for the program.

MR. WALLACE: You got a commitment from the program jointly to spend an X amount of money, and our Office Appeals Service has to approve it, and our Office Appeals Service has to approve it and make sure there's a real opportunity. I mean four is not here just as it is here, to make sure that we're getting a fair spread throughout the entire joint service area, and presumably if we approved it, we would be getting something representing a fair spread, and I'm not sure why it makes a difference what the money comes out of, if it comes out of one program or another program, but I am willing to be convinced on that.

MR. MENDEZ: I don't think we need that, I think that complicates the regulation because if we take it out, each one has the duty to do that.

MR. WALLACE: Each one has the duty to spend twelve and a half percent individually. They don't have the flexibility to have one participant spend twenty percent and another spend five percent, that way they can conclude they want to jimmy their money around, maybe they don't want to jimmy their money around.

MS. BERNSTEIN: I think that goes against the overall purpose. I could not support that. I think that we should strike it.

MR. WALLACE: Esther has another proposal to make.

ESTHER LARDENT: I hadn't realized that striking that would create that problem, because the situation I'm looking at is the DSS conversion project. There's no reason why when, for example, you are already spending twelve and a half percent of the funds in an area going -- you have more than that going -- you are going to acquire above and beyond that. I think that was the concern in particular of DSS, I don't know if --

MR. WALLACE: Hold on. A committee member would like to speak.

MR. SMEGAL: I would suggest that subsection 2 read,

"Projects expended by each recipient engaged in a joint venture are to be credited to set aside at least twelve and a half percent of the basic field award of each recipient."

Isn't that what we're doing?

MR. WALLACE: No, that has the same effect as striking it. If you want to let them jimmy the funds back and forth, I know you don't, and I may be convinced of that eventually, but somebody may have language to jimmy it back and forth.

THOMAS BOVARD: How about this,

"The recipients involved in a joint venture must expend at least twelve and a half percent of the aggregate of their basic field award on PAI."

MR. WALLACE: That does it.

THOMAS BOVARD: Taking Lea Anne's approach,

"Each of the recipients involved in the joint venture must expend at least twelve and a half percent aggregate of the basic field awards on PAI."

MR. WALLACE: It's the same --

THOMAS BOVARD: You put in each of the --

MR. WALLACE: Give me the language we started with.

THOMAS BOVARD: "The recipient involved in the joint venture must expend at least twelve and a half percent of the aggregate of their basic field award on PAI."

MS. BERNSTEIN: "The participant in the joint venture must provide to the expenditure at least twelve and a half percent aggregate of the basic field awards and recipients in the service areas of each recipient involved in the joint venture."

MR. WALLACE: Well, I don't know how you decide where it's being spent. I mean, the whole point of having a joint venture is to merge in the neighborhoods and how do you decide what neighborhood and what money is being spent. Maybe the auditors will be able to do that. It's not obvious to me.

MS. BERNSTEIN: If you have a compensated model, then you obviously would involve the attorneys equally in both areas. Now, if it's a pro bono situation -- in other words, what I am not wanting to encourage is a situation where in one service area an

attorney is encouraged to do pro bono work and there is no compensated model available, and therefore they expend only five percent, where in the adjacent area they have an Adjudicare program that exceeds twelve and a half percent by seven and a half percent and utilizes that much money in their Adjudicare model and they get the other department to agree and they're in compliance because they're adjacent.

MR. MENDEZ: I have a question. I understand what you're saying, but what do you want to do? Would that appropriation fall within the waiver provision?

MR. WALLACE: No, because what we are doing is permitting the money -- the money is getting spent, it's not a waiver. The amount of money that is committed -- the twelve and a half percent total amount of money committed to a particular area is being spent on PAI in that area; you're not waiving anything.

MR. MENDEZ: But you're waiving as to the programs --

MR. WALLACE: You're permitting programs to set up a joint venture.

