

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS MEETING

March 3, 1989

8:00 a.m.

The Marriott Marquis Hotel
McKenzie-Yukon Room
265 Peachtree Center Avenue
Atlanta, Georgia

BOARD MEMBERS PRESENT:

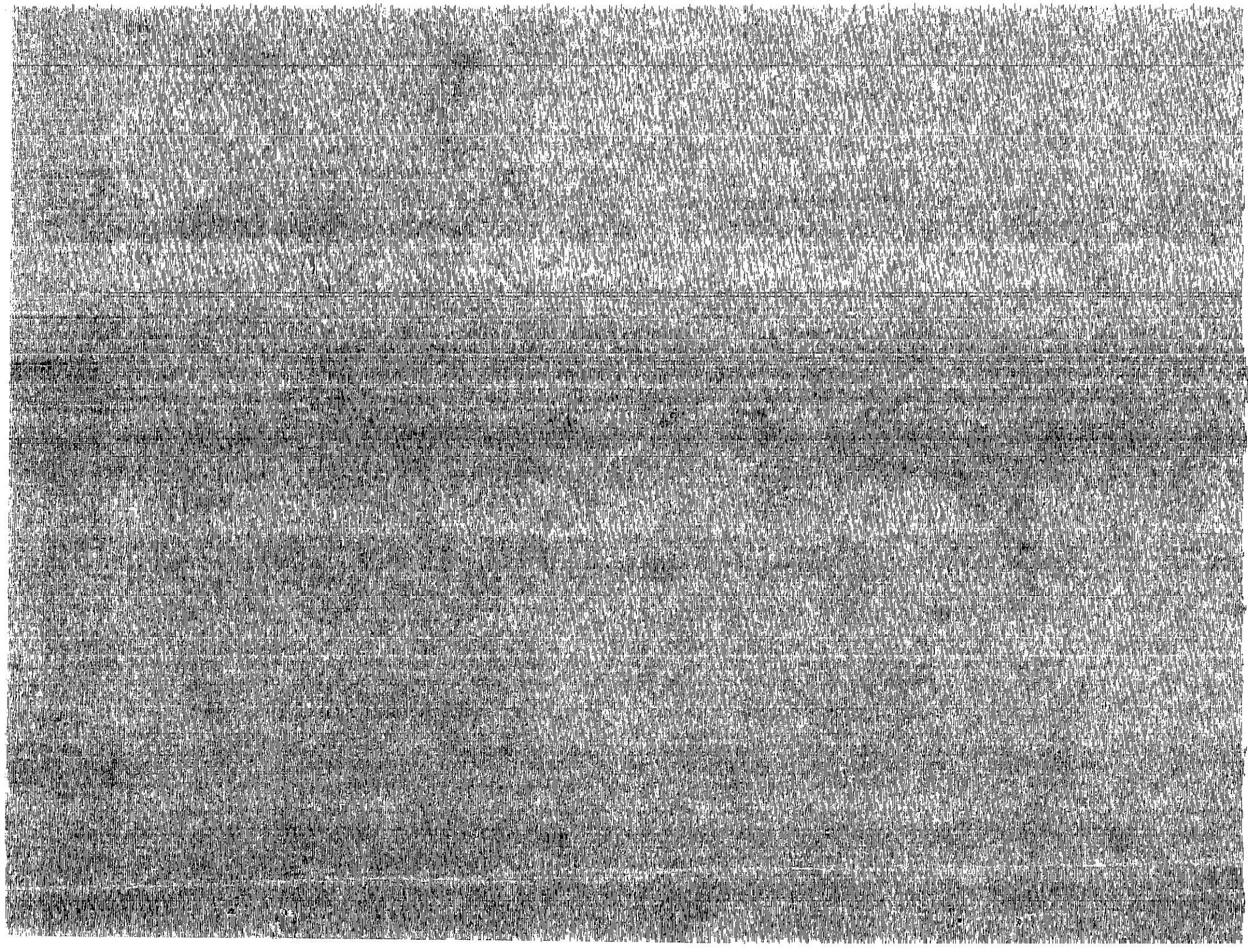
Michael B. Wallace, Chairman
Hortencia Benavidez
W. Clark Durant, III
Paul Eaglin
J. Blakeley Hall
Lorain Miller
Thomas Smegal
Claude G. Swafford
Basile J. Uddo
Robert A. Valois

STAFF PRESENT:

Terrance Wear, President
Timothy B. Shea, Vice President
& General Counsel
Suzanne Glasow, Senior Counsel
for Operations & Regulations
David Richardson, Comptroller
Maureen Bozell, Secretary

Diversified Reporting Services, Inc.

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WASHINGTON, D.C. 20005
(202) 628-2121



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P R O C E E D I N G S

(8:20 a.m.)

1
2
3 CHAIRMAN WALLACE: If I might have your attention, I
4 think we have all board members but one present this morning.
5 At this point I will call the meeting to order. This is the
6 meeting of the Board of Directors of the Legal Services
7 Corporation, called pursuant to notice duly given in the federal
8 register.

9 At our meetings it is customary for us to invite a
10 local minister to provide us with an invocation. I understand
11 our recruiting efforts in Atlanta have not worked out as we
12 might have hoped.

13 I'm going to ask Mrs. Swafford if she'd be so kind as
14 to open us with prayer.

15 (Invocation given.)

16 CHAIRMAN WALLACE: Thank you. The first item of
17 business will be the approval of the agenda. I think it's
18 accurate as printed in the board book. I don't know if this has
19 been changed, everything I see is here.

20 Let me ask for a motion to approve the agenda as
21 printed in the board book.
22

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M O T I O N

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MR. VALOIS: So, moved.

CHAIRMAN WALLACE: Is there a second?

MS. BENAVIDEZ: I second that.

CHAIRMAN WALLACE: It's been moved and seconded to approve the agenda as printed in the board book. Mr. Smegal is recognized.

MR. SMEGAL: Technically we did not have an executive session, we might need to cancel that, Mr. Wallace, items 1 and 2 under executive session. One did not occur.

MR. WEAR: Mr. Chairman?

CHAIRMAN WALLACE: Mr. President.

MR. WEAR: As the board members will note from the schedule printed in the front of the board book, the executive session was scheduled for 6:00 p.m. last night. When the hour of six p.m. arrived, we caucused with those board members who were here and it was their feeling that we did not need an executive session.

In any event, the scheduled time for the executive session passed and one was not held.

CHAIRMAN WALLACE: All right. I think that may be technical, but it's nevertheless probably appropriate. Let me

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1 as, then, for unanimous consent to delete the references to the
2 executive session from the agenda as printed in the board book.

3 Hearing no dissent, so ordered.

4 Any amendments or comments on the agenda?

5 (No response.)

6 Hearing none, we will proceed to a vote. All in favor
7 of the agenda say aye?

8 (A chorus of ayes.)

9 Opposed?

10 (No response.)

11 The agenda is adopted.

12 The first item on the agenda is the approval of the
13 minutes of the last meeting January 27, 1989. They're printed
14 in the board book. May I have a motion to approve the minutes
15 as printed in the board book?

16 M O T I O N

17 MS. MILLER: So moved.

18 CHAIRMAN WALLACE: Is there a second?

19 MS. BENAVIDEZ: I second that.

20 CHAIRMAN WALLACE: It's been moved and seconded to
21 approve the minutes as printed in the board book, are there any
22 amendments or corrections? Mr. Smegal?

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1 MR. SMEGAL: Thank you. On page 7, the last paragraph
2 on that page, there is statement made by Mr. Uddo. I have the
3 transcript and it seems to me, and maybe I'm incorrect in my
4 understanding of what was going on then, I don't believe Mr.
5 Uddo was urging this board to have our recipients find
6 alternative means of representing the aliens.

7 I think the point of the whole discussion was that the
8 aliens, or those concerned about aliens, are going to have to
9 find alternative ways of representing them rather than our
10 recipients.

11 The way this reads it sounds like we've asked our
12 recipients to go out and find alternative ways to represent
13 aliens, and I don't think Mr. Uddo was intending to say that.
14 If he did say that, that's a novel thought.

15 MR. UDDO: I think you're right, Tom. My comment was
16 exactly as you characterized it, that others would develop
17 alternatives. I didn't intend to put a burden on our recipients
18 to do that.

19 MR. SMEGAL: May I suggest a couple of minor changes
20 to accomplish that. I would replace the word "recipients" with
21 "aliens" and change "representing" to "being represented" and
22 put a period so that it would read, "in order to allow aliens to

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1 develop alternate means of being represented.

2 CHAIRMAN WALLACE: It makes sense. Let me ask
3 unanimous consent to amend the minutes as suggested by Mr.
4 Smegal. Hearing no dissent, so ordered.

5 Any further amendments or corrections to the minutes?

6 MR. SMEGAL: Mr. Wallace, I have a couple of more.

7 CHAIRMAN WALLACE: All right.

8 MR. SMEGAL: Page 8, I believe in the minutes we're
9 yet to come to, there's a nicety that I suggested by added
10 several years ago, and it has now appeared, the circumstance
11 where Mr. Uddo left and the record reflected he left.

12 I would like to adopt that same language at the bottom
13 of page 8. We've got some language following the vote, right in
14 there I'd like to insert "Mr. Smegal excused himself from the
15 rest of the meeting." That is, in fact, what happened, I left.

16 CHAIRMAN WALLACE: Let me ask unanimous consent that
17 the amendments be amended as suggested by Mr. Smegal. Hearing
18 no dissent, so ordered.

19 MR. SMEGAL: One final change, page 9, the paragraph
20 following the word "motion." I've read the transcript, I wasn't
21 here then, but from what I understood and what I see from the
22 transcript was going was Mr. Mendez had some concerns about the

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1 effect of the revised regulation.

2 I would propose that we make it a little clearer as to
3 what was going on. If I may suggest the following language,
4 "Mr. Mendez discussed with Mr. Shea his concern about," and then
5 the rest of the language is there.

6 I would require deleting the and between Mr. Mendez
7 and Mr. Shea and replacing "considered" with "his concern
8 about." I believe I can refer you to this transcript language
9 that supports that.

10 CHAIRMAN WALLACE: That's a fairly accurate
11 description of it, according to my recollections. Does anybody
12 recall differently?

13 (No response.)

14 Let me ask unanimous consent that the minutes be
15 amended as Mr. Smegal suggests. Hearing no dissent, so ordered.

16 MR. SMEGAL: Thank you, Mr. Wallace.

17 CHAIRMAN WALLACE: Thank you, Mr. Smegal.

18 Does anyone else have any additions or corrections to
19 the minutes?

20 (No response.)

21 At this point, the minutes are ready for a vote. All
22 in favor of approving the minutes as amended, say aye?

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1 (A chorus of ayes.)

2 All opposed?

3 (No response.)

4 The minutes are approved.

5 Let us proceed to the minutes of December 10th. There
6 were several concerns that Mr. Smegal raised at the last meeting
7 regarding the accuracy of these minutes and I think the
8 secretary has gone back and made certain changes.

9 Before I ask Mr. Smegal whether those are satisfactory
10 to him, let me ask unanimous consent to take the December 10th
11 minutes off the table and bring them before the board for
12 further consideration.

13 Hearing no dissent, do ordered.

14 Mr. Smegal, have you had a chance to review the
15 alterations to the minutes made by the secretary?

16 MR. SMEGAL: Yes, thank you, Mr. Wallace. The primary
17 ones appear on page 31, and do now more accurately reflect my
18 recollection. I'm fully satisfied with the way they've been
19 modified.

20 CHAIRMAN WALLACE: Any other additions or corrections
21 for the minutes of December 10th?

22 (No response.)

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1 All in favor of the minutes of December 10th, say aye?

2 (A chorus of ayes.)

3 Opposed?

4 (No response.)

5 The minutes of December 10th are approved.

6 (Discussion off the record.)

7 What that little exchange was all about was that the
8 president of the Georgia state bar is planning to appear today,
9 and I wanted to recognize him early if he was here, but he's
10 not. I understand he will be here the later part of the
11 meeting and we look forward to recognizing him at that time.

12 The next item on the agenda with which we will wrestle
13 in the absence of the committee chairman, is the allocation of
14 grant recovery funds. This is a matter that was tabled last
15 meeting so that we could get more information.

16 President Wear, I think, has provided further
17 information and I am going to recognize President Wear at this
18 time to present his proposal for consideration by the board.

19 (Mr. Durant joined the meeting.)

20 PRESIDENT'S REPORT ON ALLOCATION OF GRANT

21 RECOVERY FUNDS

22 MR. WEAR: Thank you, Mr. Chairman.

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1 On or about February 28th I sent to each of the board
2 members a memorandum dealing with the allocation of additional
3 funds to the corporation management and administration account.
4 During the course of our board meeting in January we discussed
5 the allocation of \$985,516 to various funds within the
6 Corporation.

7 At that time, Mr. Chairman, a proposal was made to
8 allocate \$753,941 of those dollars to the Corporation management
9 and administration operating budget for this fiscal year. The
10 purpose of that allocation was to bring the budget up to the
11 figure that it has been historically over the last four years.

12 As my memo indicates, the allocations for expenditures
13 for M and A have averaged \$10,728,990 over that period. This
14 year we are short of that amount and this figure that I have in
15 here, the approximately \$754,000 would bring the corporation up
16 to the \$10,850,000.

17 I made an attempt to try to show the board members
18 where that money would go if it were to come in here. The first
19 point is the hiring of replacement personnel. As some of you
20 know, when I came to the Corporation I instituted a hiring
21 freeze and also deferred some other expenditures.

22 The reason for that was, that based on my initial

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1 conversations with the Corporation's comptroller, I was not sure
2 that the Corporation would not overspend it's budget in M and A
3 last fiscal year.

4 My past experience with budgets and so forth, I've
5 developed a very healthy fear of overspending your budget. So,
6 that was the reason for the hiring freeze and the deferral of
7 expenditures. In order to bring the Corporation not back to
8 where it was, but up to where I think we can function, which is
9 less than where we were when I came here, I would hire an
10 additional 12 people.

11 That is what I refer to here in A (1) of the
12 memorandum at the bottom of the page. Since this memorandum was
13 generated, I had an opportunity to put together some numbers and
14 I'd like to hand these this way and these this way.

15 This is where the personnel would go. Basically we
16 would add six people in the monitoring division, an attorney, a
17 research analyst or research assistant, a monitoring and
18 evaluation analyst and a secretary.

19 We'd add an additional compliance attorney. In the
20 audit division we'd add a staff auditor. In the Office of Field
21 Services we'd add two individuals. In the comptroller's office,
22 we'd add one. We'd add one in personnel.

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1 The numbers associated with this are the salaries that
2 these people would earn. The total yearly cost of this proposal
3 would \$354,098. I've divided that in half since we would cover
4 basically the time period from April through September, which
5 brings it to approximately \$177,000.

6 The next item is the establishment of the Office of
7 Inspector General. As I've mentioned to the board in the past,
8 under the provisions of Public Law 100-504, the Corporation is
9 required to establish an Office of Inspector General over the
10 next two months.

11 This is a new office that wasn't anticipated when the
12 Corporation's appropriation bill was passed. I intend to hire a
13 minimum of four persons to staff that office. We're going to
14 see how that works out. If we need more, we'll do more later,
15 but it won't be in this fiscal year.

16 The job of the inspector general and his staff will be
17 to investigate and prepare for prosecution cases involving
18 violations of the Legal Services Corporation Act and the
19 regulation, cases involving fraud and abuse on the part of the
20 agents and employees of grantees.

21 Consequently, these people are going to need to travel
22 and we're going to have to have money for that. The total

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1 number for salaries and expenses over the remaining period of
2 this year for these people is approximately \$324,000.

3 The next item in the memorandum deals with hearings on
4 competition. As you all know, as part of the Corporation's 1989
5 appropriations act, the Corporation was instructed to develop
6 and implement a system for the competitive award of grants and
7 contract.

8 The Corporation staff has been working on this
9 proposal and we expect to have a proposal available for public
10 comment by early summer. Our hearings that we hold in
11 Washington cost approximately \$17,000 a meeting. On this
12 proposal I've allocated \$100,000 for these hearings.

13 That would allow five hearings at \$17,000 each and an
14 additional \$15,000 for some consulting work that we're going to
15 need to do to make sure that our proposal is in line with a
16 number of other competitive grant proposals.

17 Item number 4 on page 2 deals with client board member
18 training. Again, at the Corporation's board meeting in January,
19 the board elected to set aside \$50,000 in funds already
20 allocated to the Corporation's management and administration
21 account to pay for the training of client board members.

22 Again, this proposal was not anticipated when we

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1 developed the numbers for the fiscal year 1989 appropriation.
2 This proposal, in effect, draws money out of M and A that we had
3 in there for other purposes. I'm concerned that if the money is
4 not replenished it will have an adverse effect on the
5 Corporation's operation.

6 Going now to page 3 of the memo, item number 5 is the
7 publishing of the LSC Record. A number of board members have
8 been interested in the establishment of a newsletter, and this
9 is the fruition, I guess, of those interests on the part of
10 those board members.

11 The purpose, as I've mentioned before, of the LSC
12 Record, is to keep the field programs and other interested
13 parties apprised of developments in the Legal Services field,
14 changes at the corporation, whether it be policy or otherwise,
15 and other matters of interest.

16 We've put a pencil to this, indeed, we put a pencil to
17 it, when I was considering the idea. The cost of that
18 newsletter is approximately \$50,000 per year. I would say in
19 passing that I believe that cost is well justified.

20 The Corporation has been remiss in the past in not
21 getting its side of the story, if you will, out or getting word
22 out so that programs understand what's being done and why it's

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1 being done.

2 I think that we can avoid a lot of the problems that
3 the Corporation and the programs have had in the past if each
4 understands what's going on, and that is the purpose of that.

5 Item number 6, other increases in cost over which the
6 Corporation has no control. The first item under that category
7 is increases associated with the employment of certain contract
8 personnel. As I think all of you know, over the past two years
9 the Corporation has maintained a number of employees in a so-
10 called contract status.

11 What that means is those employees were paid a salary,
12 but they were not paid any of the fringe benefits such as
13 pension benefits and health insurance.

14 Under the new tax statute, section 89, the Corporation
15 is required to pay fringe benefits to those individuals. If the
16 Corporation elects not to extend fringe benefits to those
17 temporary employees, other employees in the Corporation are
18 going to have to take those fringe benefits into income.

19 They could do that, and some corporations do do that
20 and simply increase the salaries of the employees to cover it.
21 The intent of the statute was to try to cover these employees
22 that were not covered in the past.

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1 It's my intent to try and cover those employees so
2 that we, in fact, implement the intent of the statute. The
3 second item in that category deals with a rent increase. As
4 most of the older board members know, the Corporation moved from
5 an address in, I guess I'd call it midtown Washington, up on
6 15th Street, as I recall, down to the Corporation.

7 I do recall when the Corporation was up there when I
8 was on the Hill when I used to joust with them from time to
9 time. Since that time they've moved down to 400 Virginia
10 Avenue, we've got a multi-year lease and that rent on that space
11 is going to increase \$100,000 over next year, and there's
12 nothing I can do about it.

13 The last item in that category is the employee cost of
14 living raise. It was granted on January 1, 1989. As those of
15 you know, particularly those of you who are most familiar with
16 Washington, the principal competitor for employees in Washington
17 is the federal government.

18 The federal government is a big enough employer that
19 they're able to move the market, if you will, when they make a
20 change, a little bit like a big mutual fund that jumps into a
21 stock market on a particular stock. If that buy is big enough,
22 they can move the market, and that's what is happening here.

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1 The federal government increased the salaries of their
2 civil service employees 4.1 percent as of January 1. Last year
3 during the time that I was here from July through December, a
4 number of our employees left the Corporation for jobs in the
5 civil service.

6 The principal reason for that being that they could
7 make more money over there. I was interested in not having a
8 drain of our better employees and that was the reason for the
9 cost of living raise. I appreciate the fact that the programs
10 have testified that they have difficulty with that, because they
11 have difficulty getting a raise one way or another.

12 My response, very frankly, to that is that the
13 Corporation is competing in a different labor market, and if I
14 had the choice, we probably would not have had a raise. I've
15 got to compete in this labor market and that is, frankly, the
16 reason for it. The cost on the employee cost of living raise is
17 approximately \$180,000.

18 Now, if you all have been making notes of those
19 numbers and adding them up, you're going to see that all of
20 those numbers add up to approximately \$1.15 million, and I'm
21 asking for \$754,000, in round numbers.

22 That means that there's approximately \$400,000 that

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1 I'm going to have to cut out of here one way or another. I'm
2 determined to do that. The reason is that I am absolutely not
3 going to have a bigger budget than we've had in the average over
4 these last four years.

5 I am committed to holding the line on that. Those of
6 you who know me know that I am not somebody who likes to pour
7 money down a rat hole, and I don't care whose rat hole it is. I
8 think this is necessary in order to keep the Corporation moving
9 ahead.

10 As I said in the conclusion, the Corporation is taking
11 a more active role in the regulation of its grantees and is on
12 the way to making meaningful changes in the way that Legal
13 Services are delivered to the poor and to continue this effort,
14 we need the money to hire the replacement personnel, to set up
15 the Office of Inspector General, to develop the competitive
16 awards system, to replenish the funds that have been designated
17 for the client board member training, to publish the newsletter,
18 and to cover the other cost increases associated very simply
19 with doing business in Washington.

20 I intend to watch these nickels closely. I've got a
21 reputation among that staff, one that some people probably
22 wouldn't welcome, but I've been accused of being as tight as a

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1 tick.

2 CHAIRMAN WALLACE: Is that an Iowa expression?

3 MR. WEAR: I don't know where that came from, Mr.
4 Chairman. My response to that was, thank you very much, I
5 appreciate that. I didn't consider that an insult at all.

6 I can tell you that we are going to get a dollars
7 worth of work for a dollar that we spend for employees, we're
8 going to get a dollar's worth of value for any other dollars
9 that we spend. I believe that this is a necessary allocation
10 and I commit to you that if it's done, we will husband these
11 dollars very carefully.