MR. MENDEZ: But you're waiving one program --

1 MR. WALLACE: If you want to look at it
2 that way, okay, but I don't care if it's a joint venture
3 under waiver, the question is what do you want to do with
4 it. Mr. General Counsel?
5 TERRY DUGA: I think the problem may be
6 the word adjacent, as I recall it originally in the joint
7 venture agreement, it was where programs did overlap at
8 least, or were coterminus. You had a guarantee it was
9 going to be spent in that particular area. As I under-
10 stood what the policy was to be, we were granting an
11 exception as to one program's expenditures of twelve and
12 a half percent, but the expenditure would be in an area
13 which at least was overlapping, if not coterminus. The
14 introduction of adjacent raises a whole different
15 problem.
16 MR. WALLACE: But you can have a much
17 bigger area with much greater potential for --
18 TERRY DUGA: You run the risk of every-
19 thing being spent in one area.
20 MR. WALLACE: I understand that.
21 TERRY DUGA: If I may add one other
22 thing. We have to look at it as a whole, because each of
23 the four provisions that are enumerated in B must be
24 met, Field Services has to approve. We must have the
25

expenditure, whatever the language comes down there so the twelve and a half percent is met. Each participant must be a bonafide participant. It is not just someone else expending all the money. I have to be a bonafide participant, and it has to be available across all the service areas. If it's all going in one area, and someone is going to take the benefits of that, it doesn't meet those criteria. It's not going to be approved.

MS. BERNSTEIN: How about the change in two, removing adjacent, and saying that the joint venture must extend at least twelve and one half percent of the LSC basic field awards of each of the recipients involved?

MR. WALLACE: That's another way of saying what you want to do, to require each recipient to spend twelve and a half percent of his budget.

MS. BERNSTEIN: If they want to waive, then they go through the waiver procedure, but that they don't try to get something waived by calling it a joint venture.

MR. VALOIS: Mr. Chairman, Mr. Mendez and I are going to attend to our social obligations.

MR. WALLACE: Frankly, I can't see anything wrong as to what has been suggested, and my motion

is going to be subject to being corrected between now and -- I'm willing to be convinced, and this is the first time it has come off, and I want to get a recommendation to the Board, and I'm willing to be convinced to the contrary. I would put in adjacent, and I would demand two to use the language that Mr. Bovard read to us to say that you pull the money, and the twelve and a half is being spent in total, and that's okay. Now, that's going to be my motion, as in the Board book, 1614.2, and exactly as it is here with those changes. Mr. Bovard, if you would read the language of my motion to --

MR. BOVARD: "Recipients involved in the joint venture must expend at least twelve and a half percent, 12.5%, of the aggregate of their basic field awards on PAI."

MR. SMEGAL: Assuming that they're not going to do anything else with PAI.

MR. WALLACE: No, I don't think it says that at all. It says that the recipients, taken together, must spend at least twelve and a half percent of their total grant, and it doesn't say you have to spend it in the joint venture, it doesn't have to be spent on PAI, that was the language Tom used, doesn't say spend it on the joint venture on PAI in some form. They don't have

to put it in the joint venture, but they do have to spend it all. That's my motion; is there a second?

MR. SMEGAL: Other than putting it in, that is redundant, we already put it in sub-section 1.

MR. WALLACE: In sub-section 1, we say every recipient has to spend twelve and a half percent of its grant. In the joint venture section we are saying if you're in a joint venture and it has been approved, you may not have to spend the twelve and a half percent of your grant. All the joint ventures together have to make the twelve and a half percent requirement, not one joint venture. If they spent ten percent and another joint venture, they spent fifteen percent, and as long as it comes out to twelve and a half percent, you meet the requirement.

MS. BERNSTEIN: Why do they need to go through the waiver proceedings?

MR. WALLACE: They wouldn't need to go through the waiver proceedings because they have it approved, it's been approved by the Office of Field Services, that is a waiver proceeding, a different kind of waiver proceeding.

MS. BERNSTEIN: That's exactly what I'm saying. Why is this here and not at a waiver proceeding?

MR. WALLACE: I will put it anywhere you like.

ESTHER LARDENT: May I speak as to the history. Very quickly, the original instructions had this language in it, the revised language in it, and it was just summarily dropped, and no one in the General Counsel's office or in the Field Services Office could understand why. Essentially what you are doing -- now you have a hard and fast minimum, and encouraging cooperation, in most circumstances you are talking about the joint bar ventures, which are some of the strongest pro bono programs in the country, and I think it was a situation that was dropped without any rationale, and I will encourage you to continue dealing with it in the way you have, because really it's a special situation.

MR. WALLACE: A question has been called, my motion is to amend and adopt 1614.2 as it is in the Board book with the amendments that I have dictated in the record and, adding the word adjacent, and changing D to the way Tom dictated that. That's the motion, all in favor of that motion say "Aye."

MR. SMEGAL: Aye.

MR. WALLACE: Aye. Opposed?

(No response.)

MR. WALLACE: All right, 1614.2 is adopted. Frankly, I would move -- I've got 1614.3 going all over several pages, but there is only one change that I would make, and that is the ethical requirement, and that's page twelve, which is the last thing:

> "All records pertaining to recipients' PAI requirements should be made available."

Somebody suggested that that could have an ethical problem, and that is right, and I would change it this way:

> "All records pertaining to the recipient PAI requirement which do not contain client confidences or secrets as defined by applicable state law shall be made available."

That is the only change I would make in 1614.3. That is the only change, and secrets and confidences don't have to be disclosed. I haven't got anything else I want to change in 1614.3. Before I put that in the form of a motion, I would ask members of the committee if they've got anything else that they want to change in there.

MS. BERNSTEIN: The only thing that I am concerned about is under D4, I think, on page six:

> "Access by private attorneys to LSC recipient sources, including those of LSC national and state support centers, that provide back-up on substantive

1 and procedural issues of law."
2 That is something that should be provided to private
3 attorneys. Now, the concern here is that I don't want
4 some sort of a finder's fee or a technical assistance fee
5 being charged by the local program, and facilitating a
6 relationship between the private attorney and state and
7 national support systems, to be charged off as private
8 attorney involvement, and we talked about this earlier,
9 and I don't think there is any necessity for the
10 language, but I just wanted it clear in the record that
11 this is something--that is something to be provided
12 directly from the state or national support to the
13 private attorneys who are providing the services, and it
14 is not meant as an encouragement to utilize or facilitate
15 those services as a way of meeting their twelve and a
16 half percent requirement.
17 MR. WALLACE: With that statement made
18 with the legislative history, the Chair concurs, for what
19 it's worth. Are there any other thoughts about changes in
20 1614.3? I would move 1614.3 as printed in the Board book
21 with the addition that I picked up -- I will dictate
22 again. This is the change that I would make in 1614.3,
23 still on page twelve, and I think it's E sub-4:
24 "All records pertaining to a recipient's PAI
25

requirements which do not contain client confidences or secrets as defined by applicable state law shall be made available for inspection review by LSC auditors and monitors during regular business hours."

That's the only change that my motion contains from the Board book, and, adopted in that Board book with that change. Is there a second to my motion, first? There is a second. Mr. Duga?

TERRY DUGA: I may be getting a little picky, but on page 40 we forgot to delete the change, it's technical in nature.

MR. WALLACE: On page 40.

TERRY DUGA: In point 2C you left out something.

MR. WALLACE: Well, my motion was as it is printed in the Board book.

TERRY DUGA: I misheard you, sir.

MR. SMEGAL: Do you want something else?

TERRY DUGA: No.

MR. WALLACE: Is there any further discussion on sub-section 3? All in favor say "Aye." All opposed say "No". All right, that section is

adopted.

On four, the only discussion we've had is that I like it and Mr. Smegal is scratching it out, and we will have to vote on it. I would move the adoption of 1614.4, exactly as printed in the Board book. If there is a second, Mr. Smegal may have an amendment to that. Is there a second for the adoption of 1614.4 as printed in the Board book?

MS. BERNSTEIN: I second it.

MR. SMEGAL: I will move to amend by deleting from sub-section B of 1614.4, the added language starting with the underlined word "and" and ending with the word "response", for the reasons stated by our panel and members of our panel.