12 Thank you very much, Mr. Chairman.

13 CHAIRMAN WALLACE: Thank you, Mr. President.

14 Before we get into general debate on this subject, I
15 would like to ask the board members first of all if they have
16 any questions for Mr. Wear on details of his proposal. I'd like
17 to get everybody clear as to what the details are and then we
18 can generally debate the merits of it.

19 Are there any questions? Mr. Smegal?

20 MR. SMEGAL: Thank you, Mr. Wallace.

21 Mr. Wear, you made a statement to start with that the
22 average expenditure was \$10.8. I'm looking at some documents

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1 that David Richardson gave to us dated February 23, and I'm on
2 page 1988 C, and I see the last year we have was not \$10.8, but
3 actually it was \$9.91 with a surplus with another \$600,000.

4 How did you get \$10.8?

5 MR. WEAR: That's the difference, Mr. Smegal, between
6 what has been allocated for expenditures and what has actually
7 been spent.

8 MR. SMEGAL: Isn't that what we're talking about, how
9 much you're going to spend?

10 MR. WEAR: No, we're talking about what we're
11 budgeting now. I don't intend to spend any more nickels than I
12 have to. If we're able to save some nickels, then we will.

13 MR. SMEGAL: Our experience last year was \$9.9 and you
14 gave us the impression that you needed more money because we
15 budget \$10.8 last year. The reality is that we spent \$9.9; is
16 that not right? Expenditures last year were \$9.9, the last full
17 year?

18 CHAIRMAN WALLACE: 1988 page C you're looking at?

19 MR. SMEGAL: That's the one I'm looking at.

20 MR. VALOIS: I understood the phrase, if I may,
21 "averaged \$10,728,990" to mean that more than one year
22 experience was used.

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1 MR. WEAR: Yes, that's correct. I think that Mr.
2 Smegal has got his number right, that is what the table says,
3 but I'm going to ask Mr. Richardson to elaborate on that, if
4 he's able to do so.

5 MR. RICHARDSON: For the record my name is David
6 Richardson, comptroller. I think a better sheet to look at that
7 Mr. Smegal is looking at is attachment G on the forms that went
8 out. That does give you expenditures of '88 which were \$9.9, as
9 he has stated, but what we're looking at is the average through
10 1985, beginning 1985 through 1988.

11 The expenditures that Mr. Wear has given has average
12 better than \$10.7.

13 MR. DURANT: Expenditures or budget?

14 MR. RICHARDSON: Expenditures. The budget through
15 that period, I don't have the figure in front of me, I think it
16 was an \$11.2 average.

17 CHAIRMAN WALLACE: Let's look at page one of
18 attachment G, that's along the top line, if I understand it.
19 Column 2 is fiscal year 1985 expenses, that's actually money out
20 of pocket; is that correct, Mr. Richardson?

21 MR. RICHARDSON: That's correct, sir.

22 CHAIRMAN WALLACE: That's \$10.8 million in '85. Four

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1 would be the same figure for '86, and that's \$11.3 million; is
2 that right?

3 MR. RICHARDSON: That's correct, sir.

4 CHAIRMAN WALLACE: Column 6 is the same figures for
5 '87, that's \$10.8 million.

6 MR. RICHARDSON: That's correct, sir.

7 CHAIRMAN WALLACE: Column 8 is the same expenses for
8 1988, which is \$9.9 million?

9 MR. RICHARDSON: That's correct, sir.

10 CHAIRMAN WALLACE: All right, now we know what numbers
11 we're playing with. Let me ask, because I'm curious and I think
12 it was the thrust of Mr. Smegal's question, if we got by in 1988
13 with so much less money than we had spent in previous years, why
14 can't we get by on that amount of money again this year?

15 MR. RICHARDSON: Basically because we do have to
16 establish new programs, the IG's office, the increase rent, but
17 more to the fact is we have had a hiring freeze where we have
18 seen our employment drop drastically.

19 If we look at attachment F that was sent to you, on
20 March 31, 1988 we had 172 employees in the Corporation. June
21 30, we had 156. As of December, after Mr. Wear had been with us
22 for 6 months, we were at 138. You see a decrease of over 18

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1 people within our offices.

2 More to the point, we had to decrease our monitoring.
3 We decreased monitoring from 18 trips a month down to, in some
4 months, as low as 12. Those monitorings are expensive, but we
5 had to do that to stay within the budget that we had available
6 to us, which was \$10.5.

7 As Mr. Wear stated, I went to him in July after he had
8 come to the Corporation as president and expressed a concern
9 that we very well could go over budget if we continued spending
10 at the same level.

11 At that point is when we developed a plan to reduce
12 the monitoring and reduce the staff to stay within the \$10.5
13 budget.

14 CHAIRMAN WALLACE: Mr. Smegal?

15 MR. SMEGAL: The assumption that you make in these
16 additional staff requirements, and of course we don't have the
17 information that shows us the same kind of detail that your
18 2/28/89 single page shows us on the additions, the assumption
19 that one has to make, I guess, and you're asking us to make, is
20 that all the expenditures that occurred are going to occur
21 again, and in addition to that you're going to make these other
22 expenditures.

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1 Again, I looked at attachment 1988 C and I noticed,
2 for example, that there was over a million dollars in expenses
3 involved in temporary employees. Now I agree that under Mr.
4 Bayly the staff went from 179 down to 147 in that particular
5 fiscal year '88, a drop of about 32 and a lot of temporaries
6 were hired.

7 Now, it seems to me that if you're going to add
8 another dozen permanent staff as you propose on the sheet dated
9 February 28, 1989, you're going to gain some savings in
10 temporary employee pay, for example.

11 MR. RICHARDSON: That's true to an extent. Some of
12 the temporary employees, of course, we do not have to pay them
13 within our salary ranges that you do have. Most of them were
14 paid below that. When we hired them we placed them in a range
15 and we paid them, with their experience, a rate comparable to
16 what they deserved.

17 In addition to that, of course, we've got
18 approximately 20 percent of benefits that have to be paid, we
19 were paying 7 1/2 percent before, so there is a gain there or a
20 net increase of over 13 percent.

21 CHAIRMAN WALLACE: Let me ask does your attachment F
22 include both permanent and temporary employees?

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1 MR. RICHARDSON: Yes, sir, it does.

2 CHAIRMAN WALLACE: So it's not a question of losing
3 permanent employees and replacing them by temporary employees,
4 these are bodies that are just lost reflected on attachment F?

5 MR. RICHARDSON: That's correct, sir. We tried to
6 make that clear in the memo that we did look at both temporary
7 and full-time employees to give you a clear understanding of how
8 many bodies we have in the Corporation.

9 CHAIRMAN WALLACE: Mr. Smegal, further questions?

10 MR. SMEGAL: I think that just begs the question.
11 Over the last six months, if we go back a little further, over
12 the last nine months we've been able to reduce staff by 34. I
13 assume from that that the staff weren't needed, that there were
14 34 staff members who weren't required.

15 I think that's good management. In fact, we're down
16 from 179 as of December 31, 1987, a little over a year ago.

17 MR. RICHARDSON: I agree to an extent we have had a
18 number of people leave the Corporation that we don't really have
19 to replace. There are key personnel that are working 12 and 14
20 hour days. Of course, they're salaried employees, they're not
21 being paid for their overtime. This is something we're trying
22 to reduce.

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1 CHAIRMAN WALLACE: Mr. President?

2 MR. WEAR: Mr. Chairman, it's also a question of what
3 you really want the Corporation to do. If you're dissatisfied
4 with that the Corporation is doing, I guess a loss of personnel
5 is not a big deal for you.

6 If you do want to push ahead and make these reforms
7 and to conduct these monitoring visits that the board has, as I
8 understand it anyway, promised its oversight committees it was
9 going to do, we're going to have to spend this money to do it.

10 The reason that those monitoring trips were cut back
11 is exactly as Mr. Richardson laid out, it looked like we were
12 going to overspend the budget. One of the things you just
13 absolutely cannot do is overspend the budget, and that was the
14 reason for that.

15 CHAIRMAN WALLACE: Mr. Smegal?

16 MR. SMEGAL: I'm still going to focus on this, if I
17 may. We're talking about a year the last year that we have
18 information on the budget year that was \$9.9 million is called
19 fiscal year 1988.

20 If I understand correctly, that year ran from
21 September 30, 1987 to September 30, 1988. That \$9.9 million was
22 expended on a staff of employees that ranged, at least

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1 quarterly, from 162 to 179 to 172, 156 and now we're at 138.

2 You're going to tell me that the \$9.9 million you
3 spent on 179 employees is the same number you're starting with
4 this year and I can't accept that. I don't agree with that.
5 That's impossible. You had, during the fiscal year 1988 where
6 you spent \$9.9 million and you had a lot more employees.

7 You've got to come to me with a little more
8 information than you're giving me here. You can't tell me I'm
9 going to add 12 people, therefore it's \$354,000. I want to add
10 that to \$10.8 or \$9.9 or whatever, you're apples and oranges
11 here.

12 You've got to give me the number you're really dealing
13 with, which is how much is the staff you've got left is going to
14 cost you, and I tell you it's not going to be \$9.9 million.

15 MR. WEAR: Well, there are a couple of things there.
16 First, Mr. Smegal, the cost on the 12 people is \$177,000. The
17 cost for the inspector general's office is \$324,000, just to
18 make the record --

19 MR. SMEGAL: According to this number here, which is
20 \$354,000, do I have the wrong page; that's not correct? Do I
21 have a different sheet from the rest of you.

22 CHAIRMAN WALLACE: What are you on?

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1 MR. SMEGAL: I'm on your 2/20/89 memo that says
2 \$354,000.

3 MR. WEAR: That number, Mr. Smegal is for a full year.
4 Since we've got approximately six months to go --

5 MR. SMEGAL: That's exactly my point, Mr. Wear, and
6 your \$9.9 million is for a whole year where the staff went from
7 179 down to 138.

8 Obviously the cost per month at the beginning of that
9 year when you had 179 people was different than the cost at the
10 end of the year, so you're \$9.9 million, your premise you go in
11 with is incorrect. Somehow or other you're carrying this load
12 along of \$9.9 million and you want to add to it. I'm telling
13 you it's not there to begin with.

14 You didn't start the fiscal year '89 with \$9.9 million
15 of baggage being dragged along. You've got another number and
16 you haven't told us what that is. It's a lot less.

17 CHAIRMAN WALLACE: Mr. Smegal, I think, I mean to the
18 extend I understand your argument, it's a simple argument, Mr.
19 Wallace.

20 CHAIRMAN WALLACE: Well, I may be a simple person
21 then. I gather that you are saying that if the staffing level
22 as of 9/30/88 had been the staffing level for the entire year,

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1 expenditures would have been less than \$9.9 million; is that
2 correct?

3 MR. SMEGAL: I'm not sure if I understood what you
4 just said.

5 CHAIRMAN WALLACE: I've heard you say it about three
6 times and I'm not sure I understand it, so let me try to explain
7 what I think you said. I'll make one more try and then you can
8 tell me that I misunderstand you.

9 We have a \$9.9 million total spending for the whole
10 year. We started spending at a high level and as staff
11 decreased, the rate of spending decreased toward the end of the
12 year.

13 So, what you're saying is if we took the rate we had
14 at the end of 1988, and carried it out flat for a full year, it
15 would be less than \$9.9 million; is that what you're saying?

16 MR. SMEGAL: Mr. Wallace, I couldn't say it better.

17 CHAIRMAN WALLACE: At least I understand what you're
18 saying.

19 MR. SMEGAL: You understand me very well.

20 CHAIRMAN WALLACE: I think the question is: At the
21 level we had, at September 30, 1988, were we getting the job
22 done?

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1 MR. SMEGAL: No, that's not the question.

2 CHAIRMAN WALLACE: That's my question, what's your
3 question?

4 MR. SMEGAL: My question is: At September 30, 1988,
5 when we had whatever number we had, which you've now agreed is
6 on a decline, what was that number, what would it cost us to
7 carry on the corporate management and administration at the
8 level we were at September 30, 1988, and that's the number to
9 which I think we should look at and try to add, as Mr. Wear has
10 suggested.

11 CHAIRMAN WALLACE: Mr. Richardson, have you got any
12 way to do that on the back of an envelope?

13 MR. RICHARDSON: As Mr. Smegal had pointed out, I do
14 have a draft of the December expenditures with me. We are
15 spending at a rate right now of approximately \$9.1 million, but
16 in the course of January and December those expenses have gone
17 up considerably.

18 In addition to that, the \$1.2 million that we would
19 like to add in employees, an additional cost that would
20 increase, we would need the \$10.8 million.

21 In working with Mr. Wear in supplying these figures,
22 we've looked through every possible way of possibly reducing

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1 that figure, but we feel that we needed people coming aboard,
2 the additional office of the IG, that the full amount of \$10.8
3 million is needed for continuing operations.

4 One of the things that we have done, we are spending
5 and doing our monitoring with consultants. Some of those
6 consultants are the people we're hiring, but we do have to gear
7 up to get back on track with the 18 monitorings a month. We
8 need to do that with full-time employees so that we can get our
9 reports and keep current on the everyday operations of the
10 offices.

11 MR. UDDO: Can I ask a question about this consulting,
12 because that's something which strikes me as coming through
13 these things as a fairly high figure over the years.

14 CHAIRMAN WALLACE: Go ahead, Mr. Uddo.

15 MR. UDDO: I'm just trying to get some explanation of
16 those consulting figures. I mean we've had a pretty high figure
17 for consulting services over the years. I'm just wondering what
18 accounts for that and what's going to change with respect to
19 hiring new people.

20 MR. RICHARDSON: The main proportion of the
21 consultants --

22 MR. UDDO: I'm looking at H right now which is your

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1 projection for '89, which is still a fairly steep figure, it's
2 over a million dollars.

3 MR. RICHARDSON: We cannot house everybody that we
4 need to get the monitoring completed, so we do use consultants,
5 attorneys, accountants, management people to help the staff in
6 monitoring our compliance to get the job done.

7 Also in that line are the attorneys for the general
8 counsel's office that help with the litigation and the problems
9 that we have that arise there. Each year it is a substantial
10 amount, yes.

11 MR. UDDO: That's not going to be reduce by hiring
12 more full-time people, at least no significantly it doesn't
13 seem?

14 MR. RICHARDSON: No, sir.

15 MR. UDDO: Didn't you just say that some of the full-
16 time employees are going to replace consultants?

17 MR. SMEGAL: Right. We do have a pool of monitors in
18 excess of 300. So, when we hire ten of them, there's still
19 quite a number that will continue to help us with their
20 monitoring trips.

21 MR. UDDO: How much is the consulting line going to go
22 down by hiring these full-time people? Is it going to go down

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1 at all?

2 MR. RICHARDSON: No, sir. The figure that you have
3 there is the figure that we're projecting, the \$10 million with
4 the consultants. Of course, if we don't get the \$10.8 budget,
5 that's the place that we'll end up cutting, most likely.

6 CHAIRMAN WALLACE: Let me ask you, because we may e on
7 different wave lengths, the figure on attachment H that shows
8 \$1,000,027 for consultants in fiscal year 1989 is, in fact, a
9 reduction in consulting expenses from the previous year; is that
10 not correct?

11 MR. RICHARDSON: That's correct, sir. We are making a
12 concerted effort to use staff personnel so that we can keep
13 tighter control of our reports that need to go out.

14 CHAIRMAN WALLACE: So you don't expect to reduce that
15 million dollar figure this year, but it is a reduction over
16 previous years; is that correct?

17 MR. RICHARDSON: Yes.

18 MR. SMEGAL: What was the actual expenditure in 1988?

19 MR. RICHARDSON: \$1.3 million.

20 MR. SMEGAL: So the \$9.9 is already \$300,000 when you
21 take out that \$300,000?

22 CHAIRMAN WALLACE: Mr. Smegal, you're taking out the

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1 \$300,000 because you're hiring more permanent people, and
2 permanent people are more expensive than consultants.

3 By reducing the cost of consultants you're increasing
4 your overall budget by putting people on the permanent payroll
5 and by paying them their section 89 benefits. A reduction in
6 consulting means a more than one-to-one increase someplace else
7 in the budget, unless you're not going to do the job.

8 MR. SMEGAL: Mr. Wallace, I don't think we have enough
9 information to act on this.

10 MR. UDDO: I have some other questions, maybe we
11 could just focus on a couple of other things for a minute, then
12 make a decision about what we want to do. I confess, I only
13 read this on the plane up yesterday, so I may have been able to
14 get the answers sooner, but I didn't have a chance to really
15 review it as carefully as I'd like.

16 One area of it that gives me a lot of concern is this
17 inspector general thing. In one sense that sounds like a fifth
18 wheel to me for a corporation that has a Monitoring, Audit and
19 Compliance Division. If we're mandated to do it, we're mandated
20 to do it.

21 I haven't seen the pact that mandates it, but it seems
22 to me that we're proposing to go into it in a fairly big time

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1 fashion with \$324,000. I need some explanation as to why we
2 need to spend that much on an inspector general that sounds like
3 that office is going to do an awful lot of the same thing that
4 Monitoring, Audit and Compliance does.

5 If it is going to do some of the same things, then it
6 seems to me that some of that money ought to come out of MAC and
7 not necessarily be new money. So, I need some sort of
8 explanation about this inspector general thing and why it's
9 going to take \$324,000 of new money to do something that I think
10 we're already doing.

11 CHAIRMAN WALLACE: Mr. President?

12 MR. WEAR: Thank you, Mr. Chairman. Mr. Uddo, as I
13 mentioned, I intended to hire four professional individuals for
14 that office. We'll also have a secretary that we intend to
15 steal from MAC.

16 That office will be staffed two lawyers and two
17 investigators. I anticipate having to spend top dollar to get
18 an inspector general. I want someone with some stature, someone
19 with experience in prosecuting white collar crime, because that
20 is what we have. That is what that individual is going to be
21 doing.

22 That individual will have a lawyer with an assistant.

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1 Also we're going to have two investigators that know what
2 they're doing with regard to putting together a paper trail.

3 In my experience as a special assistant U.S. attorney,
4 I had very good results with IRS agents who know how to put
5 documents together, who can put spreadsheets together to show
6 where money is going and how it's been used. Those people cost
7 money.

8 So, that is the reason for it. In addition, I've
9 factored in some money for travel in there. I guess the bottom
10 line is those people are going to be expensive in order to do
11 what I think needs to be done.

12 We've had fraud in the programs, we have cases
13 underway now that we're looking at, and we've just got to stop
14 that. People are going to put their hands in the cookie jar,
15 they're going to have the lid slammed on their hand. Their not
16 putting cookies in when they put their hand in the cookie jar,
17 they're taking cookies out.

18 CHAIRMAN WALLACE: Mr. Uddo, can I call your attention
19 to attachment G, flip over to that page. I share your concern
20 about the relationship between the inspector general and MAC,
21 but if you look at those numbers, I think you'll see that MAC is
22 where the money is coming from.

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1 If you take the \$4 million budgeted for MAC in 1989
2 and add the \$324,000 to it, you come up with \$4,364,000, which
3 is less than we spent on MAC in 1987, less than we spent on MAC
4 in 1986, and I think we've had the explanation the reason that
5 we always spent \$4.2 on MAC in 1988, is when Mr. Wear came on
6 board he cut the monitoring by a third to keep from going over
7 budget.

8 So, I think that the MAC and inspector general
9 together in this budget is less than we've been spending on
10 monitoring alone over the last few years.

11 MR. UDDO: What figure are you using for '89 proposed?

12 CHAIRMAN WALLACE: In column 9, page 2 of attachment
13 G. Four million dollars for Monitoring, Auditing and
14 Compliance. The last line at that the bottom is \$324,000 for
15 the inspector general. Together that makes \$4,364,000 for
16 monitoring and inspector generals.

17 Compared to column 8, monitoring alone was \$4,219,000.
18 So, you're right, there's a small increase. If you look back at
19 -- I think that's been explained by the fact that we shut
20 monitoring down when Mr. Wear came on.

21 When you look at the two previous years, monitoring
22 was \$5 million, the year before that it was \$4.7 million, so for

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1 '89 monitoring and inspector general together don't even get us
2 back to where we were on monitoring alone before Mr. Wear came
3 on board.

4 I don't know how the two things are going to work
5 together and I don't how anybody can tell you that until we get
6 them in place and start trying to work it out in practice. The
7 funds together are less than what history shows us we've spent
8 on monitoring since we've been here.

9 MR. UDDO: I guess my concern is that maybe we're
10 going into this inspector general thing on a level that's going
11 to be less efficient than sort of experimenting with that on a
12 smaller basis and giving some additional money to MAC or let MAC
13 continue to do what it's been doing.

14 It just strikes me that there's going to be some
15 duplication there of efforts and expenses, and it shouldn't
16 necessarily be out of what's proposed new money. The historical
17 record -- I don't know what the average is, what's MAC's average
18 over the three years that you've got here, David? It looks like
19 it would be -- we don't have an average, though, do we over the
20 three years?

21 MR. EAGLIN: It's about \$4.5 million, that's my guess
22 from looking at the figures.

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1 MS. SWAFFORD: Let me just mention something here. It
2 appears to me that we don't have any choice about an inspector
3 general, that we have to do that; isn't that correct? In this
4 number 2 on page 2 you say "Establishment of an Office of
5 Inspector General."

6 CHAIRMAN WALLACE: Ms. Swafford, that's correct. We
7 have to do it. Mr. Uddo's point is how much do we have to spend
8 on it, and that is certainly within our discretion to decide how
9 small or how big we want to have it.

10 Congress has told us that we have to have an inspector
11 general, there's just no avoiding that.

12 MR. UDDO: I understand that. My question is since
13 we've got a Monitoring, Audit and Compliance Division, do we
14 need to go into the inspector general business to the tune of
15 some \$300,000.

16 The average is \$4.5, maybe, David?

17 MR. RICHARDSON: It's \$4.48, I believe. During the
18 same time the budget has been \$4.5 or a little bit more.

19 MR. UDDO: Is there any -- maybe it's too early to
20 talk about this, but is there any thought given to how these two
21 things are going to work together and whether there's not going
22 to be some wasted effort and duplication of effort that could be

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1 this IG is also going to be very experienced in what I'll
2 characterize as white collar crime cases.

3 I'm interested in putting cases put together that can
4 be prosecuted effectively. I think that in order to really do
5 that and to get this moving, that this is what we'll have to do.

6 CHAIRMAN WALLACE: Mr. President, could you
7 distinguish between complaints and monitoring, because maybe
8 it's not real clear which is which?

9 MR. WEAR: Well, our monitoring division, Mr.
10 Chairman, goes out and looks at programs. They are like an
11 auditing team, I guess, that would go out and look at a broker-
12 dealer and look for violations of the Securities and Exchange
13 Act.

14 Our compliance people really should be an enforcement
15 division that actually moves on the prosecution of these cases.
16 Our Monitoring Division, if they locate violations, obviously
17 they bring them in and we try to do something with it.

18 Our Monitoring Division is not effective as really an
19 arm of a prosecuting organization. My hope is that the IG will
20 come in and fill that void and we'll be able to move on these
21 cases.

22 Very frankly, Mr. Chairman, I think that if we slam

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1 avoided?

2 MS. SWAFFORD: Isn't that a management decision?

3 MR. UDDO: If they want us to approve the money for
4 it, I'd like to know whether it's necessary or not.

5 MR. VALOIS: I think Michael just got finished a
6 description of how we're not really spending more on monitoring.

7 CHAIRMAN WALLACE: Mr. Uddo's question is a fair one.
8 No matter how much we're spending, how are the two offices going
9 to work together. I do think that's a fair question. I'm not
10 sure it's one that can be answered until we get into it, but I'd
11 be delighted to let somebody try.

12 Mr. President?

13 MR. WEAR: Let me take a shot at it. Right now our
14 compliance office contains approximately three people who spend
15 most of their time fielding complaints and not really much time
16 at all investigating them.

17 I anticipate that our so-called compliance staff now
18 will continue to field those complaints and we're going to
19 categorize them and then get those into the IG's operation and
20 the IG will actually run the investigations.

21 There are some very definite advantages to doing it
22 that way, number one, the IG has subpoena power and hopefully

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1 the cookie jar on a few hands, there won't be hands going into
2 the cookie jar. When I was a special assistant U.S. attorney, I
3 prosecuted a number of cases in a new area of the law, and over
4 a three-year period those cases dried up.

5 When the agency found violations of those cases, those
6 people ran in and attempted to plead immediately because they
7 did not want to go to jail. I think that we can replicate that
8 experience in this area. I'm very interested in trying to move
9 that.

10 CHAIRMAN WALLACE: Mr. Uddo, let me mention something
11 about my experience with complaints, which has been a small part
12 of the monitoring effort.

13 The complaints people react when somebody let's them
14 know that something has gone wrong, and supposedly they
15 investigate it. Over the last several years I have had many
16 contacts from people in Congress to say my members has sent
17 something up to Legal Services to complain and nothing has been
18 done. There hasn't been any investigation, it hasn't happened.

19 I've follow up on it, it usually turns out that
20 somebody in the office has telephoned out to wherever the
21 complain came from, made a few calls, tried to find out what was
22 behind it, but they can't do any more because they don't have a

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1 budget and they don't have the personnel to go out there and get
2 people under oath and see what's going on.

3 So, I, for a long time, have been getting these
4 complaints from Congress that we are not following through on
5 matters that they refer to us. It would be my hope that the
6 inspector general would pick that ball up and run with it. I'm
7 not sure there's a duplication of effort.

8 The effort on that front in monitoring, with all due
9 respect to everybody that works there, I think has been less
10 forceful than it should have been over the last few years.

11 MR. UDDO: It sounds, though, that both Mr. Wear and
12 you are saying that you're going to move the Compliance Division
13 out MAC into the inspector general's office. Is that a fair
14 statement that the IG is going to do what the Compliance
15 Division of MAC ought to be doing?

16 MR. WEAR: I don't know that that's completely
17 accurate. Right now the problem is that the staff in the
18 Compliance Division spends all it's time fielding complaints.
19 They don't spend any time, because they don't have any time,
20 really investigating them.

21 To the extent that they are able to investigate things
22 is as the chairman has outlined. I can tell you from experience

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1 I was on the other end of that when I was on the Hill. One of
2 the reasons I came here was to try to fix that.

3 I can tell you it is very frustrating to refer
4 complaints and things that look like there is a reasonable basis
5 for an investigation to an entity and have them not do anything
6 with it.

7 I don't think it's the fault of the people in the MAC
8 division, whether any compliance or monitoring. They have got a
9 lot of other things to do as Mr. Richardson pointed out. They
10 are working a lot of overtime to get these things done.

11 So, I'm not blaming them. I am just saying we need to
12 structure this to take care of that. I think that what amounts
13 to our Compliance Division will still feel those complaints, but
14 now we are going to have some new people who are going to
15 investigate them. Those that had merit will be prosecuted.

16 MR. UDDO: All right, let me ask another couple of
17 questions. On Attachment H under Monitoring Audit and
18 Compliance, the figure for temporary employee pay remains
19 significantly high, a half a million dollars.

20 The consultant figures I've already mentioned
21 remains, I think, very high. Where are all those temporary
22 employees and why are they there?

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1 MR. RICHARDSON: Of course, we have already paid
2 temporary employees for three months of the fiscal year already.

3 MR. UDDO: A half a million dollars?

4 MR. RICHARDSON: I don't have the exact figures with
5 me. I can get that. I can make a phone call and get it.

6 MR. UDDO: I'm just looking at the proposed '89
7 budget. In there you have got both a half a million dollars for
8 temporary employees and a little more than a half a million
9 dollars for consulting.

10 Are those some of the same people, monitors?

11 MR. RICHARDSON: What we can do under Section 8 and 9
12 is hire an employee for a three month period before we hire them
13 full time. We still need money in there for that process. More
14 to the point, we have a nighttime crew, all of them part-time
15 people, that come in and help process our reports.

16 We have six to eight people still there. So, there
17 will still be some temporary employees in the MAC division.
18 Plus, in the summer we have, in the past, hired people from
19 local universities and universities throughout the United States
20 to come in and work during the summer to get some experience.

21 They help with the assimilating the documents and
22 preparing the monitoring teams that way.

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1 MR. UDDO: All right, just explain this to me though.
2 All of your other documents for '88 -- 1988 B, the 12 month
3 period ending September 30, 1988, you have got \$588,000 for
4 temporary employees in MAC. That's a 12 month figure; fiscal
5 year '88, \$510 million.

6 I guess my question is, why is that figure going to
7 stay the same and the consulting stay about the same if, in
8 fact, this proposal is to get some full-time people on and to
9 alleviate some of the need for consultants and temporary
10 employees?

11 MR. RICHARDSON: Okay, I think you say that the
12 consultant, for instance, in '87 was \$1.4 million.

13 MR. UDDO: Show me where you are looking.

14 MR. RICHARDSON: In 1987 B. Also 1988 B the
15 consultants was \$9.6 million. So, we are seeing a significant
16 reduction --

17 MR. UDDO: Wait, wait. What was that last thing you
18 said -- 9.6?

19 MR. RICHARDSON: 9.6.

20 MR. UDDO: Where is that --

21 MR. WALLACE: \$960,000.

22 MR. RICHARDSON: \$960,000, I'm sorry.

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1 MR. UDDO: What is that on?

2 MR. RICHARDSON: 1988 B. Let me remind you of
3 something else too. These are projections in budget. If we
4 don't get the staff that we need -- for instance, if we have
5 staff that leave the corporation, to continue the monitoring
6 process we would shift money from, for instance, temporary
7 employee or personnel compensation into your consulting line so
8 that we can continue operations.

9 MR. UDDO: I guess my question is, though, where are
10 the full-time employees going? In this temporary employee line,
11 \$500,000, are those monitors? Who are those people?

12 MR. RICHARDSON: You're talking about the --

13 MR. UDDO: I'm talking about Attachment H, your
14 projected budget showing \$501,198 for temporary employees at
15 MAC. Who are those people? Are they monitors? Are they
16 secretaries? Who are they?

17 MR. RICHARDSON: In some cases, yes, they are
18 monitors. We hire them for special projects within the
19 corporation. Also, we have secretaries, like I said, that work
20 at night. We do project hiring people in the summer to come in,
21 work an internship, to help keep the monitoring process going.

22 MR. WALLACE: Let me ask a question because I'm a

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1 little confused along with Mr. Uddo in looking at this. If you
2 compare MAC over the last three years, there is a significant
3 decrease in consulting for 1989, but there is not really a
4 significant decrease in temporary employee pay.

5 I was thinking that we were changing temporary
6 employees into permanent employees. If you look at where the
7 money is going, it looks like we are changing consultants into
8 permanent employees.

9 Temporary employees look fairly constant over the
10 three year haul in MAC. That's correct. Again, we are
11 projecting the use of some temporaries, but what we are
12 basically doing is two things.

13 We did hire some temporary employees full time. We
14 are also having to go outside the corporation into our
15 consulting pool to hire full-time employees. So you will see a
16 reduction, we hope, in the consulting because we are hiring some
17 of those consultants as now full-time employees.

18 We can control their monitoring, of course the
19 direction they are working being full time for the corporation
20 and get additional monitoring and control the report writing to
21 get that process completed and get the draft reports and the
22 completed reports into your hands and the general public.

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1 MR. UDDO: Well, that still doesn't answer the
2 question, why are there going to continue to be so many
3 temporary employees? I thought that we had a lot of temporary
4 people because of the monitoring teams.

5 Apparently, that is mostly in consulting. Why are we
6 going to continue to have about the same number of temporary
7 employees?

8 MR. RICHARDSON: The nighttime people that I'm talking
9 about who did have staff that worked until 11:00 three or four
10 nights a week, they will continue to do so. Those are temporary
11 people. They will continue to be part-time people.

12 They work jobs of the day and then come work for us in
13 the evening. We don't have to extend full-time employment and
14 benefits to them.

15 MR. UDDO: Are there attorneys working at night?

16 MR. RICHARDSON: No, sir.

17 MR. UDDO: Research analysts or research assistants
18 working at night?

19 MR. RICHARDSON: There are some, mainly secretary help
20 through.

21 MR. UDDO: So, secretaries, on this thing here that
22 Mr. Wear gave us, pay secretaries around \$17,000 a year. That's

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1 a lot of secretaries working at night to get to half a million
2 dollars.

3 MR. RICHARDSON: That's true. Again, we still have
4 the option, still intend to, if need be, bring people in on a
5 temporary basis; for instance, when we have people that leave
6 the corporation.

7 MR. UDDO: So, in other words, what you are saying is
8 you have got half a million dollars here in case you need it;
9 that you are not really budgeting that you are going to use half
10 a million dollars for temporary employees?

11 MR. RICHARDSON: I don't have the figure with me that
12 we spent the first three months, but we have spent a good deal
13 of money in the first three months for this exact type of thing
14 because we have lost people. Even our temporary people we hire
15 occasionally that we are hoping will come aboard for a full-
16 time job come and go because we have not been able to offer them
17 full-time employment.

18 MR. WALLACE: Mr. Richardson, let me ask you --

19 MR. UDDO: I'm confused.

20 MR. WALLACE: I think I'm beginning to get a pattern
21 out of this, but let me try again. One reason we have got half
22 a million dollars here in temporary employees is that for the

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1 first quarter of the fiscal year we have had a lot of temporary
2 employees and we have already spent a lot of money, but you
3 don't know exactly how much; is that correct?

4 MR. RICHARDSON: That's correct. I don't have that
5 information with me. I can call and get it.

6 MR. WALLACE: All right now, from here on out if we
7 hire new people as we may do, a lot of those people for three
8 months are going to be temporary employees almost probationary
9 employees. They get to be permanent if we like them; is that
10 right?

11 MR. RICHARDSON: In some cases, yes.

12 MR. WALLACE: That's going to be some significant
13 chunk of money?

14 MR. RICHARDSON: Yes.

15 MR. WALLACE: We've got some people who are always
16 going to be temporary employees because they work nights on a
17 part-time and don't work enough to get up into the Section 89
18 realm; is that correct?

19 MR. RICHARDSON: That's correct, sir.

20 MR. WALLACE: MAC is the biggest division we've got;
21 is that correct?

22 MR. RICHARDSON: That's correct and the biggest

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1 turnover of employees.

2 MR. WALLACE: So, those categories together, whether
3 you can break them down dollar for dollar, is where it comes
4 from?

5 MR. RICHARDSON: That's correct, sir.

6 MR. WALLACE: As I compare 1988 B with Attachment H, I
7 see a lot of temporary employees in places like General Counsel,
8 Policy Development, Management Services, Field Services. Those
9 temporary employees, with the exception of General Counsel--
10 then Field Services is being cut in half -- that's seems to me
11 where we are getting rid of most of the temporary employees.

12 MR. RICHARDSON: That's correct, sir.

13 MR. WALLACE: Why is it easier to get by without
14 temporary employees in those divisions than it is in the
15 monitoring division? Obviously monitoring is bigger and what
16 you have, there's going to be more of it.

17 It looks to me like there's qualitative difference
18 here too by the nature of the beast. Monitoring uses a lot more
19 temporary employees than the other divisions do. Maybe you can
20 tell me why that is.

21 MR. RICHARDSON: I think anytime you have people
22 travelling, and some of the temporary people do that we hire,

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1 there is a period that it may look attractive to go on the road.
2 Once they do it once or twice, they have the report writing, the
3 stress related there, and they decide they don't want to work in
4 the capacity anymore.

5 Plus, if they move into the area, in the past we have
6 experienced them leaving and going to the federal government.

7 MR. WALLACE: So, the turnover is high and they stay
8 temporary employees for just about all the time they're there;
9 is that correct?

10 MR. RICHARDSON: In cases, yes.

11 MR. WALLACE: Sorry, Mr. Uddo, to step on your time a
12 little bit, but I hope that clarifies a little bit.

13 MR. UDDO: Except that the proposed conversion to
14 permanent employees that is on the sheet that Mr. Wear gave us,
15 the amount for MAC is about three times as much as any other
16 division.

17 So, I mean, we're putting \$160,000 into permanent
18 employees in a division that, according to what I just heard,
19 shouldn't try to hire permanent employees. Maybe we shouldn't
20 be putting that \$160,000 trying to hire permanent employees if
21 the nature of the beast is that you are better off working with
22 temporary.

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1 The proposal for '89, the personnel line, goes from
2 1.5 to 1.7. Temporary employees stay about the same.
3 Consulting goes down a bit. So, I'm still confused about that
4 whole area there.

5 It doesn't seem to me that the conversion to permanent
6 employees is doing much good in MAC because it doesn't seem to
7 be a significant change in the way those things are set up. I
8 would like to know how much we spent so far this year on
9 temporary employees in that division.

10 That would be a helpful figure to me because if it is
11 mostly secretaries, I'm going to be very surprised if it's a big
12 figure.

13 MR. RICHARDSON: Well, I have someone calling. I will
14 call the office very shortly and get it. They were working on
15 getting the information together for me yesterday.

16 MR. UDDO: Let me switch to something else and ask
17 another question. Maybe that information will come in. The
18 other one I have some problems with is Number 3 on hearings on
19 competition.

20 My problem with that is principally this, I don't know
21 that those hearings have to be held independent of board
22 meetings. That should not necessarily be an additional \$100,000

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1 if those are held in conjunction with scheduled board meetings
2 anyway.

3 MR. WALLACE: I'll tell you as chairman what I would
4 anticipate doing, Mr. Uddo, is to refer this matter to the
5 provision subcommittee. I think that is the proper place for
6 it. Perhaps we will do a subcommittee of the committee. I
7 don't know.

8 It seems to me similar to the study that you undertook
9 on sport centers that we never got finished for reasons we are
10 all aware of. My recollection of your experience is that we had
11 a lot of meetings that were not in conjunction of board meetings
12 because your committee, working on that project, had more work
13 to do at times that the board didn't have.

14 So, there may not be five special meetings. I would
15 expect there would be five meetings. Some of them will be in
16 conjunction with board meetings and some of it won't. If we are
17 going to have this in place by September --

18 If we are going to have a plan ready by September 30,
19 then once this budget is adopted and the staff knows what it can
20 spend, they are going to have to shift into high gear and get us
21 a proposal so we can start having hearings on this maybe in May.

22 We are going to be on a very fast track. So, that may

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1 be a little overbudgeted, but I don't think it's a lot over
2 budgeted because I just remember what you went through on sport
3 centers. I look at this to be a similar task.

4 MR. UDDO: Well, we had two meetings as I recall. The
5 first one in New Orleans was independent of a board meeting.
6 The second one was too, but the second one was in San Francisco
7 in conjunction with the ABA meeting because we felt there were
8 people there that would be able to testify relevant to the
9 matter that we were investigating.

10 MR. WALLACE: You do that again, we are going to have
11 to pay to go to Hawaii this summer. (laughter)

12 MR. UDDO: There may be times when a meeting
13 independent of a board meeting might make sense. I just don't
14 know that the assumption should be that all of them are going to
15 be independent of the board meeting.

16 I just glanced over here and noticed something to go
17 back to this MAC thing. I said \$160,000. It's that whole first
18 part of that page which is really \$232,000 which we're being
19 asked to shift for hiring full-time employees.

20 I only looked at the monitoring part. The whole first
21 three sections is \$232,000. So, I mean, we are talking about
22 another \$232,000 to convert or hire permanent employees. My

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1 point is that that is, I thought, to get away from temporary
2 people. I don't see that reflected in your projections.

3 I would still like to get that figure if they are
4 trying to get it. I don't have any other questions right now.

5 MR. WALLACE: All right, Mr. Smegal?

6 MR. SMEGAL: I have a couple. Let's focus on this
7 latter matter that Mr. Uddo just brought up, the hearings in
8 competition. I have in front of me the language of the writer
9 which I guess is what we are talking about.

10 It is provided further that a board of directors of
11 the Legal Services Corporation, composed of individuals
12 nominated by the president after January 29, 1989, and
13 subsequently confirmed by the United States Senate, shall
14 develop and implement -- and it doesn't say the staff; it says
15 this board that does not yet exist because there's been no
16 nominations by President Bush nor has there been any
17 confirmations -- anyway, shall develop and implement a system
18 for the competitive award for all grants and contracts including
19 support centers to take effect after September 30, 1989.

20 What are we doing?

21 MR. WALLACE: I think what we are doing, Mr.
22 Smegal --

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1 MR. SMEGAL: I think we are doing it without
2 authority, Mr. Wallace, whatever it is we are doing.

3 MR. WALLACE: I think when our successors come in, and
4 may that blessed day soon arrive, they are going to be charged
5 to get something on the ground and running as of September 30.

6 MR. SMEGAL: That is not what this says, Mr. Wallace.

7 MR. WALLACE: That's the way I read it. If we haven't
8 done the groundwork for them so they've got something to look
9 at when they get here, I think we have been very remiss in our
10 duties.

11 Now, neither you nor I were in the room where the deal
12 was cut, but that's the way I read it. Congress expects after
13 September 30, 1989, for a new board to be here and for a new
14 board to implement new policies.

15 This staff needs to get to work so there will be
16 something on the table for that new board to look at when it
17 gets here. I think that's prudent. I think it's proper and I
18 think we ought to do it.

19 MR. SMEGAL: First off, this makes no mention of any
20 staff doing anything. It says that a board that does not yet
21 exist shall develop and implement -- I don't see any staff in
22 there at all. It's talking about a board doing something and

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1 the board is not us.

2 MR. WALLACE: The board sometimes does things through
3 staff, Thomas.

4 MR. SMEGAL: Well, whether it does or not, this board
5 is not here to tell the staff what to do. I think it's
6 inappropriate for us and probably a misuse of federal funds for
7 us to be sitting here instructing a staff based upon authority
8 which we do not have.

9 MR. WEAR: Mr. Chairman?

10 MR. WALLACE: Yes, Mr. President?

11 MR. WEAR: I would note, Mr. Chairman, that the
12 corporation is not secluded from developing a competitive model.
13 That statute says it will require to do it. Even if that
14 statute was not in effect, we could still move forward and
15 develop a competitive model for the awarding of the grants and
16 contracts.

17 MR. SMEGAL: What's the authority in the act for
18 that, Mr. Wear?

19 MR. WALLACE: Our general authority to manage this
20 program in the efficient and proper use of federal funds. I
21 can't quote the statute chapter and verse, but we are told that
22 we are supposed to try to manage this program as prudently and

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1 efficiently as possible.

2 This is the sort of stuff that the program development
3 office has been doing ever since we got here. We have often
4 questioned as to whether they ought to be doing particular
5 things, but nobody has ever questioned their statutory authority
6 to do it as far as I know.

7 MR. SMEGAL: Well, if they are already doing it, I
8 don't know what this discussion is all about, Mr. Wallace. If I
9 understood it, you said we are already doing it, we have been
10 doing it all along, so what are we talking about.

11 MR. WALLACE: No, you didn't understand what I said,
12 Mr. Smegal.

13 MR. SMEGAL: Are we pledging more money to something
14 we are already doing and we have been doing all along.

15 MR. WALLACE: Mr. Valois?

16 MR. VALOIS: We've been at this for about four years,
17 I guess. Virtually every time we have a monetary item come up,
18 we have asked for additional information. We have criticized
19 our staff and our president and our past presidents for not
20 really giving us enough information.

21 In this case, pursuant to what I consider to be good
22 management and good budgeting, our president has presented us

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1 with a plan as to how he is going to expend funds. I will say,
2 for the first time, that although there may be some minor
3 dispute about certain numbers on this, I'm very happy -- and I
4 wish Pepe were here because this is usually his speech -- that
5 we've actually got a good management tool, a plan.