MR. WALLACE: All right, is there a second to that amendment? Hearing none, the amendment dies for lack of a second. The main motion on the floor is the adoption of 1614.4, as printed in the Board book. Is there any further discussion; if not, we will go ahead and vote. In favor say "Aye."

MS. BERNSTEIN: Aye.

MR. WALLACE: Opposed?

MR. SMEGAL: No.

MR. WALLACE: 14.4 is adopted as in the

Board book.

All right, that would take us up to litigation funds. I would move its adoption as printed in the Board book. Is there a second?

MS. BERNSTEIN: I'm going to ask a question relating to Esther's statement regarding C2. Is that right?

MR. WALLACE: Yes, you're right. You have it right.

MS. BERNSTEIN: C2, that the private attorneys, "Prior to initiating their action in the matter, it's requested of the recipient to advance funds." I wonder if there's some way to reword that a little bit in order to simply say that by the local practice, or, you know, something that on a regular basis certain funds will be reimbursed.

JAMES MARTIN: I've got some language that I think would cover --

MS. BERNSTEIN: I don't want to get carte blanche.

MR. WALLACE: I understand your $2.40 problem and I apologize for forgetting it. You've got some language?

JAMES MARTIN: Yes. The suggested

language would be to advance funds or expend such funds in accordance with the schedule previously approved by the recipient. The way that operates in our program, we have a schedule of costs that attorneys are allowed to advance without getting prior approval. It includes certified copies, some long distance telephone charges --

MR. WALLACE: Where would you put that language?

JAMES MARTIN: I would put it right at the end of C2. I am saying that the private attorney, prior to initiating action in a matter, will request the recipient to advance funds or expend such funds in accordance with a schedule previously approved by the recipient.

MR. WALLACE: Would you read the language back to me, in C2?

TERRY DUGA: "A private attorney either prior to initiating an action in the matter will request the recipient to advance the funds or has expended such funds in accordance with a schedule previously approved by the recipient's governed body."

MR. WALLACE: You put "either" in the wrong place. It ought to be, "either has requested -- a private attorney prior to initiating an action in the

matter either has requested --"

MR. SMEGAL: Why do we need either at all?

TERRY DUGA: "In accordance with a schedule previously approved by the recipient."

MS. BERNSTEIN: Is that a friendly amendment?

MR. WALLACE: That's a very friendly amendment, and I am embarrassed that I did not remember it from my notes. Okay, that motion has been made and seconded with the language we just worked out. Is there any further discussion of 1614.5?

TERRY DUGA: As a technical matter, I believe 1607 is governed body, rather than governed board.

MR. WALLACE: Yes, I think it says body instead of board. Okay, any further debate on this section? All in favor say "Aye."

MS. BERNSTEIN: Aye.

MR. WALLACE: Opposed? All right, five is adopted. Now, we're into waivers. I would propose the adoption of the waiver section as is, except I would add as C5 of Mr. Nusbaum's proposal which was given to me earlier today, and I would move from 5 down to 6, and I

would say one other thing. Mr. Housman had some language that made some sense to me. Let's see if I can get a draft of it. If you go on down, he gives the reason, and if the information is insufficient, you tell them in a hurry so they can do something about it, and does anybody from OFS think it's too burdensome to give a reason if you decide to turn something down? Is anybody from OFS here? Is there a problem, John?

JOHN MEYERS: All it means is that when we send them back, if we disagree, we explain why, we do that anyway, so there isn't any harm to the regulation. We send it back and we say well, these are our reasons, this, this, and that, and we can start one of those paper mill things -- if you mean we should explain rationally why this doesn't fit within one of the six or seven criteria, there isn't any problem with that. The other part of it is open to interpretation problems. If we look at it, and, you know, have a request, that's fine, if we don't have enough information we will get back with you as quickly as possible. What is usually done is that they're brought in, they're processed and a conclusion is granted, or turned down or well, we're not quite sure for one reason or another. We ask for additional information when we are undecided for one reason or another, when we

ask for information we are undecided, so there could be some problems with the second part of that.