6 Where are we going to spend the money? Where does it
7 come from? I congratulate the president and the staff for
8 bringing us this kind of information. I hope we can get this
9 resolved.

10 MR. SMEGAL: If I may, I do have one more point. I
11 want to go back to where Mr. Uddo was earlier. You are right,
12 Mr. Valois. We have more paper this time, and I think we are
13 going in the right direction. My point is that I don't think we
14 have enough paper.

15 Let me just point out one thing to you, if I may. We
16 look at Attachment H and Attachment 1988 C and we see two
17 numbers for personnel compensation. We see a proposed budget
18 for this year of \$4.6 million total and we see an actual
19 expenditure through September of \$3.8 million.

20 Mr. Wallace and I have already stipulated that that
21 number is an average of 12 months where the staff was going
22 down. So, in reality, the last month of 1988 C, September, we

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1 did not have personnel compensation at a rate of 1/12 of \$3.8
2 million. It was somewhat less than that. It has continued to be
3 that, as I believe Mr. Richardson has pointed out.

4 The point I'm trying to make is that the difference
5 between what is being requested for personnel compensation in
6 fiscal year '89 is probably 40 percent higher than what we
7 actually expended in 1988.

8 The \$3.8 million does not represent what our personnel
9 compensation expenses were at the end of fiscal year '88. The
10 number is \$3.4, maybe less than that. If you add another \$1.2
11 to \$1.4 million to that and you are asking for 40 percent more
12 for personnel compensation in fiscal year '89. I think that is a
13 little bit excessive.

14 MR. RICHARDSON: If I can interject, what you are
15 looking at if you look at 1988, and I know that you are looking
16 at toward the end of the year, the total compensation last year,
17 the total temporary and personnel was basically \$5 million.

18 Recognizing that we had to give the 4.1 percent
19 increase, we are asking for 4.3. We were also taking into
20 consideration that additional hiring of the I.G. office. So, I
21 think the two, in looking at it in total, will equate,
22 recognizing the fact that we were down in staff, that we do need

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1 to build back our staff to employ more people to get the job
2 done.

3 MR. SMEGAL: I have nothing further, Mr. Wallace.

4 MR. WALLACE: Are there any further questions? Mr.
5 Durant?

6 MR. DURANT: Mr. Chairman, what is going to be your
7 procedure on this? Are we going to have a motion to adopt this
8 as is?

9 MR. WALLACE: No, the procedure parliamentarily is
10 that Mr. Mendez' committee report is on the floor proposing to
11 send the whole \$924,000 to the field. That is the proposition
12 before the board at the moment.

13 To do anything other than that will require an
14 amendment which I expect would be an amendment in the nature of
15 a substitute to take this proposal and substitute it for the
16 committee proposal.

17 That, of course, will require six votes to amend what
18 is before the House and then it will take six votes to pass
19 anything. So, that's our parliamentary position. It's about
20 7:45 out in Denver.

21 I think we are going to try to get Mr. Mendez when
22 it's time for us to vote because he's been fully briefed on this

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1 subject. That's the parliamentary position we find ourselves
2 in.

3 MR. DURANT: I need your instruction in terms of
4 trying to achieve, I think, one small thing that I would like to
5 try and do and maybe it doesn't require a formal amendment to
6 what will be, I guess, this other amendment to Mr. Wear's memo.

7 I have talked with Gladys Barnes and Emma Williams and
8 Hortencia and Lorain relative to this client training issue.
9 Where it talks about client board member training in number 4,
10 whether we could either, through an understanding -- I mean, if
11 this money is allocated -- we have an understanding that -- or
12 we have to do it by motion -- that Gladys Barnes and myself and
13 Lorain and Hortencia would like to put together a list of 10 or
14 11 people to come together in a small conference to talk about
15 this proposal and an additional or other kinds of client
16 training.

17 Now, I also know that we have to look at whether or
18 not under our statute and regulations, what training is
19 permitted and what training is not permitted. What I would like
20 is a part either of this full proposal or as a separate
21 amendment that before any of this \$50,000 is spent, money will
22 specifically be spent to bring together these people to talk

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1 about that kind of a proposal.

2 MR. WALLACE: Let me recognize Mr. Uddo who is
3 chairman of the task force that evaluated this subject.

4 MR. UDDO: Well, first of all, that proposal would not
5 be included in this \$50,000. In other words, this \$50,000 is
6 earmarked for the other things that are proposed by the motion
7 that we adopted last time. So, that would be a new proposal,
8 frankly, Clark, and it would require additional money.

9 I think that it is anticipated in the revised
10 consolidated operating budget that we got a copy of under that
11 heading of meritorious grant proposals. Now, I know that we
12 have got to get more deeply into that to determine what that is.

13 All I'm saying is that the \$50,000 in number 4 does
14 not contemplate bringing anyone together at a conference --

15 MR. DURANT: I understand it doesn't. So my question
16 is whether or not in order to do that --

17 MR. UDDO: You need to get it out of that line item in
18 the proposed operating budget under meritorious grant awards.

19 MR. DURANT: Or unless there is the support that that
20 money that was allocated under that previous proposal, that a
21 portion of that money, in fact, be used for this.

22 MR. UDDO: It doesn't exist. If we are going to put

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1 together a videotape -- these expenses which we gave you a sheet
2 on at the last meeting --

3 MR. DURANT: None of which have been incurred.

4 MR. UDDO: No, but if we are going to carry out the
5 motion, which as been passed, and produce a videotape and the
6 printed material and mail a copy to each individual board
7 member, it's going to take \$50,000.

8 MR. DURANT: I understand that. If we then wanted to,
9 if you will, amend that proposal, I guess I would ask the
10 chairman how could that be done.

11 MR. WALLACE: Well, you have to undo the last motion
12 from the last meeting.

13 MS. SWAFFORD: Before we belabor this question, I
14 thought I understood Mr. Alan Houseman to say yesterday that
15 corporation funds could not be expended on client training.

16 MR. WALLACE: I'll let Mr. Houseman explain whatever
17 he said yesterday.

18 MR. HOUSEMAN: What I said yesterday was that under
19 your regulation 1612, you cannot train non-lawyers and non-
20 attorneys if in the course of training you disseminate
21 information on public policy.

22 In your regulation, you define public policy to be

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1 existing rules and laws. Therefore, you couldn't train clients
2 who are non-attorneys and non-lawyers if in the course of
3 training you disseminated information about existing laws and
4 regulations.

5 If you are doing any kind of training of clients
6 without substance of province, you have to give them information
7 about the laws and regulations. You have to give them
8 information about what the welfare laws are, what the housing
9 laws are, the housing regulations are, what the family laws are,
10 the child support regulations. You can't do that.

11 MS. SWAFFORD: Wouldn't that make this --

12 MR. HOUSEMAN: No, you can train them on the
13 responsibilities under the board. You can train them about LSC.
14 You can train them about the responsibilities --

15 MS. SWAFFORD: That's what we are doing.

16 A PARTICIPANT: I think we have got a real
17 communication problem here because what Clark is talking about
18 is not board --

19 A PARTICIPANT: Well, two things. I don't think
20 having a conference of which -- the point that Alan is making
21 obviously would have to be a part of the discussion -- is
22 contrary to any rule or regulation.

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1 MR. WALLACE: If I may reclaim the floor as chair, it
2 would not be contrary to any rule or regulation to convene a
3 conference to talk about client participation in the
4 administration or corporation and its grantees.

5 I can't think of any regulation that would violate it.
6 It doesn't constitute training if we are not teaching them about
7 positive law out there.

8 It would be in addition to what this board unanimously
9 approved it its last meeting. The \$50,000 that is in this
10 budget presentation was unanimously approved and allocated. If
11 we are going to have such a conference, it can't come out of
12 that \$50,000; it has to come someplace else.

13 I think Mr. Uddo has directed you toward the most
14 likely place in President Wear's proposal where those funds
15 might be found which is the meritorious grant section of about
16 \$130,000. I will ask Mr. Wear to explain that portion of the
17 proposal which he hasn't done yet.

18 MR. WEAR: Thank you, Mr. Chairman. If I may, I would
19 like to direct the board's attention to pages 37 through 41 of
20 the materials in the board book for this meeting. The first
21 page is a very brief explanation of what this proposal does. It
22 was prepared for the board's consideration at the request of

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1 Chairman Mendez.

2 What this proposal does in a nutshell is to allocate
3 the monies that I discussed earlier to M&A, approximately
4 \$754,000. The remaining monies, \$131,575 would be placed in a
5 special fund labelled Meritorious Grant Awards which you will
6 find on page 41 of the board book.

7 It was my thought that there are a number of
8 proposals, whether they deal with client training, as former
9 Chairman Durant has mentioned, or deal with other kinds of
10 training. I know that we have received some unsolicited grant
11 proposals from people who are not grantees and have an interest
12 in child support law, things of that nature.

13 We have not, or I should say I have not looked at them
14 in detail. I did pass them onto the staff, but I know the staff
15 has been working on other things. It's my impression they have
16 not gotten to them yet to look at.

17 We could set this \$131,575 in this fund and look at
18 the proposals that come in and try to make some decisions as to
19 which should be funded. I don't, again as I said earlier,
20 believe you should spend money simply because you have got some
21 money in your pocket.

22 As I said earlier, I'm not interesting in pouring

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1 money down a rat hole of any kind. I think that would look at
2 these proposals, evaluate them, again see what we are getting
3 for our money and then make some decisions and go from there.

4 So, that, Mr. Chairman, is what I would propose.

5 MR. DURANT: May I ask a question? Mr. Wear, I assume
6 that having a small conference with 14 or 15 people pursuant to
7 some of the testimony and discussions that have come out over
8 the last 6 months or longer. You don't consider it pouring
9 money down a rat hole?

10 MR. WEAR: Again, we need to know more about what is
11 going to be talked about.

12 MR. DURANT: Let me just tell you very simply.

13 MR. WEAR: It would be considered and considered
14 seriously, yes, sir. It's not going to be rejected out of hand
15 because it's associated with client training.

16 MR. DURANT: What I would like to do is that before we
17 take the vote from Mr. Mendez is that I would like to sit down
18 in one paragraph and make a proposal and would like to know
19 whether or not because I think it's important to do.

20 CHAIRMAN WALLACE: Let me reclaim the floor at this
21 point. At the last meeting, we came up with the question of how
22 to allocate \$300,000 to clients, which was the number we came up

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1 with at Sante Fe a year ago.

2 I said at that time if anybody wanted to figure out
3 how to use that money, we ought to have a solid proposal for our
4 consideration at this meeting. Ms. Barnes has made such a
5 proposal.

6 Before we vote on it -- before we vote on anything,
7 I'm going to recognize Ms. Barnes to tell us what it is she has
8 in mind. Mr. Durant, if you want to take advantage of that time
9 to write up what you proposed, then we will also consider that
10 when we all get together to vote.

11 Before I recognize Ms. Barnes to talk about her
12 proposal, is there anyone else on the board who has got any
13 questions or comments on the matter before the board?

14 MR. UDDO: Which matter is it before the board?

15 CHAIRMAN WALLACE: The matter, as I explained to Mr.
16 Durant, the matter before the board is the committee report.

17 MR. UDDO: Is the committee report the vote from
18 January or this new proposal?

19 CHAIRMAN WALLACE: No, the committee report is the
20 vote from January, what is before the board is to take all this
21 money and to send it to the field. That is the proposal we
22 have; to effectuate what Mr. Wear who proposal we will need to

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1 amend the committee report.

2 I would think the most effective way would be to
3 approach the proposed amendments in the nature of a substitute.
4 Any secondary amendments could be attached to that. When that
5 has been perfected, we can vote it up or down.

6 It will take six votes to amend the committee report
7 and six votes to pass the committee report which is why Pepe is
8 on the other end of the line. We have a lot of 5-5 votes at 10
9 member meetings.

10 That is our parliamentary position, Mr. Uddo. That is
11 where we are.

12 MR. UDDO: Okay, I understand.

13 CHAIRMAN WALLACE: If not body on the board has
14 anything else at this point, I'm going to ask Ms. Barnes to come
15 forward. She was kind enough to do what the chair suggested
16 which was put it in writing and get it to us.

17 I'm going to ask her to come forward and talk about
18 her proposal at this time. At least she got it to me. I don't
19 know if everybody else has it.

20 Welcome, Ms. Barnes, it's good to see you again.

21 PRESENTATION OF GLADYS BARNES

22 MS. BARNES: Thank you and good morning, board

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1 members. I believe that you all have been provided a copy of the
2 proposal that we did submit. Am I correct? Yes, thank you. I
3 always try to do my homework.

4 When I left the last meeting I was very encouraged
5 that certain things took place at that meeting which I felt was
6 like opening the gate to clients. In keeping with that, some of
7 my members, board members, I contacted before I left Washington
8 and others I contacted immediately upon arriving back from
9 Alabama.

10 I briefly went over with them some of the things that
11 had developed at that meeting, what I thought was an opportune
12 time for us to present a proposal that would reflect on our
13 efforts to provide clients not only Region 6 but clients
14 throughout the country with the use of a pilot program that
15 would serve as something they could live with, that they could
16 work by and that would be also beneficial to the corporation.

17 So, at this time, I would like to read you our
18 proposal.

19 CHAIRMAN WALLACE: All right, go ahead.

20 MS. BARNES: Region 6 Clients Council National Client
21 Training Proposal. Goal: Develop client based training
22 capability at the local level to enhance client self-sufficiency

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1 and client advocacy.

2 Proposal summary: Assemble a national client training
3 team to deliver training of trainers at the Regional level to
4 clients. The trainers would be trained on developing and
5 carrying out client based training at the local level.

6 Mini-training grants would then be available for local
7 client based training and the national training team would
8 review and make recommendations on the training grant
9 applications. A client based training library would be
10 developed from existing client based training materials and the
11 materials developed from the funded mini-training grants.

12 Proposal: a) National Client Training Team - bring
13 together ten clients from across the nation who have experience
14 developing and presenting client based training. Examples of
15 quality client based training materials emphasizing client self-
16 advocacy and self-sufficiency skills would be collected to be
17 used as part of the training of trainers events.

18 The national training team would develop, with the
19 assistance of a training consultant, a training of trainers
20 training event which includes the exhibition of quality client
21 based training based training materials and videos.

22 The training of trainers agenda would cover such

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1 topics as: adult learning, development and use of materials and
2 videos, the management of training events, client advocacy and
3 self-help training, private attorney involvement in client based
4 training, and training fund management. The training event
5 would then be presented in each of the five regions;

6 b) Regional Training of Trainer Events - Fifty
7 clients would be trained as trainers in each of the five
8 regions. The national client training team would present the
9 training and provide direct consultation on carrying out client
10 based training. Trainers would commit to developing and
11 conducting client based training in their states and local
12 communities.

13 In the process the trainees would also train other
14 clients as trainers. To assist in this continued development of
15 strong client based training capability, mini-training grants
16 would be made available for client based training;

17 c) Client Based Mini-Training Grants - The national
18 client training team would assist in the development of the
19 standards and criteria for the client based mini-training
20 grants. Requests for grant applications would be widely
21 distributed after the regional training events.

22 The national client training team would assist in

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1 reviewing and rating the state and local training grant
2 applications. The team could also provide consultation and
3 suggestions for improvement for training events recommended for
4 funding.

5 Those receiving training grant funds would be required
6 to submit training materials and videos to the client Based
7 Training Library;

8 d) Client Based Training Library -- From existing
9 client based training materials and videos and the materials in
10 videos developed through the mini-grant funding, a National
11 Client Based Training Library would be assembled.

12 The library would produce regular updated catalogues
13 of the materials available and supply copies of materials and
14 videos to persons conducting client based training. A
15 representative sample of library material would also be
16 available on a lending basis for exhibition at meetings and
17 conferences to encourage more client based training events.

18 Number four, Costs. At this time only general cost
19 estimates are provided. More detailed cost estimates can be
20 developed with the National Client Training Team.

21 a) National Client Training Team training of trainers
22 event development meeting, \$6,000; b) Fine Regional Training of

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1 Trainers Conferences, 50 trainers each at \$25,000 each,
2 \$125,000; c) Client Based Mini-Training Grants, 50 grants at an
3 average of \$3,000 per grant, \$150,000; d) Client Based Training
4 Library, assembling, cataloguing, reproducing and mailing,
5 \$15,000. The total estimated cost of this training proposal is
6 \$296,000.

7 CHAIRMAN WALLACE: Thank you, Ms. Barnes. Let me ask
8 if any board members have any questions for Ms. Barnes.

9 MR. VALOIS: What procedure are we going to follow
10 with respect to this?

11 CHAIRMAN WALLACE: If anybody --

12 MR. VALOIS: A public proposal.

13 CHAIRMAN WALLACE: It is a public proposal. If there
14 is a member of the board who would want to propose it to the
15 board, then it would come in as an amendment to the committee
16 report.

17 MR. VALOIS: What committee report?

18 CHAIRMAN WALLACE: To the committee report that we
19 take \$900,000 and send it to the field. Somebody can offer to
20 amend that by taking \$296,000 out of it and putting it into this
21 program. That would be the way to do it. If some board--
22 excuse me.

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1 (A discussion was held off the record.)

2 CHAIRMAN WALLACE: I grant you that Mr. Wear has
3 reminded me that if we were to adopt the proposal that he has
4 put before us, we do have \$130,000 which is not enough to cover
5 this item, but then this might not be a one year item, this
6 might be a multi-year process anyway.

7 The funds could come out of that line if the president
8 were satisfied that it was in fact the meritorious thing to do.
9 The board can instruct the president to do whatever the board
10 wants to instruct the president to do.

11 You could take a motion and the motion would be in the
12 nature of an amendment to the committee report that is before
13 us. So, that would be the procedure. Anybody who wants to put
14 Ms. Barnes' motion on the table would move to amend the
15 committee report and we could take it up at that point.

16 So, that's how we do it.

17 MR. VALOIS: I suggest maybe one other alternative
18 which is somebody might want to make a motion to refer this to
19 the president. I have a lot of questions about it, and I don't
20 think the proposal is sufficient at this point in time on a
21 number of items.

22 CHAIRMAN WALLACE: Well, if we do nothing, Mr.

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1 Valois --

2 MR. VALOIS: I'm prepared to make a motion to refer
3 this to the president.

4 CHAIRMAN WALLACE: Well, let me say this. A motion at
5 this time to refer it to the president would probably be out of
6 order because nobody has moved -- the motion on the table is to
7 send \$900,000 out to the field.

8 If that motion passes as is, we can refer it to the
9 president all we like but there isn't any money there for him to
10 pay for it. So, it would be something to think about for next
11 year.

12 MR. VALOIS: I understand what you are saying, but I
13 suggest to you that this proposal is incomplete and really
14 couldn't properly be considered by this board.

15 CHAIRMAN WALLACE: The alternative, Mr. Valois, would
16 be to adopt the president's proposal that has \$130,000 in it for
17 unearmarked grants. This could be one of them. If we do
18 nothing, then the president would automatically, it seems to me,
19 consider this and decide whether any of that \$130,000 ought to
20 go to this project.

21 So, I just want to make it clear that if the committee
22 report passes as is, there ain't any money to pay for Ms. Barnes

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1 proposal. If Mr. Wear's proposal passes as is, there is some
2 money from which it could be done if Mr. Wear decided it ought
3 to be done. That, I think, is the essence of your suggestion
4 that we refer it to the president anyway.

5 MR. VALOIS: Yes.

6 CHAIRMAN WALLACE: That's where we are
7 parliamentarily. Mr. Durant?

8 MR. DURANT: Let me just read you this motion that I
9 prepared. It may be out of order. If so, tell me and then we
10 can do it --

11 CHAIRMAN WALLACE: We are in general discussion at
12 this point, so what I would like you to do is read it. I'll
13 tell you what we have to do. We have to recognize the president
14 of the Georgia Bar in just a minute.

15 What I would like to do, Mr. Durant, before you read
16 your proposal is get the questions to Ms. Barnes. I don't want
17 to displace her. I want anybody to ask Ms. Barnes any questions
18 they have and then I will recognize the president of the bar so
19 he can go on about his business.

20 Are there any questions?

21 MS. MILLER: I want you to know we are not ignoring
22 your proposal, but we are trying to do, I guess, more than one

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1 thing here. So, we wanted Mr. Durant to read his first so we
2 could get one. Then we have to set the other one aside.

3 MS. BARNES: Ms. Miller, I have no problems with that.
4 I'm perfectly satisfied. I understand that all business must go
5 on. Sometimes we have to get away from one angle to come back
6 to the other one.

7 MS. MILLER: We want you to be in agreeance with us
8 too.

9 MS. BARNES: I am.

10 CHAIRMAN WALLACE: Any further questions for Ms.
11 Barnes?

12 (No response.)

13 CHAIRMAN WALLACE: All right. Ms. Barnes, at this
14 point I will thank you for being with us. We will take up your
15 proposal in due course this morning. At this point I don't --

16 MS. BARNES: Thank you.

17 CHAIRMAN WALLACE: At this point I would like to
18 recognize out of order Mr. James Elliott, president of the state
19 bar of Georgia who has joined us now and needs to unjoin us in a
20 few minutes. So, we'll let him talk here.

21 PRESENTATION OF JAMES ELLIOTT

22 MR. ELLIOTT: I've been here since about 8:45 and

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1 found this intriguing.

2 CHAIRMAN WALLACE: I'm glad you did.

3 A PARTICIPANT: You obviously haven't been listening
4 carefully.

5 MR. ELLIOTT: On behalf of the lawyers in the state of
6 Georgia I would like to welcome you. My purpose really in being
7 here is to talk just about a couple of things I understand you
8 have under consideration.

9 Lawyers in Georgia are probably very little different
10 from lawyers anywhere else; that they are willing to complain
11 immediately, particularly to somebody like me whose phone number
12 is listed in front of the bar directory with a direct dial
13 number.

14 They are particularly ready to complain if they think
15 something is going on that is getting into their pockets. When
16 I was looking over your proposed regulations concerning fee
17 splitting, I had several reactions to it.

18 First is, if there had been a problem, I don't think
19 there is any question that I would have heard about it at least
20 from lawyers in Georgia. In this part of the country we would
21 have a saying that "if it ain't broke, don't fix it."

22 I think that really seems to apply to what you're

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1 looking at in terms of fee splitting arrangements in 1609. I
2 don't really see it as a problem. Therefore, it seems to me
3 that if there is a new procedure, and it would seem overly
4 bureaucratic, that what may be underlying that is perhaps simply
5 an idea that those sorts of cases ought not to brought.

6 That's the goal and I think that's the fight that
7 ought to be fought as opposed to having an elaborate procedure
8 that to me is going to accomplish nothing positive and is simply
9 going to dissuade Legal Services provides from getting involved
10 in cases like that.

11 I guess the second aspect of it that really is a
12 matter of concern to me is when we are getting talk about how
13 money that is coming in to a particular system is going to be
14 either taken out directly or simply reduced from the budget that
15 would otherwise go to that provider.

16 Is this really a first step, for instance, in saying
17 that to the extent there are private funds coming in, be that
18 IOLTA money, be that volunteer money coming in, that there's
19 going to be a decrease in the budget of that particular
20 provider.

21 I spent last year a substantial amount of time raising
22 money outside of our IOLTA program. We raised \$100,000 for

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1 Georgia Legal Services. Now, that's not very much money, but if
2 I were convinced that to spend that time and to raise that money
3 is simply going to result in a reduction in the amount of money
4 that was going to come into GLSB, well, then, I'm certainly not
5 going to be willing to spend that time to do it.

6 As we all know, there's a great need for funding. It
7 would seem to me that anything we could do that encourages more
8 money to come in is what we ought to be doing. If this is the
9 first step in something that is going to dissuade the private
10 bar from getting involved and trying to help raise money, then
11 to me it would be a very, very big mistake.

12 I do appreciate your taking me out of order. I am
13 going to get back now and do some of those things called
14 billable hours, something that my partners will be delighted in
15 since for the last two years as the president of the bar, they
16 are not convinced that I spent quite enough time doing that. I
17 do appreciate your letting me come and talk to you.

18 CHAIRMAN WALLACE: Those of us who have sat on this
19 board for four years now have heard that story. Are there any
20 questions for Mr. Elliott? I do want to let you bill your
21 hours. If anybody has got any questions for Mr. Elliott, I'd
22 like to hear them now.

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1 (No response.)

2 CHAIRMAN WALLACE: Thank you for being with us. We
3 appreciate your --

4 MR. ELLIOTT: You're quite welcome.

5 CHAIRMAN WALLACE: -- and it's good to be in Atlanta.
6 All right, let me get back to where we were. Mr. Durant, who
7 has just exited was about to make his proposal. Bob, would you
8 look and see if Clark is out there because I think that's where
9 we are right now, waiting to hear from him.

10 Let's hear what your proposal will be and then we'll
11 figure out how to slip it in.

12 MR. DURANT: This is fairly simple. I propose that
13 between 10 and 16 people, clients and non-clients be brought to
14 Washington at the earliest possible date for a meeting at the
15 corporation to discuss the proposal of Gladys Barnes presented
16 at our Atlanta board meeting, 3/3/89, and to what extent it can
17 be implemented with the support of the corporation.

18 The corporation will pay for the expenses of invited
19 participants. The people invited will be determined by Gladys
20 Barnes or Hortencia Benavidez, Lorraine Miller, Clark Durant and
21 Terry Wear.

22 CHAIRMAN WALLACE: I didn't hear a number in there.

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1 MR. DURANT: That's because I don't know what it
2 specifically will cost. If we want to take the money -- Mr.
3 Uddo's suggestion is a good one. If that is the budget category
4 where it has to come out of, I'm sure it isn't going to cost
5 \$135,000.

6 CHAIRMAN WALLACE: A prudent amount of that category.

7 MR. DURANT: A very prudent and penny pinching amount,
8 but an amount sufficient to meet the task.

9 CHAIRMAN WALLACE: As congress sometimes says,
10 authorize such sums as they are necessary. I understand -- I
11 think I understand where it will go. What I'm going to propose
12 to do in a few minutes is to take about a ten minute recess. We
13 can all go about our business briefly. We can try to get Mr.
14 Mendez on the phone.

15 At that point, what I'm going to do is to offer Mr.
16 Wear's proposal as a substitute to the main motion on the floor.
17 I will incorporate Mr. Durant's request into that substitute
18 motion.

19 At that point we can debate the substitute and vote it
20 up or down. If there are any second degree amendments -- no, I
21 think I'm going to incorporate Mr. Durant's. I think that will
22 be easier since I think there is developing a consensus on that

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1 proposal.

2 Then anybody who wants to change Mr. Wear's proposal,
3 the weak things will have a chance to do it. Then we'll vote on
4 that substitute as it exists. If it passes, that will be the
5 main vehicle on the floor and we'll have to pass it.

6 If it's defeated, what will remain is \$964,000 going
7 out to the field. We will have to vote whether or not we want
8 to do that. So, that, I anticipate, will be the parliamentary
9 course that we engage in after we take our break and after Mr.
10 Mendez gets on the phone.

11 Other individuals may have particular amendments they
12 are going to want to offer. So we can try to do this
13 efficiently, let me ask now if you let me know does anybody
14 anticipate any further amendments.

15 Granted, some people are going to vote for Mr. Wear's
16 proposal and some people are going to vote against it. Is
17 anybody anticipating voting to change it at this point? If so,
18 I'll try to figure out how to fit that in to give everybody a
19 fair vote.

20 MS. SWAFFORD: Mr. Chairman, I have a question. Are
21 you saying that Mr. Durant's proposal is going to be
22 incorporated into Mr. Wear's proposal to amend the field

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1 proposal so we will not have the chance to -- either we vote for
2 Mr. Wear's which includes Mr. Durant's?

3 CHAIRMAN WALLACE: Here's how you would vote on it,
4 Ms. Swafford.

5 MS. SWAFFORD: No, wait a minute. Let me ask you --

6 CHAIRMAN WALLACE: Yes, you will have a chance because
7 you can move to delete it. It is subject to amendment. The
8 amendment that I will propose to offer includes Mr. Durant's
9 proposal.

10 If anybody is opposed to Mr. Durant's proposal, you
11 move to amend the package by deleting the Durant proposal. That
12 will be the parliamentary procedure. It's a little complicated,
13 but there will be a free vote on Mr. Durant's proposal if
14 anybody wants to move to strike it out.

15 Mr. Uddo?

16 MR. UDDO: In answer to your question, I might have
17 amendments to Mr. Wear's proposal. I'm still waiting for some
18 numbers and I don't know yet.

19 CHAIRMAN WALLACE: All right, that's fine. Mr.
20 Smegal?

21 MR. SMEGAL: I'm a little troubled by the procedure
22 you just outlined if I understood it, Mr. Wallace. Those of us

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1 who would favor Mr. Durant's proposal are kind of locked into
2 voting for Mr. Wear's plan. I don't really think that's fair
3 nor do I think it's proper.

4 CHAIRMAN WALLACE: No, let me explain, Mr. Smegal. If
5 you vote against Mr. Wear's proposal and that is defeated, the
6 main subject on the floor will be the \$960,000 proposal. It
7 will then be in order to propose further amendments to the
8 \$964,000 proposal.

9 You could, at that time, move to fund Mr. Durant's
10 proposal out of the \$964,000. I haven't got it in front of me;
11 I think it's \$964,000, something like that. So, you will have
12 an opportunity to vote against Mr. Wear's proposal.

13 If that proposal goes down, you will have a second
14 chance to take money out of the committee report for Mr.
15 Durant's proposal. So, you will have a chance to make that
16 motion once the substitute, if the substitute is defeated.

17 MR. SMEGAL: Just so I understand, Mr. Wallace, if I
18 vote against Mr. Wear's proposal to take this \$964,000 and add
19 it to our management administration, I am not, therefore,
20 foreclosed from supporting Mr. Durant's proposal here. I will
21 get a new chance at that, right?

22 CHAIRMAN WALLACE: If Mr. Wear's substitute is

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1 defeated, I will recognize you immediately, Mr. Smegal, to
2 propose to amend the committee report to put the Durant proposal
3 into place.

4 MR. SMEGAL: I wouldn't propose to take Durant's
5 proposal. He is certainly welcome to make it. I'll second it
6 if it needs seconded.

7 CHAIRMAN WALLACE: That's fine, but that opportunity
8 will be made available. There's no problem. That vote will come
9 up. The reason we are doing this is because I want to make sure
10 everybody understands the parliamentary posture we're going to
11 be in and I want everybody to have a fair chance to vote.

12 Mr. Uddo has said he may have some additional
13 amendments. I think those will be easy to vote on as second
14 degree amendments. Does anybody else anticipate any amendments?

15 MR. SMEGAL: I want to comment on your procedure here,
16 Mr. Wallace. I don't see a speaker phone. I see a telephone.
17 I assume the purpose of the phone is to allow Mr. Mendez to
18 vote. I assume we know what his vote is going to be.

19 I recall a circumstance several meetings ago in
20 Washington where we had a similar situation, Mr. Wallace, where
21 you were unavailable. It seems to me we can -- what we did at
22 that point when your unavailability became extended, we took a

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1 vote and left the matter open for you to vote when you got a
2 chance to call in.

3 I'd like to move this matter along. The meeting
4 started this morning at 8:00 because I couldn't be here unless
5 it was going to be over before noon. I'd like us to take the
6 vote and we can add Mr. Mendez to the count at such time as Mr.
7 Mendez may be available to be counted.

8 CHAIRMAN WALLACE: Well, the --

9 MR. SMEGAL: He's not going to hear any of the
10 discussion. We don't have a speaker phone. He is only going to
11 hear whoever is speaking into the telephone when you talk to
12 him.

13 CHAIRMAN WALLACE: The problem with that, Mr. Smegal-
14 - and he's entitled to vote. We worked on the bylaws together
15 four years ago. You know how they worked as well as I do. The
16 problem with just deferring the vote is that given the
17 parliamentary posture we are in, we have a lot of preliminary
18 votes that -- and you may not be able to move to the next vote
19 until one vote is resolved.

20 We will have substitutes. We will have second degree
21 amendments. We are going to need Mr. Mendez on the line. I
22 think that's --

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1 MR. SMEGAL: I don't know that that follows. I think
2 we can appreciate why he is going to be on the line, Mr.
3 Wallace, so we know how he's going to vote. I'm suggesting to
4 you that his vote may be irrelevant.

5 CHAIRMAN WALLACE: Well, let me -- at this point we've
6 been here two and a half hours. I think the court reporter and
7 everybody else, and I know I am, are in need of a break. What I
8 would propose to do at this point is to take our ten minute
9 break.

10 We'll try to get Pepe on the line. If we can't get
11 him on the line, we will proceed as you suggest, Mr. Smegal. If
12 we can get him on the line, we haven't lost anything. We'll be
13 ready to vote as it comes up.

14 Hearing no dissent, let's take a ten minute recess.

15 (A short recess was taken.)

16 CHAIRMAN WALLACE: Let me call the meeting back to
17 order. I will explain where we are as I try to bring you up to
18 date. The proposition on the floor is the committee report to
19 send the full \$985,000 to the field.

20 MOTION

21 The Chair moves an amendment in the nature of a
22 substitute. The Chair moves to distribute the \$985,000 as

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1 indicated on pages 39 through 41 of the board book in column 5
2 with the following proviso: that part of the funds from line 3b,
3 meritorious grant awards, a prudent portion of those funds be
4 used in the following fashion -- this is a proviso contributed
5 by Mr. Durant -- that between 10 and 15 people, clients and non-
6 clients be brought to Washington at the earliest possible date
7 for a meeting at the corporation to discuss the proposal of
8 Gladys Barnes presented to our Atlanta board meeting of 3/3/89.

9 As to what extent it can be implemented with the
10 support of the corporation, the corporation will pay for the
11 expenses of the invited participants. The people invited will
12 be determined by Gladys Barnes, Hortencia Benavidez, Lorraine
13 Miller, Clark Durant and Terry Wear.

14 That is the board's amendment in the nature of a
15 substitute, the Chair's amendment in the nature of a substitute.
16 Is there a second?

17 MS. MILLER: I second it.

18 CHAIRMAN WALLACE: All right. The motion in the
19 nature of a substitute has been seconded. That is the
20 proposition presently before the board. I know of at least one
21 amendment that needs to be made. It is available for debate or
22 amendment at this point. Does anyone desire recognition? Mr.

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1 Valois?

2 MR. VALOIS: Let me ask a question first,
3 parliamentarily. I've answered my own question. I obviously
4 have problems with Mr. Durant's addition to Mr. Wear's proposal.
5 I find myself in the position of, I suppose, offering to amend
6 the substitute.

7 CHAIRMAN WALLACE: It would be an amendment. You can
8 amend this amendment in the second degree. So, yes, you can
9 move to change what I just said.

10 MOTION

11 MR. VALOIS: I am going to move to change what you
12 just said to leave the Durant addition off the Wear proposal.
13 If I can speak to it a moment, I will do so.

14 CHAIRMAN WALLACE: Mr. Valois has moved to delete the
15 Durant proviso from the substitute amendment. Is there a
16 second to delete the Durant proviso?

17 MS. SWAFFORD: Second.

18 CHAIRMAN WALLACE: It's been seconded by Ms. Swafford.
19 Mr. Valois is recognized in support of his second degree
20 amendment.

21 MR. VALOIS: I find myself in the position of, quite
22 frankly, trying to address what I think is a quite incomplete

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1 notion to start with. The whole Durant proposal is based upon
2 the Region 6 client's council national client training proposal.

3 What he's asking us to do, quite frankly, is to spend
4 money to study a proposal which I think does not meet the muster
5 of anything that we have ever on this board asked the board to
6 commit money to.

7 So, to spend money to look at a proposal which on it's
8 face is probably in violation of 1612.4, at least I think and
9 Mr. Houseman seems to think, I think is not a good idea.

10 Secondly, you know, we are a country of 50 states.
11 There are unauthorized practice of law statutes that are
12 probably different in all 50 states. To go into a proposal to
13 teach, and I will quote from the proposal if it, in fact, was
14 permitted by our regulation to which it is not, "client self-
15 advocacy," I don't quite know what that means.

16 Yesterday we were told that that means we would teach
17 the clients how to get divorces and teach clients how to appear
18 in small claims court. I, frankly, am not interested in
19 encouraging divorces in this country and I'm not interested in
20 spending government money on doing that.

21 The notion of teaching people how to appear in small
22 claims court, I mean, I thought that's what our recipients were

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1 already hired to do. We have spent \$300 million a year paying
2 very fine lawyers to appear on behalf of eligible clients. So,
3 that falls on its face in my opinion also.

4 Self-sufficiency skills, I mean, I'm in favor of
5 eligible poor and ineligible poor becoming self-sufficient.
6 There are a lot of people in this country who favor that. This
7 isn't the program, the Legal Service Corporation, to be
8 directing that effort.

9 It merely parallels or mirrors the efforts of hundreds
10 of other -- perhaps thousands of other agencies both operated by
11 cities, states, counties, and the federal government already to
12 try to convert the Legal Service Corporation into some sort of
13 general poverty agency by doing such things as "adult learning
14 development and use of materials and videos, managing of
15 training events, and client advocacy self-help training, private
16 attorney involvement."

17 I thought we were doing that. Our recipients are quite
18 capable of developing PAI. I just think it's a kind of a nutty
19 idea, quite frankly, and a waste of money. I'm going to vote
20 against this.

21 I hope my board members will agree with me and also
22 support this amendment. Frankly, if this can be developed down

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1 the road into something that is number one, lawful and number
2 two, that's not nutty, I'll support it. It's not here today.

3 CHAIRMAN WALLACE: Thank you. I will recognize Mr.
4 Durant in support of his proviso.

5 MR. DURANT: First of all, my proviso is simply to
6 discuss the proposal that was made by Ms. Barnes. Let me just
7 respond to two aspects of the things that you said, Bob.

8 Number one, although I find it rare that I would be in
9 agreement with a bar association, the Florida Bar Association
10 underwrote a grant to help train non-lawyers to appear in a
11 variety of circumstances, a video tape of which I think has been
12 made available to the board and a very quality job at that.

13 . It was underwritten by a grant by the Florida Bar
14 Association. So, if it's a nutty idea, then the Florida Bar
15 Association underwrote a nutty idea too. Second, I don't see it
16 -- I think Rose Palmer in Pittsburgh is a very good example of
17 where in fact part of Rose's activities were to help poor women
18 and spouse abuse cases and child support cases.

19 I think any efforts to help people know how to handle
20 those items goes to preserve the family or to preserve values
21 that I think are important. Again, what the purpose of the
22 meeting, among other things, is -- it's called for as a part of

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1 the proposal is simply to refine.

2 The things that Gladys has talked about in her
3 particular proposal -- quite frankly, all the things that are in
4 her proposal, I'm not in favor of. I think the purpose of
5 bringing people together is to refine those things and to make
6 it into a workable idea.

7 CHAIRMAN WALLACE: Any further debate on Mr. Valois'
8 amendment? You're entitled to close and I will recognize you to
9 close, Mr. Valois.

10 MR. VALOIS: I'm in an awkward position here because I
11 agree that there is merit to trying to find ways to allow people
12 to help themselves. Bob, I'm not worried about teaching people
13 to use the small claims courts. I think that's what they are
14 made for.

15 I think it's consistent with what we're supposed to do
16 to try to help people have access to those procedures that have
17 been established to make it quicker and easier and maybe less
18 painful for them to protect themselves or assert their rights in
19 court.

20 I haven't seen the video from Florida. I asked for it
21 yesterday at the Task Force meeting. I want to see it. I think
22 there may be some really legitimate things that could be done

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1 short of the kind of client training which is probably
2 prohibited by our regulations or if not maybe should be
3 prohibited by our regulations, something short of that but yet
4 effective enough to actually do something beneficial for
5 clients.

6 As we remind ourselves all the time, the purpose of
7 Legal Services Corporation is to serve clients, to benefit
8 clients. On the other hand, I'm not sure that Ms. Barnes'
9 proposal is the right one.

10 I'm not so sure that I see in that the focus on the
11 kinds of education or assistance that will achieve at least my
12 perception of what would be good client training. So, I'm in a
13 very awkward position in that I don't want to squelch the idea
14 that there's some merit to helping people in this way.

15 On the other hand, I don't know that bringing people
16 to Washington to talk about this particular proposal is a useful
17 step in that direction. So, I still don't know what I'm going
18 to do.

19 CHAIRMAN WALLACE: Let me recognize Mr. Durant.

20 MR. DURANT: Just one analogy. When the delegates got
21 together to amend the Articles of Confederation, they threw that
22 out and came up with a different proposal. It may very well be

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1 that a full discussion of Ms. Barnes' proposals will modify it
2 in substantial ways, but the point is that I think what is
3 important about what she has done is to focus the effort on
4 trying to help people to help themselves and to be in a focused
5 area where it's lawful to do -- be advocates.

6 CHAIRMAN WALLACE: Any further comments? Mr. Smegal?

7 MR. SMEGAL: Yes, I share the quandary that Professor
8 Uddo finds himself in and for another reason, I think we've got
9 a very clean issue here that's really been muddied by Mr.
10 Durant's proposal.

11 You assured me that if we defeat the Wear proposal
12 here that that matter will come up again. It seems to me that
13 what we really should be focusing on is what we spent two hours
14 talking about which is \$956,000 of grant recovery from programs.

15 Whether that money should go back to programs to be
16 used for the purpose for which it was intended, delivery of
17 legal services to the indigent, or whether we should put it into
18 management administration.

19 I don't think Mr. Wear has made his case for that. We
20 spent two hours talking about it. I for one believe the Durant
21 proposal just makes it more difficult to focus on really what
22 we're about today.

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1 CHAIRMAN WALLACE: Before I recognize Mr. Valois to
2 close, I've got a couple things I want to say. Do any other
3 board members desire recognition?

4 (No response.)

5 CHAIRMAN WALLACE: Let me explain the position, the
6 quandary that I find myself in as chairman. It's my job to try
7 to get agreement on this board's operating budget for 1989
8 before Chairman Mendez and I have to go up to the House
9 Appropriations Committee in about two weeks.

10 Certainly, they will want to know what we are doing
11 with the money we already have. As such, it's my job to try to
12 reach a consensus. In the world of legislation, consensus is
13 not always a neat and clean thing to find.

14 I tend to agree with Mr. Valois that I have very
15 little hope that this conference will produce anything useful or
16 even legal. I think it's part of a consensus that is going to
17 produce the funds that we need to run this corporation.

18 I think as part of this package we will be able to get
19 the management administration funds we need to do our job. For
20 that reason, with much reluctance, I will vote against Mr.
21 Valois' second degree amendment and for the package that I
22 introduced as a substitute.

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1 That may be on principal, but I think it's the way I
2 have to go. Mr. Uddo is much better on equesiastical history
3 than I am, I'm sure, but there was a king of France who once
4 said that "Paris is worth a mass." I think this corporation is
5 worth a conference and that's the way I'm going to vote.

6 I will recognize you to close, Mr. Valois.

7 MR. VALOIS: As I recall, that was a chap who later
8 had his head separated from his body. (laughter)

9 CHAIRMAN WALLACE: I expect that momentarily.

10 MR. VALOIS: I have not foregone principle on this
11 board yet and don't intend to; thank you. I don't really have a
12 whole lot to add. I think that the issues are fairly clear. I
13 will just add something that I thought Basile would say and that
14 is that the board is already expressed a clear direction for
15 training client board members.

16 That is now committed to the task force. We heard
17 testimony on it yesterday. I was here. Mr. Uddo was here. We
18 heard from a number of client board members. We had the same
19 sort of issue, it seems to me, that is lurking about Mr.
20 Durant's proposal yesterday over and over again.