MR. WALLACE: Well, the thing is that the staff draft says, you know, you got a thirty-day deadline on this, which I think is reasonable, and, you know, it is certainly hortatory if you are going to need more information, then your response should be, we need more information -- if you don't make some response within thirty days, you just grant it?

JOHN MEYERS: Right. I was in discussion with the officers of General Counsel and because of the feeling that people wanted some security, they wouldn't take forever in the process, I believe that we can process this within thirty days and if we mess up, it's tough luck for us, not for them.

MR. WALLACE: My motion would be to add Mr. Nusbaum's language where I added it, and to use Mr. Housman's version of section 1614.6F, instead of the one in the Board book, and that basically says, "Give them an explanation and if you need information tell them to get it." So that would be and is my motion with regard to 1614.6, as on page 254 of our book.

TERRY DUGA: There is a problem that we have. There are two types of waivers. One, under C,

which is an OFS matter, and one under D, which is an audit --

MR. WALLACE: Product matter.

TERRY DUGA: And the time limit only deals with sending everything over to OFS.

MR. WALLACE: I think the appropriate language is pretty simple. What we are saying is that all waiver requests shall be addressed to the Office of Field Services, or to the audit division as appropriate under the preceding portion of this section. Maybe that's not the best language in the world, but what we are saying is that any waiver sought under B goes to OFS, and D goes to the audit division. Instead of saying OFS you would say -- yes, the corporation shall make a written response.

MS. BERNSTEIN: We've got thirty days after the waiver request comes in, are we presumed in any sort of non-compliance --

MR. WALLACE: Well, that to me, that's over in the next section, and if you sent in a waiver within the year -- the motion is to adopt section 6 as in the Board book with adding Mr. Nusbaum's language, adding Mr. Housman's revised language, and so adopt it. Is there a second to that motion?

MR. SMEGAL: Second.

MR. WALLACE: Is there any further debate? All in favor say "Aye."

MR. SMEGAL: Aye.

MS. BERNSTEIN: Aye.

MR. WALLACE: Opposed? That motion passes. We are up to section 7, Failure to Comply. We've got to make some changes on here because of what we did about the twenty percent, so what has to come out of here begins on line 2:

"Also fails to close at least twenty percent of its cases through private attorney representation in any contract year."

That is going to come out, on the motion that I'm going to make. It should read,

"Or receives a waiver of part, p-a-r-t."

You've got a grammatical problem. What this says is you fail to ask for good cause for a waiver, you ask for a waiver and don't get it, or you receive a partial waiver, and you don't come up with the part you were supposed to spend, then the amount that you missed is added on that next year, and there was some language left out there. So on line 2 of sub-section B, after the comma, it should be "or receives a waiver for part of the PAI

requirement." Now, I know there are different views on this one, but what I'm going to do, to get it for us, is to move the adoption of 1614.7 as in the Board book with the deletion in A that I just read and the addition in B that I just read and if I get a second to that, then we can debate any amendments.

MR. SMEGAL: I will second it.

MR. WALLACE: What I deleted in one, starts on line 2, after the word part, start deleting, and,

> "Also fails to close at least twenty percent of the cases through private attorney representation in any contract year."

That was already tied to the first part that we deleted.

MR. SMEGAL: So it reads,

> "If a recipient fails to comply with the expenditures required by this part and if a recipient fails with good cause to seek a waiver."

MR. WALLACE: That's right. That's the motion before us. Does anybody else have any further language?

MS. BERNSTEIN: Yes, I would like to amend that motion by striking two field programs out of the second and third lines.

1 MR. WALLACE: Let me second that, for
2 purposes of debate. I want the staff to explain to us --
3 as Chairman, I have correspondence with the staff about
4 this, and there was some thought as I understand it, and
5 there would be some problems in giving this money out in
6 a hurry to anyone in the field program, but maybe I was
7 wrong.
8 THOMAS BOVARD: I didn't draft this
9 provision, but I don't have any problem with --
10 MR. WALLACE: The real problem is the
11 original language, as I remember Ms. Bernstein said we
12 would get it prior to the attorneys, in the delivery
13 area, and if you strike field programs it is not as
14 limited as it was before, as a matter of fact, it's wide
15 open.
16 MS. BERNSTEIN: Then everybody could
17 compete. The reason that I am favor of that is that
18 we've already gone through the possibility of a joint
19 venture, which we already have the possibility of a joint
20 venture, we have the possibility of a waiver provision,
21 and this is only if the -- basically if the local
22 programs have not complied in any of the senses, and I
23 say that at this point we make an effort to get the funds
24 out.
25

MR. WALLACE: By striking the field programs this could go anyplace.

MS. BERNSTEIN: Right.

MR. WALLACE: There are several comments from the floor on that so this gentleman had his hand up first. Identify yourself.

MICHAEL LEONARD: My name is Michael Leonard, I am from Chicago, and if the program in Chicago did not comply, and you took some of the funds away, could the money go away to a program in San Francisco?

MR. WALLACE: It could go anywhere, with either language.

ESTHER LARDENT: My concern is with respect to remedy. What my own sense is is that you are creating a business incentive for programs that are having difficulties with complying, and you are penalizing clients in that program so that -- what you are saying is that if the program does not meet the twelve and a half percent requirement without any allusions to other remedies or assistance, technical assistance, you are going to remove that money and put it up for competitive bid. What that means to me, in terms of the private bar in that area and the clients in that area, they're losing the advantage of that, and it seems to me that if

you're going to do this sort of thing that the remedy, indeed, would be working on an acceptable plan for utilization of that money, so that it continues to benefit the clients in that service area and so that you don't have a problem with a program that is not in compliance.

MR. WALLACE: The only funds that get withheld under this section are from people who don't meet the requirements and don't bother to ask for a waiver. It's a limited group of people, I hope it's going to be a zero group of people.

ESTHER LARDENT: Again, what you're doing, you're not teaching them anything by this. I mean it's a wholly negative situation, with no incentives, and the people that will be harmed in that area are the clients of that program.

MR. WALLACE: I understand, and there are only two things that someone can do in a regulation, and we're going to hire, if we haven't already, a PAI coordinator, full-time, on staff. I am fully conscious that we need to do positive things, but there's only so much education you can do with a code of regulations, and we want to do that. This penalty applies to a very limited class of people, the people that didn't do it and didn't bother to tell us why, and as far as penalizing

the people in the local area, anybody that doesn't, and doesn't know why for two or three years in a row, as far as I'm concerned, is going to be getting out of this business, because I'm going to get another provider that will take care of the clients, and it's a small problem and a short range problem, but anybody that persistently comes under Section A is somebody we need to look at replacing.

MS. BERNSTEIN: Are you considering a friendly amendment?

MR. WALLACE: Well, since somebody seconded my motion, I'm not sure that I can do it, but we will vote on it.

MS. BERNSTEIN: Lorain seconds it.

MR. WALLACE: Okay, we got a second on the motion, but we will have to vote on it separately. Mr. Smegal?

MR. SMEGAL: I will accept her amendment, but I would like to make an offer.

MR. WALLACE: Well, I tell you, if you accept it as a friendly amendment, we won't have to vote on it.

MR. SMEGAL: I will accept it. Now, we've got a motion that I'd like to amend, that I'd like

to add in the same sentence, further on, for use in providing legal services, the words, "in the recipient's area", and also after "through", the word "other". So that this recipient couldn't come back and get their money back, but other recipients in that area -- or others could receive the money:

"Any funds withheld by the corporation pursuant to this section shall be made available by the corporation to start these field programs for use in providing legal services through other PAI programs."

MS. BERNSTEIN: I would like to second his motion.

MR. WALLACE: We've got a second and this almost takes us back to where we were on the last draft. Mr. Duga?

TERRY DUGA: If I can add a technical word before service area?

MR. SMEGAL: Sure.

JAMES NEUHARD: I have just one question. I need a grant and I'm in the service area, I'm grantee, too. What happens in the second year when the program comes into compliance, what happens to that, say there's $10,000 involved, I've got it, and now we're

in the second year, does that go back?