21 It was necessary for the chairman of the task force to
22 constantly try to segregate the issue of client training from

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1 client board member training. I think we finally got that idea
2 across or at least I hope we did.

3 Since the board is now committed to client board
4 training through it's task force, I don't see what's left here
5 other than if we're voting for this then we're voting for client
6 training.

7 Client board training, that field is already occupied.
8 If client training is what we're now voting for, I ask you to
9 vote against it because our regulations don't permit it.

10 MS. SWAFFORD: Mr. Chairman, am I out of order now? I
11 know he's had the closing statements.

12 CHAIRMAN WALLACE: I will recognize you briefly. I
13 think Mr. Valois will not mind.

14 MS. SWAFFORD: Thank you very much. I didn't intend
15 to say anything, but it comes to my mind that we've already had
16 two meetings on client board member training. It looks to me
17 that, Professor Uddo, it's been done to you again.

18 You chaired a committee --

19 MR. UDDO: Nice of you to point that out.

20 MS. SWAFFORD: Well, it just came to my mind. You
21 chaired a committee in which we had two meetings. You felt that
22 you had not developed enough information to really have a mind

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1 about it.

2 So, we summarily dismissed you and said it wasn't
3 necessary; we were going to vote. Well, we've done that again.
4 Then we decided to have a meeting on client board member
5 training.

6 You made that distinction, that differentiation so
7 well that I understood it and thought everybody else understood
8 it. Apparently we did not because here we come up today after
9 meeting yesterday at length and the meeting before in deciding
10 what we were going to do was very good.

11 It was going to cost -- it was something that I had
12 been forced in coming on this board. Now that we are going to
13 do away with that and we're going to start something that is
14 illegal, unprincipalled and a waste of money if we go with Mr.
15 Durant's suggestion which I cannot possibly understand.

16 I just want to implore you to vote for Mr. Valois'
17 amendment and not -- record me on that and then you won't need
18 to take my vote. That'll save my time.

19 CHAIRMAN WALLACE: At this point, I think we all
20 understand where we are. The question recurs on the Valois
21 amendment to delete the Durant proviso from the Wallace
22 substitute. I vote we'll leave the substitute exactly as it is

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1 printed in the board book with no earmarking for a client
2 conference.

3 A no vote will leave the substitute with an earmarking
4 for a client conference as proposed by Mr. Durant. Now, on that
5 question, Mr. Durant, how do you vote?

6 MR. DURANT: You mean on Mr. Valois'?

7 CHAIRMAN WALLACE: On Mr. Valois.

8 MR. DURANT: I vote no.

9 CHAIRMAN WALLACE: All right. Ms. Miller?

10 MS. MILLER: No.

11 MR. DURANT: Ms. Benavidez?

12 MS. BENAVIDEZ: No.

13 MR. DURANT: Mr. Eaglin?

14 MR. EAGLIN: No.

15 MR. DURANT: Ms. Swafford?

16 MS. SWAFFORD: I vote yes.

17 MR. DURANT: Mr. Uddo?

18 MR. UDDO: Since history is the order of the day, I'm
19 going to indulge another venerable tradition from the
20 constitutional convention and abstain courteously.

21 MR. DURANT: All right, one abstention. The Chair
22 votes no. Mr. Valois?

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1 MR. VALOIS: Aye.

2 MR. DURANT: Mr. Hall.

3 MR. HALL: No.

4 MR. DURANT: Mr. Smegal?

5 MR. SMEGAL: I'm in the quandary of Mr. Uddo. I'll
6 vote abstained.

7 MR. DURANT: Mr. Mendez?

8 MR. MENDEZ: No.

9 MR. DURANT: All right. The Valois amendment is
10 defeated by a vote of seven to two with two abstentions. The
11 vehicle on the floor at the moment for debate is the Wallace
12 substitute which is as printed in the board book with the Durant
13 proviso.

14 Are there any further amendments to the Wallace
15 substitute to be proposed?

16 (No response.)

17 MR. DURANT: Any debate on the Wallace substitute?

18 MS. SWAFFORD: Go over the Wallace substitute again,
19 please.

20 CHAIRMAN WALLACE: All right. Look at page 39 through
21 41 of the board book.

22 MS. SWAFFORD: All right, I'm looking.

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1 CHAIRMAN WALLACE: What I am proposing is that we take
2 problem 5 because that is the proposed allocation of other funds
3 available. That's what we're talking about; that we take the
4 \$985,516 which are the other funds available, and distribute
5 them as shown in column 5 of the board book.

6 MS. SWAFFORD: On page what?

7 CHAIRMAN WALLACE: On pages 39, 40 and 41. It is all
8 one chart. As part of my proposal, look at 3b where it says
9 meritorious grant awards. Out of that \$131,000 the president is
10 directed to spend a prudent amount of money to do what Mr.
11 Durant has asked him to do which is to have a client conference
12 in Washington, and I read that in.

13 So, he will be directed to use some of those funds for
14 the purpose of having such a client conference. That's what is
15 on the table right now. It is subject to amendment if anyone
16 has an amendment to propose.

17 MR. UDDO: I have an amendment.

18 CHAIRMAN WALLACE: Mr. Uddo is recognized.

19 MR. UDDO: I still don't have the numbers that I asked
20 for about some of my problems and concerns. After discussion
21 and review of the matter that we've gone through here in the
22 memorandum, I would propose that the amount permitted to

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1 management and administration be reduced to \$470,000, the
2 balance of that amount proposed, which is \$283,941, go to field
3 programs.

4 In addition, I would propose that field programs get
5 an additional \$31,575 leaving \$100,000 for 3b, meritorious grant
6 awards. My rationale for that is that I'm not persuaded on all
7 these matters that have been presented to us with respect to
8 additional expenses that the corporation is going to incur.

9 I'm not convinced on the permanent replacement. I
10 don't think the Inspector General's office should be funded to
11 the level of \$324,000. So, I considered \$100,000 to be adequate
12 seed money to see what we're going to do with that.

13 Hearings on competition, I think that maybe we ought
14 to pinch those pennies and try to get those meetings all to
15 coordinate with board meetings. I included the \$50,000 for
16 client board member training and the \$50,000 for the publication
17 of the in-house newsletter and the \$270,000 under 6a and b,
18 other increased costs, because I don't think there is much
19 discretion over that.

20 I'm unpersuaded on the cost of living increase. So,
21 my proposal is \$470,000 for management administration. That's
22 just how I came to my number. How it's used, of course, is up

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1 to the corporation. That's how I went through this and came up
2 with my numbers.

3 CHAIRMAN WALLACE: Let me read Mr. Uddo's amendment as
4 I have the math before I ask for a substitute. Mr. Uddo would
5 amend line 1a on page 39, field programs, by substituting in
6 place of zero the figure \$315,516.

7 MR. UDDO: Right.

8 CHAIRMAN WALLACE: He would amend on page 41, line 3a,
9 by substituting \$470,000 for \$753,941. He would amend 3b by
10 substituting the figure \$100,000 for \$131,575. That is the Uddo
11 amendment. Is there a second?

12 (No response.)

13 CHAIRMAN WALLACE: The Uddo amendment dies for lack of
14 a second. The Wallace substitute as originally proposed is
15 still on the table. Are there further proposals for amendment?

16 MR. SMEGAL: Mr. Wallace, again I ask the question
17 that I asked earlier. If I vote against the Wallace amendment,
18 will I have an opportunity later to support Mr. Durant?

19 CHAIRMAN WALLACE: I will recognize either you or Mr.
20 Durant, whoever seeks recognition, to make that proposal, yes.
21 There being no further debate, the question recurs on the
22 Wallace substitute to the committee report.

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1 MR. DURANT: Mr. Wallace, your substitute is where you
2 combine mine with Mr. Wear's proposal?

3 CHAIRMAN WALLACE: That's right. Those are together.
4 Mr. Durant, how do you vote?

5 MR. DURANT: I vote in favor of the Wallace
6 substitute.

7 CHAIRMAN WALLACE: Ms. Miller?

8 MS. MILLER: Yes.

9 CHAIRMAN WALLACE: Ms. Benavidez?

10 MS. BENAVIDEZ: Yes.

11 CHAIRMAN WALLACE: Mr. Eaglin?

12 MR. EAGLIN: No.

13 CHAIRMAN WALLACE: Ms. Swafford?

14 MS. SWAFFORD: No.

15 CHAIRMAN WALLACE: Mr. Uddo?

16 MR. UDDO: No.

17 CHAIRMAN WALLACE: The Chair votes aye. Mr. Valois?

18 MR. VALOIS: No.

19 CHAIRMAN WALLACE: Mr. Hall?

20 MR. HALL: Yes.

21 CHAIRMAN WALLACE: Mr. Smegal?

22 MR. SMEGAL: No.

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1 CHAIRMAN WALLACE: Five to five. Mr. Mendez?

2 MR. MENDEZ: Yes.

3 MR. DURANT: All right. The Wallace substitute passes
4 by a vote of six to five. That means the committee report has
5 been superceded by the Wallace substitute which is the
6 combination of the Wear proposal with the Durant proviso.

7 Is there any further debate or any further amendments
8 to be offered before we proceed to vote on the committee report
9 as amended?

10 (No response.)

11 MR. DURANT: All right, hearing no further debate, we
12 will now vote on the main motion on the floor which is the
13 committee report as superceded by the Wallace substitute. This
14 is the last vote we take. If it passes, that's our budget. If
15 it fails, we are back to ground zero.

16 Mr. Durant, how do you vote?

17 MR. DURANT: This is in favor of the Wallace --

18 CHAIRMAN WALLACE: This is the final passage on the
19 Wallace substitute.

20 MR. DURANT: I say yes.

21 CHAIRMAN WALLACE: Mr. Durant votes yes. Ms. Miller?

22 MS. MILLER: Yes.

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1 CHAIRMAN WALLACE: Ms. Benavidez?
2 MS. BENAVIDEZ: Yes.
3 CHAIRMAN WALLACE: Mr. Eaglin?
4 MR. EAGLIN: I vote no.
5 CHAIRMAN WALLACE: Ms. Swafford?
6 MS. SWAFFORD: No.
7 CHAIRMAN WALLACE: Mr. Uddo?
8 MR. UDDO: No.
9 CHAIRMAN WALLACE: The Chair votes aye. Mr. Valois?
10 MR. VALOIS: No.
11 CHAIRMAN WALLACE: Mr. Hall?
12 MR. HALL: Yes.
13 CHAIRMAN WALLACE: Mr. Smegal?
14 MR. SMEGAL: No.
15 CHAIRMAN WALLACE: Mr. Mendez?
16 MR. MENDEZ: Yes.
17 MR. WALLACE: All right. The committee report as
18 amended by the Wallace substitute is adopted by a vote of six to
19 five. That completes the business on the distribution of funds.
20 The next item on the agenda is debate --
21 MR. UDDO: Mr. Chairman, I think that arrangement of
22 voting should be preserved for history. (laughter)

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1 MR. WALLACE: Mr. Mendez, I anticipate we will be
2 holding discussions on Part 1609 for quite a few minutes. Do
3 you want to listen to the discussions or do you want to get back
4 to your business and we'll call you.

5 MR. MENDEZ: I'm supposed to be someplace and it takes
6 me about an hour to get there.

7 MR. WALLACE: So, when do you need to leave?

8 MR. MENDEZ: Yes. The question I have is, is it going
9 to be more than an hour or less than an hour?

10 MR. WALLACE: I just don't have any way to predict.
11 We hope to conclude the debate shortly. Mr. Smegal has to go
12 catch a plane too, but I can't tell you as we sit here --

13 MR. MENDEZ: How long will it be --

14 MR. WALLACE: When do you have to leave for where
15 you're going?

16 MR. MENDEZ: (No response.)

17 MR. WALLACE: Did we lose you or are you thinking?

18 MR. MENDEZ: Oh, you're talking to me? I thought you
19 were talking to Tom.

20 MR. WALLACE: No, I was talking to you. When do
21 you --

22 MR. SMEGAL: Tom's leaving.

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1 MR. WALLACE: Tom just left.

2 MR. MENDEZ: Oh, Tom's leaving? I would say in half
3 an hour.

4 MR. WALLACE: You have to leave in half an hour?

5 MR. MENDEZ: Yes.

6 MR. WALLACE: All right. Let me let you get on about
7 your office business and we'll check in with you in half an hour
8 and let you know where we are.

9 A PARTICIPANT: You got a car phone, Pepe?

10 MR. MENDEZ: No, I don't.

11 MR. WALLACE: You will be out of pocket for an hour
12 after that; is that correct?

13 MR. MENDEZ: At least an hour.

14 MR. WALLACE: We may at that point want to take a
15 lunch break because it will be about here -- we may try to get
16 you later. I don't know anybody else here who has early planes,
17 but, Pepe, let me let you get about your business. We'll call
18 you in half an hour and let you know where we are.

19 MR. MENDEZ: I appreciate it.

20 MR. WALLACE: Thank you.

21 MR. EAGLIN: Mr. Chairman, is this meeting going to go
22 past 1:00?

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1 MR. WALLACE: I don't know the answer to that. I
2 don't know how long this debate on Part 1609 is going to take.
3 Let me just ask -- let me ask what people's schedules are. Mr.
4 Smegal has already had to leave. Is there anybody else that has
5 an early afternoon plane?

6 MR. DURANT: I do, Michael.

7 MR. WALLACE: When's your plane?

8 MR. DURANT: I have either one at 12:25 or 1:20.

9 MR. WALLACE: Well, you ain't going to make 12:25, I
10 can tell you that right now.

11 MR. UDDO: He's not going to make 1:20 if we --

12 MR. DURANT: I have to catch the 1:23 one.

13 MR. WALLACE: Anybody else have to leave by 1:23?

14 MR. UDDO: About that time I have to leave from here.
15 I have a 2:30, 2:40 -- I can get a later one I hope.

16 MR. WALLACE: Well, I think what we're going to have
17 to try to do then is to just work through lunch and see if we
18 can dispose of this. Part 1609 is on the floor. Let me get the
19 General Counsel up here. Mr. Houseman is going to have some
20 remarks he wants to make.

21 While he's getting situated, let me review the
22 bidding. There is a committee report on this matter. At the

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1 last board meeting, various board members suggested changes that
2 needed to be made.

3 The General Counsel has proposed those changes and I
4 anticipate that there will be an amendment to approve those
5 changes and en block. So, let me recognize the General Counsel.
6 I think you have a memo you sent to everybody which I presume
7 will be the working document.

8 Would you explain to us what changes have been made
9 and where we are?

10 MR. SMEGAL: May I interrupt for just one moment as
11 I'm leaving to advise you that were I here when this vote is
12 taken, I would vote against any revision that would encompass
13 the matter before you, 1609, in any form.

14 MR. WALLACE: All right, thank you, Mr. Smegal. The
15 record will so reflect. At this point I will recognize the
16 General Counsel.

17 (Mr. Smegal excuses himself from the meeting.)

18 PRESENTATION OF TIMOTHY SHEA REGARDING PART 1609

19 MR. SHEA: Thank you, Mr. Chairman. As you have
20 indicated, we have a memorandum that I have furnished to board
21 members dated February 28, copies of which are available here in
22 this room.

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1 It is a discussion of the changes that have been--
2 that we're recommending; first of all, the proposed changes to
3 Part 1609 as reported from the Operations and Regulations
4 Subcommittee here.

5 Keep in mind, first of all, that the Operations and
6 Regulations Subcommittee reported out a draft rule that was
7 considered by the committee in January, by the board in this
8 January meeting.

9 In connection with that, I had several recommended
10 changes. I'll summarize those very briefly but I'm talking
11 about procedure at this point. There was some concerns
12 expressed by board members at that meeting about the scope and
13 the purview of the rule.

14 Since then, we have tried to address a number of the
15 concerns that were raised there. Both in anticipation of the
16 Ops & Regs Committee meeting, I discussed the rule with Alan
17 Houseman and with representatives of the ABA.

18 Bill McAlpin appeared at the January meeting on behalf
19 of the ABA. I spoke with him briefly there. I have had some
20 conversations with him after the January meeting to address some
21 of the concerns that they had in mind.

22 I have spoken on several occasions with Alan. We have

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1 addressed a number of the concerns. They still have some
2 remaining ones. Of course, you are well aware that both the ABA
3 and PAG NLADA opposed basically what I have been styling as the
4 accrediting mechanism.

5 With respect to some of the remaining matters, there
6 were some other technical disputes. I think their fundamental
7 position is that they oppose this accrediting mechanism. Let
8 me, if I may, pass on to some of the substantive changes that we
9 are recommending. I'll deal with those sort of briefly.

10 MS. SWAFFORD: Excuse me just a minute. So we can
11 follow your line, this is the last memorandum which you handed
12 to us -- are you speaking of that?

13 MR. SHEA: February 28, 1989.

14 MS. SWAFFORD: That's the one we got today?

15 MR. SHEA: Actually, I think it was sent to you.

16 MS. SWAFFORD: Well, it was sent to me. Is it the
17 same thing?

18 MR. SHEA: Yes. There are two attachments. Attachment
19 1 is the text that I'm recommending -- it contains amendments--
20 the text that I'm recommending that the board adopt.
21 Attachment 2 is the text that is before this board now which is
22 the text that was reported out of the Ops & Regs Committee.

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1 Let me then proceed to identify what I think are some
2 of the substantives that remain. First, there were a number of
3 exchanges dealing with the effect of this change on
4 subrecipients, of this rule on subrecipients.

5 Again, there appears to be a difference between myself
6 and Alan Houseman about what is the subrecipient's understanding
7 is of their obligations vis a vis private funds that are
8 received -- let's say non-LSC funds that they have in their
9 hands.

10 It's my view that both the LSC regulations and the
11 Standard Subrecipient Agreement that private funds that are in
12 the hands of subrecipients are ordinarily subject to 1010(c).
13 The subrecipients undertake the same kinds of obligations with
14 respect to private funds that recipients do.

15 We have put in -- for purposes of this rule, we have
16 put in an exemption for subrecipients whose LSC funding is small
17 compared to their other funds. That provision says the section
18 for subrecipients for whom the LSC annual funding is 20 percent
19 or less aren't bound by the so-called accrediting mechanism that
20 is incorporated in this rule.

21 Similarly, there was -- we put in a provision that
22 would permit the president to exempt other subrecipients for

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1 whom these mechanisms would either be inappropriate or
2 impractical.

3 It is -- some of the objections, as I understand that
4 have been articulated, is that subrecipients now don't
5 necessarily appreciate that some of their private funds may be
6 encumbered even by the procedural requirements of 1010(c); that
7 is the case referrals and things like that many of you acquired.

8 My understanding from the staff is that private funds
9 of subrecipients, unless they are segregated in some former
10 fashion are treated as subject to 1010(c) and they are monitored
11 -- subrecipients are otherwise required to observe the terms
12 of the LSC Ops & Regs with respect to those funds.

13 The provision -- as well, we had put in a provision in
14 the regulation that permits in the context of a subrecipient
15 agreement that activities that are not in the scope of 1010(c)
16 may properly be excluded.

17 Hence, we have a provision here that the recapture
18 would apply only to funds that are effected by the subrecipient
19 agreement. Hence, activities that are somehow outside the scope
20 of the subrecipient agreement, as it is so provided, the would
21 be outside the terms of this rule.

22 Turning to the matter of agreements with bar

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1 associations, the provision as amended now contemplates that the
2 programs would sit down with the majority bar associations that
3 serve -- that are written in the recipient service area and that
4 they would come up with an agreement as to which cases the
5 program is obliged to refer to the local lawyer referral
6 service.

7 Keep in mind one of the changes we put in as between
8 the Ops & Regs Committee text here is that we have identified
9 the bars as the majority bars in the service area. First of
10 all, as far as the McCollum Amendment requires bar associations
11 to -- the majority bars to appoint the directors of our
12 recipients, that this should -- in principle, these
13 organizations, that is the bar associations who are in the area,
14 should be well identified. They surely should know who they
15 are.

16 There's also some amended text that would provide for
17 the bar association to give due notice of the terms of the
18 tentative agreement to its membership so its membership will
19 have an opportunity to comment.

20 Now, I might add the due notice provision is a
21 flexible one. It leaves to the bar the -- to find the
22 appropriate mechanisms to communicate the terms of the

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1 agreement.

2 I might add there is a requirement that the agreement
3 sort of be sunsetted after three years so that the matter can be
4 revisited by the bar on a regular basis. There was a comment
5 that I received recently from the New York State Bar
6 Association, the Committee on Legal Aid, which suggested that
7 there may be some issues as to whether we can require our
8 recipients to sit down and deal with the local bars.

9 It's always been my understanding that is a matter
10 of mutual interest both to the bar association and to our
11 programs. It seems to me that in the ordinary case, there is
12 every reason for them to come up with a mutual understanding of
13 what their expectations are.

14 Keep in mind the whole purpose of this rule is to
15 implement the provision of the LSC act that our recipients don't
16 compete with the local bar association fee generating cases.
17 That surely is a matter which I think is of mutual interest to
18 the local bar associations.

19 Moving on, pursuant to suggestion from board chair,
20 Michael Wallace, if we include in this recommendation a
21 provision that the programs be permitted to keep 25 percent of
22 the attorney's fees that they generate.

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1 The purpose of that proposal is to provide the
2 programs adequate incentive to pursue attorney's fees in cases
3 where they are entitled to the fees. A number of commentators
4 have suggested that if the local programs had no interest, had
5 no monetary interest to pursuing fees, that they simply abandon
6 the case and move on to provide other services for eligible
7 clients.

8 One of the concerns -- the concern that was
9 articulated by board member Mendez at the last meeting related
10 to the expectations of private attorneys who are working either
11 under a Judicare arrangement or a private attorney involvement
12 program in connection with an LSC recipient.