MR. WALLACE: Yes --

MR. NEUHARD: Hacking these things up is not easy. You put all this appartus up, now you have to dismantle it.

MR. WALLACE: That's why I had problems with the language and as much as I hate to stand in the way of Bernstein-Smegal litigation, it looks like --

MR. NEUHARD: The problem there is the same one you have in a lot of other cities.

MR. WALLACE: There are lots of ongoing programs where the money can be spent. I mean if somebody can come in --

MR. NEUHARD: Well, that's a different amendment.

MR. WALLACE: Read the Bernstein-Smegal language, beginning with "any funds".

MS. BERNSTEIN: "Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services in the recipient service area through other PAI programs."

That simply means that we have a chunk of money, whatever was not asked for a waiver, but that's

the only amount of money that we're talking about, is non-compliant, non-asked-for waiver, that that money is -- we published in the newspaper and whatever we want to publish, and we've got money out there to serve clients in this geographical area.

MR. WALLACE: But that really limits you on where the money can go, I mean if somebody is $25,000 under, you've got to take that $25,000 out of the program in Chicago and give it to somebody else in Chicago, you've got Mr. Neuhard's program of start-up costs, you might be able to take that $20,000 and put it in Detroit, and have it put to good use.

MS. BERNSTEIN: It's made available in the geographical area.

JAMES MARTIN: If you can't benefit the clients then you just say you can't benefit them.

MR. WALLACE: Okay, we've got a motion on the floor, do we have any more discussions on the floor? Are we ready to vote on 1614.7 as amended by the committee? All in favor say "Aye."

MS. BERNSTEIN: Aye.

MR. SMEGAL: Aye.

MR. WALLACE: Opposed?

(No response.)

MR. WALLACE: All right, then I'll make a general motion that this regulation as adopted section by section here today, be recommended to the Board for adoption. Is there a second?

MR. SMEGAL: Second.

MR. WALLACE: All in favor say "Aye."

MR. SMEGAL: Aye.

MR. WALLACE: Opposed?

(No response.)

MR. WALLACE: Now, one other thing, and this is in the way of an announcement, for members of the committees and for anyone else who is here, this is not on the agenda, but I've asked Mr. Bovard to prepare a regulation that would implement the set-off provision of the question of cost instruction, and we've got two versions of it out there, and we're going to give it to the members of this committee and we will publish it eventually. We're not trying to do anything, we're not trying to sneak up on anybody, but I just wanted to put it on the table this month and at some point, if we like what we're doing, publish it for -- consider it formally. We've got copies of it here.

THOMAS BOVARD: Just for the record, for people who pick it up and look at it, the first

section of both versions stops after the words "basic field grants", and it should continue saying, "This part seeks to avoid an unnecessary disruption with delivery to eligible clients." There's a sentence that has been left out, somehow.

MR. WALLACE: This is not a proposal, this is going to be a discussion draft for the members of the committee, and for anyone else who wants to discuss it. The chair will entertain a motion to adjourn.

(Proceedings concluded at about 6:45 p.m)

STATE OF MICHIGAN

COUNTY OF WAYNE

I, ELIZABETH E. MONTGOMERY, Notary Public, in and for the State of Michigan, County of Wayne, do hereby certify that I reported stenographically the foregoing proceedings at the time and place hereinbefore set forth; that the same was thereafter reduced to typewritten form under my supervision by means of computer-assisted transcription; I further certify that this is a true record of the foregoing proceedings.

ELIZABETH E. MONTGOMERY, RPR, CSR-2230
Notary Public, Wayne County, Michigan

My Commission expires: 9-9-87

CERTIFICATE OF COURT REPORTER

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

I, ARLEEN McNIVEN, Certified Shorthand Reporter in and for the County of Wayne, State of Michigan, do hereby certify that the foregoing meeting of the Board of Directors of the Legal Services Corporation held at the time and place hereinbefore set forth was recorded by me stenographically and that the attached pages of transcript is a true and accurate transcription of my stenographic notes so taken.

ARLEEN McNIVEN
CSR-0970