13 Upon reflection, I think these concerns are well
14 taken and we have put in another exemption such that private
15 attorneys who are working either under PAI arrangement or under
16 a Judicare program, fees garnered by those attorneys, may be
17 kept by them and there would be no recapture of those or
18 accrediting of those fees under this proposal.

19 That is, I might add, consistent with the proposal
20 insofar as one of the concerns that generated this proposed
21 change is that programs, certain programs seemed to be skewing
22 their case election to favor attorney fee cases insofar as that

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1 would generate fees that they were otherwise entitled to keep
2 and use for other services.

3 To the extent, of course, that a private practitioner
4 would be entitled -- would be getting such fees, of course they
5 are not going to go to the program, hence part of the concern
6 that gives rise to the rule wouldn't apply.

7 So, there is -- we have inserted an exemption that
8 would permit private attorneys to retain fees that -- in cases
9 on which they prevail. I think that addresses the changes, the
10 concerns, at least the principle concerns, that have been
11 articulated to date.

12 A number of the concerns that were articulated by the
13 ABA, and really it was Bill McAlpin in the conversation we had
14 last week, were of a technical nature. He probably had six or
15 seven comments.

16 I think that our changes have accommodated them, at
17 least, let's say, four or five. Of the other two, I don't think
18 that he felt were large concerns. It was an issue of
19 identifying which bar associations we are talking about.

20 We have made a technical amendment that would
21 recognize the fact that there may be several bar associations
22 and referral services that a recipient would be dealing with. I

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1 would like to think that that deals with that concern.

2 The rest of them I think it is substance we have
3 addressed. I think that's all I have to say at this point
4 unless -- I would be happy to address any questions from the
5 members.

6 MR. WALLACE: All right, thank you. In a minute, I
7 will recognize Mr. Houseman. At this point, does anyone have
8 any questions for the General Counsel?

9 MS. SWAFFORD: I don't have any questions of him. I
10 think he explained it well. I do have some discussion. You are
11 going to give an opportunity for discussion before we actually
12 vote??

13 MR. WALLACE: Yes, that's right. I would like to get
14 all the input on this and then we will have a discussion among
15 the board members.

16 MR. SHEA: If I may have one other matter, there is a
17 memorandum that I assume has been made available to the board
18 members to me from Robert Elgin dealing with some -- it shows
19 some attorney fee data for what I think is the programs that
20 identifies historical attorney fee data for the programs that
21 were the -- that generated the most attorney's fees in the year
22 1987.

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1 The data suggest that those programs have been sort of
2 on the high side of programs that have been generating fees for
3 the last few years. I assume that that information has been
4 made available to the board members. I have other copies
5 available here.

6 MR. WALLACE: I know there were some board members
7 that asked for it.

8 MS. SWAFFORD: I have not seen it.

9 MR. WALLACE: I don't think it was a general mailing.
10 I think it went to those that were asking Mr. Elgin for
11 information, but I don't think it went out generally. If you
12 have some copies, you might want to distribute them.

13 MR. SHEA: I do.

14 MR. WALLACE: Mr. Houseman is asking for a copy. All
15 right, if there is nothing further from the General Counsel at
16 this time, I will ask Mr. Houseman to pull up a chair. He has
17 given us his written comments which I think are at everybody's
18 place this morning.

19 I'll recognize Mr. Houseman as soon as he can make his
20 way up.

21 MR. UDDO: Mr. Chairman, this is coming as a committee
22 report.

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1 MR. WALLACE: Yes, the committee report is Attachment
2 2 to Mr. Shea's memo. Attachment 1 is the revisions that Mr.
3 Shea has prepared on request of several members. Those again
4 will have to be moved as amendments to the committee report.
5 The vehicle on the floor right now is Attachment 2 not
6 Attachment 1.

7 MR. UDDO: There will be occasion to propose
8 amendments?

9 MR. WALLACE: There certainly will. All right, Mr.
10 Houseman?

11 PRESENTATION BY ALAN HOUSEMAN

12 MR. HOUSEMAN: I want to address a number of points in
13 this provision, some of which are relatively minor, some of
14 which are not, and some of which I think could be fixed if we
15 took a little more time to fix it.

16 The guts of this, but not the only issue, is the
17 capture, offset, crediting issue, however you want to describe
18 it. I call it a recapture issue. Some people call it an offset
19 issue.

20 As proposed in the latest staff draft Mr. Shea just
21 talked about, this issue would -- what would happen is -- I just
22 want to make sure everybody understands it and then I want to

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1 talk about it.

2 What would happen is that attorney's fees derived by a
3 recipient from LSC funds and attorney's fees derived by a
4 recipient from private funds as well as some attorney's fees
5 derived by some subrecipients with their LSC and private funds
6 would be subject to offset or recapture by the corporation.

7 There is a provision in the current staff draft but
8 not in the committee report that would permit the recipient to
9 retain 25 percent of those attorney's fees and the offset or
10 the recapture would apply to 75 percent of those attorney's
11 fees.

12 That is what this does, this recapture provision. The
13 consequence of this, and I just want to be quite clear about
14 this, is that the consequence of both the committee report and
15 the latest staff proposal is that there would be fewer
16 resources available for legal services generally as a
17 consequence of this offset recapture provision.

18 The reason for that is because the cost of the
19 attorney fee petitions often exceed the amount of the fee that
20 would be retained under this proposal of 25 percent. So,
21 recipients are not going to seek attorney's fees in many cases
22 because the cost of seeking the attorney's fees is more than the

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1 25 percent they would be allowed to retain under this proposal.

2 This 25 percent incentive, therefore, will not
3 overcome the disincentives that exist to seek such fees. So,
4 one consequence of this is that there will be fewer resources
5 available to serve poor people on poor people's issues.

6 We are not here talking about service to non-eligible
7 clients; we are talking about service to eligible clients.
8 Secondly, I just want it to be clear that the distribution
9 scheme is not as suggested, to reward the lowest funded
10 programs and punish the highest funded programs.

11 There are numerous examples and I haven't seen the
12 Elgin memo so I can't completely react, but I'm just going to
13 take one of the examples and just explain it to you. The Legal
14 Assistance Foundation of Chicago expects to get approximately a
15 million dollars in attorney's fees this year.

16 Now they are the lowest funded program. They are one
17 of the lowest funded. They are funded at the lowest LSC level.
18 If you take into account that they are going to be allowed to
19 retain \$250,000 under the staff proposal and then looking at the
20 distribution scheme that Mr. Elgin described in his January 18th
21 memo, they would suffer a net loss of \$564,750 using those
22 figures, which are their projected figures for attorney's fees.

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1 I might add, and I want to come back to this, that the
2 retroactivity provision would have virtually no impact on most
3 of these. Virtually all of these fees, I am told by the
4 director and board chairman, would come from petitions filed or
5 settlements that were entered into after the November 1st
6 retroactivity provision that is in the reg. I want to come
7 back to that.

8 So, the consequence of this --

9 MR. DURANT: Can I ask you a question?

10 MR. HOUSEMAN: Yes.

11 MR. DURANT: Conceptually, one of the questions that I
12 haven't resolved in my own mind is that if we are funding a
13 particular program for certain levels or whatever to be doing
14 indigent work full time, why wouldn't an attorney, if that
15 particular case fell within the priority of that program, why
16 wouldn't they do it anyway irrespective of whether there is an
17 attorney fee question?

18 MR. HOUSEMAN: They may. We don't know -- we can't
19 fully predict the consequence of this. It is not a simple
20 answer because there's various different types of attorney's
21 fees shifting provisions.

22 Programs may go ahead. I haven't even talked about

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1 that issue yet. I was just talking about the financial
2 consequences. Programs may go ahead and bring the case-in-
3 chief.

4 I think in many circumstances they will and then not
5 seek the fees because there is not sufficient incentive for them
6 to seek the fees. Some programs in some cases may not go ahead
7 with the case-in-chief because the cost is so high and the
8 resources that we needed are so high.

9 They would, therefore, not have the funds available
10 even with our funding, your funding, the services funding to
11 anticipate sufficient funds and expenditures to go ahead and do
12 it.

13 I don't know how to sort all that out because we don't
14 have very good ways and accurate data doing that. The comments
15 from the programs, which there were 300 and some, a number of
16 those comments said that one of the impacts of this was to
17 deter us from taking some cases that we legitimately take now
18 and no one else is going to take for clients.

19 Many programs said we will go ahead and take those
20 cases, but we won't seek fees. We don't know the consequence to
21 that. I put on your tables this morning, from the New York
22 State Bar Association, where -- and I hadn't seen this before I

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1 got it in the time it was Fax'd to him -- they argued that in
2 some cases the effect of this would be that they won't bring the
3 case.

4 I cannot sort that out, but I think if the point of
5 this is to bring in the cases in the first place, I think that
6 this will have that impact in some cases; I don't think it will
7 have that impact in all cases. That is a long answer and it is
8 not a simple answer.

9 Let me also, just while we are on this, be quite clear
10 about what we are talking about here in terms of attorney's
11 fees. Programs get attorney's fees now under Section 1988, the
12 Attorney's Fees Civil Rights Award Act of the Civil Rights Award
13 Act.

14 To get those attorney's fees, they have to file a
15 petition after the case-in-chief is done and litigate that
16 issue, which often is subject to litigation. Also, attorneys in
17 Legal Services Programs get attorney's fees under the Equal
18 Justice Act, which is a later statute, but there is a cap on the
19 amount of attorney's fees they can get under that statute, some
20 way of exception, but by and large that cap is in place.

21 Finally, there are a number of state law provisions
22 where attorney's fees are recovered. Most of the cases that

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1 Legal Services brings under those state law provisions -- not
2 all, but most -- are subject to a very low cap recovery that
3 doesn't begin to make up for the amount of funds that are spent.

4 We are dealing with different kinds of attorney's fees
5 here. I want to address a point that has come up and came up
6 again in Mr. Shea's memorandum, and it is this issue of
7 windfall. The argument is made that programs are getting a
8 windfall from attorney's fees work.

9 It goes something like this: Because, under some fee
10 shifting statutes, 1988 in particular, Legal Services, by
11 Supreme Court decisions, is paid for with market rate--
12 recovers fees based on a market rate, there will be a difference
13 between the market rate they recover and the amount of
14 expenditures that they have spent, so that difference is the
15 windfall.

16 There are a number of answers to this. The first
17 answer is: First of all, that is only under one of the fee
18 shifting statutes. Most of the fee shifting in Legal Services
19 does not involve that statute and does not involve market rate
20 tests.

21 Second of all, we do not know, we do not have
22 information in front of us, as to what the actual costs and

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1 expenses that programs utilize in their case-in-chief for
2 attorney's fees.

3 Most people estimate, who do a lot of 1988 work, that
4 the windfall, if any, is about 25 percent of 1988 work. There
5 is virtually no windfall for Equal Justice Act work -- windfall,
6 in the sense we are using it -- and most of the state laws, they
7 actually lose. They do not ever get the fees back sufficient to
8 reimburse them for their costs and expenses.

9 We are not talking here about primarily a windfall. I
10 might point out that, for whatever worth it is, the Supreme
11 Court recently addressed this issue again in the context of a
12 case decided February 21, 1989, where the Court held that the
13 attorney's fees allowed under the Civil Rights Attorney's Fees
14 Act is not a windfall in terms and that it is not limited, in
15 the case involved, limited by whether there was an existing
16 contingency fee arrangement.

17 The only point is that, under the Civil Rights
18 Attorney's Fee Act, no one thinks of these as windfalls. My
19 point is, as a very practical matter, there is very little
20 windfall even in the 1988 cases, which is where the market rate
21 plays a role. I do not think this argument about windfall is
22 very relevant.

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1 Now, let us be clear about another consequence of this
2 recapture provision, and that is the effectiveness is going to
3 be punitive on programs and clients. The reason it is going to
4 be punitive on clients is because it limits the ability of
5 clients to effectively enforce their rights. Here is how that
6 happens.

7 Today, attorney's fees act as a deterrent to a
8 defendant violating the Civil Rights federal statutes,
9 Constitutional provisions for clients. The deterrent works
10 because the defendants know that if they do that, they will face
11 recovery of attorney's fees, in some cases, subject to fee
12 shifting. Therefore, they are less inclined to violate rights,
13 et cetera.

14 Secondly, the fee shifting provisions today encourage
15 settlements. Most judges in the real world in this situation
16 sit the parties down once the merits are decided and say, when
17 there is a strong merits case, "Let's settle this and let's
18 settle the fee things and let's get rid of the case."

19 The consequence of this is going to be that there will
20 be delays, there will be fewer settlements, and the deterrent
21 effect of the Civil Rights Attorney's Fees Awards Act and other
22 fee shifting statutes will be diminished, so that is another

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1 consequence.

2 MR. DURANT: May I ask a question?

3 MR. HOUSEMAN: Yes.

4 MR. DURANT: I apologize for interrupting you.

5 MR. HOUSEMAN: No, that's fine. I want you to.

6 MR. DURANT: With the Chairman's permission?

7 CHAIRMAN WALLACE: Go ahead, Mr. Durant.

8 MR. DURANT: This regulation -- correct me if I'm
9 wrong -- does not prevent the recapture of attorney's fees on
10 cases. What it says is that the particular program that
11 recovers it has this 25 percent/75 percent because the other
12 money goes back out into the field; is that correct?

13 MR. HOUSEMAN: What the proposal on the table -- yes,
14 essentially correct, yes.

15 MR. DURANT: In other words, on the civil rights
16 cases, I mean, I talked to Gary Gershon in the Migrant Program.
17 He just had a judgment up in Michigan on a thing against the INS
18 on a civil rights issue. I called him and I told him that I
19 thought the kind of case he had done was correct and applauded
20 him for it.

21 The kinds of things that you are talking about are not
22 preventive; it's just a question of what happens to the attorney

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1 fee money; isn't that correct?

2 MR. HOUSEMAN: Well, I'm talking a little bit about
3 the prevention but, by and large, no, they are not preventive.
4 The question is what happens to the attorney's fees and that is
5 what we are talking about. That's right.

6 MR. DURANT: All right, because I'm not --

7 MR. HOUSEMAN: In terms of understanding the
8 consequences, when the other side realizes that the program may
9 lose or may not go after fee petitions, may not have an
10 incentive to do so, they are going to respond accordingly and
11 they are going to be less willing to settle, and they are going
12 to be much more willing --

13 MR. DURANT: Isn't it conceptually, Alan -- just a
14 second. Isn't it conceptually, though, the way I understood it
15 from what the Chairman was saying -- in one of the other
16 hearings, not today -- what it is going to allow to happen is
17 that when attorney's fees are recovered, programs that are not
18 receiving as much or are underfunded, are going to have
19 additional sums by which they can pursue particular cases.
20 Isn't that true?

21 MR. HOUSEMAN: If you get the sums, but I am pointing
22 out two problems with that. The first problem with that is that

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1 it doesn't necessarily work that way. That was my Chicago
2 illustration. That is, they lose \$564,000 under this proposal.
3 They don't gain, and they are one of the lowest funded programs.

4 MR. DURANT: I read your thing on the Chicago Legal
5 Services. Tell me why they lose again on that?

6 MR. HOUSEMAN: They lose because they get a million
7 dollars in attorney's fees that they have already from private
8 and LSC-derived funds. You allow them to keep \$250,000, the
9 Corporation takes back \$750,000, redistributes some money to
10 them under the formula, they redistributed two hundred and
11 something.

12 MR. DURANT: So, they are now up to \$500,000?

13 MR. HOUSEMAN: It's less than two hundred. They end
14 up losing \$564,000; that is, of the million they would have had
15 in their coffers, after everything was done, they had left
16 \$434,000 or something like that, when they get done with the
17 money coming back from the Corporation from the distribution.

18 My point is that we do not know the full implication
19 because we have not looked at the attorney's fees and run the
20 formula out. We do not know, but in many cases like Chicago,
21 you are going to find that the lowest-funded programs are going
22 to lose under this. They are not going to gain under this, and

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1 that is assuming everybody continues to seek attorney's fees, et
2 cetera, which I don't think will happen.

3 While this distribution scheme may seem interesting,
4 the fact is it is not necessarily going to result in the lowest
5 funded programs getting more money.

6 MR. DURANT: Because there may not be a pot available
7 to them?

8 MR. HOUSEMAN: That's right. No, not just because of
9 that, but that they have more attorney's fees than they are
10 going to get back from the Corporation already. The lowest-
11 funded programs are not necessarily the programs that don't
12 bring in attorney's fees.

13 Most of the lowest-funded programs have attorney's
14 fees cases, so we are not talking about that. Also, let's be
15 clear that we are taking money from a community and putting it
16 into another community. That's what the president of the
17 Georgia Bar was also concerned about.

18 MR. DURANT: That's what the federal government is all
19 about.

20 MR. HOUSEMAN: I just want to make a couple of other
21 points on the recapture provision and answer any other questions
22 on it, and then go on briefly to some of the other issues.

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1 First of all, no other federal agency that I can find,
2 and I've looked hard, and nobody has contradicted this, recovers
3 attorney's fees earned from legal representation. The OMB
4 circulars that many of you like to refer to explicitly permit
5 nonprofit grantees to retain attorney's fees. That's the OMB
6 Circular 110 and the other OMB Circulars. They permit states
7 that sue to retain attorney's fees if they get federal funds.

8 So, this is a policy that is at odds with the policy
9 generally in the federal government.

10 MR. VALOIS: Wait a minute, Alan. When you pay fees
11 into whatever the costs of fees are as a result of losing an
12 administrative case, it goes to the general treasury; it doesn't
13 go to the court system. Isn't that right?

14 MR. HOUSEMAN: Excuse me?

15 MR. VALOIS: When you have to pay costs or fees or
16 whatever are recovered by the other side in a case involving a
17 federal agency, it doesn't go to increase the federal agency's
18 budget. It goes into the general treasury, if I'm not mistaken.

19 MR. HOUSEMAN: That may be. I'm not talking about
20 that. I'm talking about grantees.

21 MR. VALOIS: Okay.

22 MR. HOUSEMAN: Grantees with federal grant funds. If

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1 they bring -- some of them are funded. Many grantees are funded
2 to bring legal representation, the Older Americans Act,
3 Disability, all of those, and a number of nonprofits receive
4 those funds.

5 If they bring funds in and recover attorney's fees,
6 those are not offset by the federal grant. That is the
7 Principles of Federal Accounting that are stated in OMB Circular
8 110.

9 MR. VALOIS: But they lose it completely in the case
10 of an administrative agency which recovers a fee or a cost
11 because it has prevailed in a case in the federal court system.

12 MR. HOUSEMAN: Sure.

13 MR. VALOIS: It doesn't go to increase that particular
14 office's budget and it does not go to increase the agency's
15 budget. It goes back in to the U.S. Treasury.

16 MR. HOUSEMAN: That is correct. I am saying the
17 principles for nonprofits and for grantees are different.

18 MR. VALOIS: I think the same principles are involved
19 here.

20 MR. HOUSEMAN: I don't think so and I am not quite
21 sure why it is.

22 Finally, I think, as a matter of policy, this does not

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1 make any sense. It seems to me that a program that has earned
2 fees ought to be able to retain those fees. If they have been
3 effective and efficient to earn fees, they ought to be able to
4 retain those fees. This will ensure that programs that are
5 effective and efficient and earn fees continue to do so, and it
6 will ensure that other programs that do not have an incentive to
7 do so.

8 I think, as a matter of policy, of strict policy, the
9 policy is wrong. I think the impact of this can be very adverse
10 on a number of recipients in terms of their funding and, as I
11 said before, and maybe my point was not made clear, the policy
12 is going to be adverse to clients because there will be fewer
13 settlements.

14 If the defendant has to pay a larger attorney's fee,
15 he is not going to go to trial at every issue; he will settle
16 more quickly; clients will receive better results and quicker.
17 I think the impact of this ultimately will be detrimental to
18 clients.

19 So, for all of those reasons, I strongly urge you, on
20 behalf of my client, to vote down any recapture offset
21 provision; that is the heart of this issue. I will get to some
22 other issues that are not unimportant, but this is the heart of

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1 the issue. Yes?

2 MR. DURANT: You are specifically representing, when
3 you say your clients, NLADA and PAC?

4 MR. HOUSEMAN: Yes, I am specifically representing
5 NLADA and PAC.

6 MR. DURANT: In terms of the recovery of the fees,
7 maybe the 25 percent number is not right because maybe in a
8 couple of the examples that you are setting, I think it costs
9 more than that to actually get the attorney's fees recovered.

10 MR. HOUSEMAN: Yes.

11 MR. DURANT: If that number were different, does that
12 change your position?

13 MR. HOUSEMAN: Obviously, if the number was higher, it
14 would be better. It does not change our ultimate position. Our
15 policy arguments are you should not do this at all. You should
16 let the money stay with the programs that are already doing well
17 and getting it.

18 One of the problems of this is we have not looked
19 fully at the consequences, every time we change this number, at
20 what is going to happen. We do not think you should close any
21 recapture or offset provision whatsoever.

22 To some degree, all of the consequences I talked about

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1 will hurt. Obviously, the more incentive there is, the impact
2 of the consequences will be less. To some degree, any number
3 you pick is going to have these consequences, it seems to me.

4 MR. DURANT: If the attorney in a particular program
5 has won a particular case on the merits and moved the ball
6 forward in that direction, and the program, say, in actually
7 recovering this additional money for delivery of legal services,
8 and assume that you don't lose money in terms of the time that
9 you spent on recovering it, why isn't the idea of spreading out
10 in a broader way that additional money, why is that -- so long
11 as the individual program doesn't lose and, in fact, gains the
12 victory for the client -- obviously, or you wouldn't have the
13 attorney's fees -- and, second, cannot lose.

14 You were saying there is a disincentive because of the
15 amount of time in order to try to recoup this. Well, in private
16 practice, you have certain cases that you take it a step farther
17 and, in fact, the client compensates you to do that. Why isn't
18 that the same thing here?

19 In effect, it's one more kind of a case, but what it
20 does it has the benefit of the program itself earning a certain
21 sum, plus it has the added benefit that other programs, for a
22 variety of reasons, who are not doing attorney fee cases, now

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1 have other money to continue to meet unmet needs?

2 MR. HOUSEMAN: You first assume that programs are
3 going to seek fees under this circumstance and there will be
4 money to redistribute which, the way it is in this proposal, I
5 don't think will result in that.

6 MR. DURANT: Because of the percentage?

7 MR. HOUSEMAN: Yes. Secondly, you assume, as I
8 pointed out earlier, that the lowest-funded programs will
9 ultimately end up gaining from this.

10 MR. DURANT: And your Chicago thing.

11 MR. HOUSEMAN: Chicago, I suggest to you, is one
12 example where they won't and there may be many others, and I
13 think there are.

14 I think that finally, as a matter of policy, you want
15 to be encouraging programs to seek through LSC and private
16 funding, and remember, this covers private funding of
17 recipients, as well, you want to be encouraging those programs
18 to take steps to expand their resources and to devote those
19 resources to representation.

20 It seems to me, as a matter of policy, you want to
21 encourage them to do that in their local area and not say,
22 "Well, if you get money, we're going to take it away from you

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1 and give it to somebody else."

2 So, I think, as a matter of policy, this recapture
3 provision, aside from all the disincentives I have talked about,
4 does not make sense. It seems to me you want to be encouraging
5 programs to seek as much money as possible to deliver services
6 in their area, and this will not do that.

7 MR. DURANT: Let me just try --

8 CHAIRMAN WALLACE: Let me interrupt for just a second.
9 The Marriot, speaking of prudent marshalling of federal funds,
10 the Marriot has told us if we are not out of our rooms by 1:01,
11 they are going to stick us for another night. I am not out of
12 my room and I am about to go get out of my room.

13 What I am going to do is ask the chairman of the
14 committee to chair this portion of the debate. This is what I
15 would like to do if we can. I would like, after Mr. Houseman is
16 finished, to take the rest of the public comment, whoever may be
17 here, and then once that's done, let us get to our debate among
18 ourselves.

19 I will be back as soon as humanly possible, but I do
20 not want to cost the Corporation any money. Excuse me.

21 MR. DURANT: Please go ahead.

22 MR. HOUSEMAN: I don't want to dwell on this, but I

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1 just want to make it clear. There are also some legal arguments
2 that have been raised in my memorandum previously on this, as to
3 the legality of this. I do not think those legal arguments,
4 which I am not going to go into, because they usually do not
5 have any effect here, are unmeritorious.

6 There is one that I want to bring to your attention
7 that I only looked at very recently and have not fully explored,
8 but I just want you to be clear about it. There are now
9 several legal ethics opinions from several State Bar
10 Associations, and there are several cases.

11 I have cited some of these in the memorandum, which
12 have said that it is impermissible to shift fees between a legal
13 organization and a lay or non-legal organization, that is,
14 between an organization that is a law firm and an organization
15 that is not a law firm.

16 The Corporation is not a law firm. It cannot
17 litigate. There is some question in my mind as to the ethics
18 and propriety of this. I do not think these cases resolve the
19 question by any stretch of the imagination. I do not think the
20 ethical opinions resolve the issue, but it is not an issue that
21 I very fully address.

22 Having just looked at it this week, it causes me some

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1 concern on behalf of my clients because they may face ethical
2 opinions that say they cannot turn this money over to you, that
3 it would be a violation of legal ethics, however you do it.

4 I think that is exacerbated by your 25/75 percent
5 proposal, by the way. I just want to make that clear. I want
6 to put it on the record. I can talk more about it if anybody
7 would like to.

8 I think there are legal issues here, as well. I do
9 not think you have the authority under 1007(b)(7) or 1010(c) to
10 do this. I think there is the Civil Rights Attorney's Fees
11 argument that I have made in the comments.

12 ACTING CHAIRMAN VALOIS: Alan, on that ethics
13 argument, you are talking about something where an opinion or
14 practice or ethics rule or whatever really prohibits finder's
15 fees, isn't it?

16 MR. HOUSEMAN: No, it has to do with shifting fees
17 between the -- the cases all had to do with unions, most of the
18 cases; there are several that do not. They had to do with
19 unions whose attorneys brought cases and won, got fees and the
20 money went into the treasury of the union. That was held to be
21 unethical.

22 There are several cases that have blocked that; that

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1 have upheld Merit System Review Board decisions that prohibited
2 those fees from going to the unions.

3 ACTING CHAIRMAN VALOIS: It should have gone to the
4 union's attorneys instead; is that what you are saying?

5 MR. HOUSEMAN: That's correct. It said that they
6 couldn't turn them over to the parent unions.

7 MR. DURANT: Aren't these going out to the attorneys,
8 anyway?

9 MR. HOUSEMAN: But they come through you, and that is
10 where the fee shifting is.

11 MR. WEAR: But the Corporation is merely a conduit on
12 that, isn't it, Alan?

13 MR. HOUSEMAN: It is no different from the union. The
14 unions put it right back into the Legal Division of the union.

15 MR. WEAR: But that is different. It's coming from
16 one entity that earned these fees. We are sending it back to
17 the same class of entities.

18 MR. HOUSEMAN: Yes, but you are doing it.

19 MR. WEAR: It's not the same one.

20 MR. HOUSEMAN: Well, I don't know how a State Bar
21 Ethics would rule on this, because there is no ruling that is
22 difficult relevant to this. Let me be clear.

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1 MR. WEAR: Yes.

2 MR. HOUSEMAN: I'm just saying that there are some
3 ethical opinions that have dealt with the situation of the union
4 and the union's attorneys and where the money went back into the
5 union's attorney's division and that was held not to pass
6 muster, either.

7 Now, that is the heart of this argument, on the
8 recovery offset provision, which clearly is the heart of what we
9 are all about. Not many people are here, but there are a couple
10 of points that I think need to be made that have not been fully
11 explored. I need to do them and I think you need to understand
12 them.

13 There is a retroactivity provision here that I think
14 is fairly significant. You have, in the staff proposal,
15 indicated that any fee petitions, post-judgment fee petitions or
16 settlement negotiations, begun after November 1, 1988, would be
17 subject to this recapture.

18 I am not quite sure where we got this November 1, '88
19 date. This reg was not even published in the Federal Register
20 until December 19th; most didn't know about it until early
21 January; and, we still don't know what the ultimate result is
22 going to be.

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1 But the issue is that programs have done work,
2 performed work, months and maybe years before the fees are
3 formally requested and received. LSC has permitted this and has
4 encouraged it, and recipients have assumed that they were going
5 to get some of these fees and have budgeted staff and resources
6 accordingly.

7 The impact of this regulation, as currently written,
8 is to recover those fees. I think if you are going to adopt
9 this offset recapture provision, which I hope you don't, but if
10 you are, I think you have to address this retroactive problem.

11 There has been no opportunity for recipients to plan,
12 to make budget adjustments, to deal with this new set-off
13 system. As I pointed out in the Chicago example, they are going
14 to have to close offices and they are going to lose staff as a
15 consequence of this. Many other recipients are going to face
16 the same consequence.

17 I would urge you, if you are going to proceed, to
18 write a retroactive provision that only applies to fees received
19 for work performed before the effective date of this part shall
20 not be subject to the provisions of this part.

21 MR. DURANT: Alan, could you hold on for a second?
22 What is your reaction to this, Tim?

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1 MR. SHEA: Well, there is no question that the date,
2 the November date, is, to some extent, as any sort of date, it
3 is somewhat arbitrary. Our sense was that, first of all, that
4 was the time when -- if programs were making budgeting
5 decisions, that would have been, by then, the time that they
6 would have made such decisions.

7 Take, for example, this matter of Chicago. They have
8 made a strong presentation that they are going to be generating
9 some other fees. I think last year, their expectation, as I
10 understand it, is a million dollars in fees in this calendar
11 year, I think it is.

12 Last year, their fees were something on the order of
13 five or maybe six hundred thousand dollars. I don't know how
14 they are making budgeting decisions for the other \$400,000,
15 because there are issues about how they are going to see the
16 funds and where they are going to get them.

17 Even if they think that they are likely to prevail and
18 get the money, it is -- I mean, there surely is some uncertainty
19 as to when they will be receiving the funds and using them. I
20 do not necessarily resist the proposition that the November date
21 may be movable.

22 If we are talking about reasonable budgeting

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1 decisions, it seems to me that there is some, let's say, we can
2 only attribute to the programs some reasonable expectations of
3 receiving fees. I don't think that their staffing levels are
4 immediately responsive, you know, to as soon as they get new
5 fees, they have new staff. I surely don't think that's the
6 case.

7 MR. HOUSEMAN: For the record, the Chicago fees
8 averaged out to \$780,000 over the last three years, but two of
9 these years, they were up and one of them was \$966,000. The
10 estimate was based, I am told and it is in the record, on what
11 they anticipate at this point in time.

12 They do have staff and offices budgeted around and
13 under the assumption that these fees are coming into their
14 program.

15 MR. WEAR: Mr. Chairman?

16 ACTING CHAIRMAN VALOIS: Go ahead, Mr. Wear.

17 MR. WEAR: Mr. Houseman, the proposal that the General
18 Counsel has recommended to the Board dealing with this provision
19 shows up on page 9 of attachment roman I, subpart (e).

20 The first section (a) which is the, as you term it,
21 fee recapture/offset shall not apply to fees received as a
22 result of post-judgment petitions, applications or motions filed

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1 before November 1, 1988. That's for cases that have been
2 decided and the motion has been filed, and settlement agreements
3 entered into -- that is, final settlement agreements -- entered
4 into before November 1, 1988.

5 MR. HOUSEMAN: Yes.

6 MR. WEAR: Now, one of the things I learned in the
7 agricultural business was never to count my chickens before they
8 hatched. I understand that programs may have cases in progress
9 and they may think they are going to get something.

10 You can't realistically plan, just like I can't
11 realistically plan the kind of money I'm going to spend here
12 until people actually make the allocation. It seems to me it is
13 unreasonable for a program to say that, "We anticipated getting
14 these fees."

15 If you win the case, I think then, yes, you've got a
16 basis for assuming that you are going to get some fees, but if
17 you haven't won the case yet, at that point in time, and you are
18 making your budgeting decisions for this calendar year -- that
19 is, calendar year 1989 -- it seems to me it is unreasonable to
20 say that the programs are going to count those fees as coming
21 in, because those chickens haven't hatched yet.

22 MR. HOUSEMAN: But they do. They always have and they

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1 will. They do. If you look at the history, they know
2 approximately how much money they are going to get from fees and
3 they budget accordingly.

4 I mean, you can say they shouldn't do it, but they do.
5 I do it. I'm a nonprofit provider. I have to anticipate some
6 fees to meet my budget. A lot of programs do.

7 MR. UDDO: Every law firm does.

8 ACTING CHAIRMAN VALOIS: I don't think that's correct.

9 MR. UDDO: You don't plan and anticipate you are going
10 to make fees?

11 ACTING CHAIRMAN VALOIS: We're not talking about fees
12 in general. We are talking about contingent fees or contingent
13 recoveries or awards of attorney's fees is what we are talking
14 about. We don't budget that we are going to get attorney's
15 fees.

16 MR. UDDO: I would say that people who do exist on
17 contingency fees have to expect that they are going to get some.
18 They've got cases in the mill that they have reasonable belief
19 are going to produce attorney's fees or they are going to have
20 one hell of a time in the next year, if they've got a bunch of
21 cases that aren't going to produce attorney's fees.

22 Somehow, it goes a little far to say that you don't

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1 budget on the expectations that fees are coming in, particularly
2 if you have a history that certain kinds of cases that can
3 produce attorney's fees.

4 My problem with this -- I've got other problems with
5 this that we'll get into when we start discussing it, but I do
6 not see the need for a November 1 date if this is enacted,
7 because irrespective of the budgeting consideration, if you have
8 done ninety percent of the work on the case, took it in good
9 faith on the expectation that you would be able to get
10 attorney's fees, I do not see the point.

11 How is it going to affect anyone's behavior to
12 suddenly say they are not going to get that fee? I do not see
13 the point in doing that. Now, if the decision is for the
14 future, maybe you have some rationale for saying that their
15 resources won't be put to certain kinds of cases in the future
16 because they know this exists.

17 To take a case that is ninety percent complete, eighty
18 or ninety-five percent complete and say, "Even though you took
19 that with the good faith belief that you were going to be able
20 to get attorney's fees, we're not going to let you keep them"
21 just doesn't, on an equitable ground, it bothers me.

22 MR. HOUSEMAN: I do not know if there is anything else

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1 to say on this retroactivity provision. Let me just indicate
2 there was a Supreme Court decision in 1988 in December, Bowen v.
3 Georgetown Hospital (phonetic), which held by unanimous decision
4 that an administrative agency did not have the authority to
5 impose regulations retroactively unless the statute gave that
6 authority explicitly. This was a nine-nothing decision written
7 by Justice Renquist.

8 i think there are some --

9 MR. SHEA: May I interrupt you? I do not regard this
10 as retroactive. That discussion has a dissent by --

11 MR. HOUSEMAN: Not a dissent.

12 MR. SHEA: Concurring. There was a concurring opinion
13 by Justice Scalia, where he distinguishes between what you might
14 call truly retroactive regulations and secondarily retroactive
15 regulations.

16 Truly retroactive is something that would change the
17 characterization of past behavior, for instance, as between
18 whether it is legal or illegal; and secondarily would be
19 something that would prospectively change the effects of past
20 behavior.

21 The example he gave, I think, was a tax regulation
22 that, for instance, would make conduct that theretofore had been

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1 legal, had been illegal, as of a year before, say, that's truly
2 retroactive.

3 Secondarily retroactive would be a tax regulation that
4 is prospective that would impact or affect, I guess would be the
5 proper term, arrangements that had been put together in the past
6 even though there's nothing impermissible about that, then the
7 people might have to then -- if that would upset people's
8 expectations, even though they had put together the arrangements
9 in the past, there is nothing impermissible about that.

10 I would say this is secondarily retroactive.

11 MR. UDDO: That is what the dissent said, or the
12 concurrence.

13 MR. SHEA: The thing at issue was a full-time
14 retroactive. There, there was an issue by cost, the
15 permissibility of certain -- if some items could be reimbursed
16 and there was argument about whether it could be disallowed for
17 past times.

18 I think the Supreme Court -- it was a first tier
19 secondary regulation that was at issue there, not a second.
20 Basically, I think this is prospective within the meaning of
21 Bowen is what it comes down to.

22 MR. HOUSEMAN: We could debate Bowen. I frankly think

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1 that this falls squarely within Bowen. As a matter of policy,
2 it seems to me that if you are going to enact this, you ought to
3 make it effective so that people can plan and deal with their
4 budgets, deal with their staffing situations, ahead of time.

5 Regardless of whatever they have done in the past,
6 there will be fiscal consequences on their programs that they do
7 not anticipate.

8 Let me talk about three other issues. One quickly, or
9 not so quickly, I guess, this provision would apply to
10 attorney's fees derived from private funds of a recipient, the
11 offset provision would do so.

12 It seems to me that, at most, you ought to be
13 concerned about the LSC funds to the recipient and not the
14 private funds to a recipient and that if you are going to
15 recapture funds, they should be only the LSC funds of the
16 recipient, not the private funds of the recipient.

17 There are a lot of reasons for that. Many of the same
18 arguments about incentives and disincentives apply. Clearly,
19 there will be a disincentive for some private funders and there
20 will be some limit on the ability of programs to leverage
21 additional funds as a consequence and apply the offset provision
22 to the private funds of subrecipients.

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1 So, I think if you are going to enact a recapture
2 offset provision, you should not apply it to the private funds
3 of the recipients, the recapture offset provision.

4 There are two other issues in this, and one has to do
5 with the issue of sub-grantees and sub-recipients. Let me just
6 try to address that very briefly so that we understand what we
7 are talking about here.

8 Currently, a subrecipient that gets money from the
9 Legal Services Corporation under a sub-grant agreement, the
10 current practice is that that subrecipient does not apply the
11 fee generating case procedures to its private funds that it
12 receives independently.

13 For example, if the Legal Aid Society of New York, and
14 one of its top officials is sitting here, if they receive a sub-
15 grant, if ten or fifteen percent of their funds comes from Legal
16 Services Corporation, the rest of their funds come from other
17 sources, they do not apply the fee generating case referral
18 provisions to those other funds.

19 This proposal on the table would continue to apply the
20 referral procedures and the hoop jumping to those private funds
21 that exist. Now, there is some effort by Tim to draft a
22 provision that would only apply it to certain activities, but in

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1 many cases, the subrecipient's activities are not segregated;
2 that is, the money they get from LSC to carry out LSC purposes
3 is not easily segregated from the money they get from private
4 funds.

5 In the example of the Legal Aid Society of New York,
6 they provide representation to eligible clients; they get some
7 LSC funds to do it; they get some private funds to do it. So, I
8 think this is an important issue here, that you should not apply
9 the prohibitions on the referral procedures to the private funds
10 received directly by subrecipients.

11 I am not talking about money that comes from a
12 recipient and I do not think the proposed change goes far
13 enough. It will still affect a number of subrecipients.

14 Finally, the referral procedures themselves. Without
15 one iota of evidence that there was a problem, you have proposed
16 a change in the referral procedures. By and large, this change,
17 in many situations, may well be beneficial, and the change is
18 essentially that a Bar Association, a general membership Bar
19 Association, and the recipient must sit down and work out an
20 agreement.

21 I do not think it was necessary to do that. I do not
22 think it was necessary to change it. You have no information

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1 anywhere that suggests there was a need for such a change. You
2 have never presented even one thing and there is nothing in the
3 record. You have never even given an anecdote that there was a
4 need for such a change, but you have made that change.

5 Now, I think if we are going to adopt that approach to
6 the referral procedures which are separate from the offset
7 procedures, we should take into account some of the problems
8 that this can cause.

9 The reason that I gave you the New York State Bar
10 letter was because they talked about some of the problems this
11 would cause on the first page of their letter in the fourth
12 paragraph.

13 They do not say -- contrary to what I think Tim's
14 characterization of this was, they say there will be
15 considerable difficult in negotiating between thirteen providers
16 and the Bar and giving notice to the Bar about thirteen separate
17 kinds of arrangements for the New York State Bar Association
18 which is the employing authority for these thirteen providers,
19 the general membership Bar in the State of New York.

20 Again, I am not opposed to the notion of an agreement
21 between a Bar Association and the program. We support that.
22 But, I think this particular proposal has to be worked out a

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1 little more before you adopt it.

2 In addition, the proposal does not have the criteria
3 by which you are going to review the plans that are agreed upon
4 between the Bar Association and the program. You have a review.
5 You require that they submit a plan to you for review, but there
6 is no criteria of whether those plans are going to be approved
7 or disapproved.

8 There is no other process to question, as we have
9 worked out in the other regulations, some appeal process to
10 question decisions of disapproval under those plans, and I think
11 if we are going to enact this Bar Association issue, we ought to
12 work on that language and work on the procedures a little bit.

13 Finally, I think it would be useful, if we are going
14 to enact this, to get a little more comment from programs and
15 Bar Associations on this referral procedure. It was not in the
16 published version that went out. Programs did not have an
17 opportunity to comment and neither did Bar Associations and
18 there may be other problems with it.

19 Let me be clear: By and large, I think the notion of
20 a Bar Association agreement with the program is fine. I am only
21 talking about a couple of what I would call mechanical problems
22 that may exist that we are not aware of, by imposing this

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1 without allowing comment on it.

2 So, for those reasons, let me just say one other thing
3 about this. It is not clear, given all the changes we have
4 made, whether a subrecipient would not have to work out their
5 own separate agreement with Bar Associations under the
6 provisions written.

7 I do not think you mean to do that and I hope you do
8 not mean to do that, and maybe we can clarify that. It is not
9 so clear that those subrecipients covered for the referral
10 provisions, which are still a number of subrecipients, wouldn't
11 have to jump through the hoops, as well.

12 So, for those reasons, I would urge you to do several
13 things. First, I think you would be better off if you did not
14 deal with this at all, but if you are going to proceed, I would
15 urge you to not impose the recapture offset provision, to give a
16 little more time to work out the referral procedures and either
17 get comment or let us try to get a little comment, and to fine
18 tune those and to keep those in place but to fine tune them, and
19 to give us some more time to work on this problem of
20 subrecipients, private funds that subrecipients get directly,
21 which are not fully taken care of by Tim's proposals. That
22 would be what I would urge you to do.

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1 Are there any questions?

2 CHAIRMAN WALLACE: Thank you, Mr. Houseman.

3 This meeting was projected to end at 1:00 o'clock and
4 while my plane is at 7:30, I am getting whispers in my ear from
5 Board Members who expected to be able to leave at about that
6 time.

7 What I am going to do at this time is ask for public
8 comment. I do not want to foreclose other people who would like
9 to speak, but I'm going to try to keep that as brief as I can.
10 How many of the members of the public would like to speak?

11 (Show of hands.)

12 CHAIRMAN WALLACE: All right. Your name, sir?

13 MR. DEAN: Gordon Dean.

14 CHAIRMAN WALLACE: Gordon Dean?

15 MR. DEAN: I am representing the National Organization
16 of Legal Services Workers.

17 CHAIRMAN WALLACE: The gentleman in the back?

18 MS. BARNES: Gladys Barnes.

19 CHAIRMAN WALLACE: All right. The gentleman in the
20 back?

21 MR. BRICKING: Dennis Bricking, the Director of a
22 Program in Kentucky.

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1 CHAIRMAN WALLACE: You, sir?

2 MR. CUTLER: I am Ed Cutler.

3 CHAIRMAN WALLACE: I hate to do it, but I'm going to
4 hold everybody to three minutes apiece, because we have to get
5 out of here and we have -- five minutes each. We will have a
6 board here to vote if we give everybody five minutes each?

7 MR. UDDO: I have amendments and discussions of my
8 own.

9 MS. SWAFFORD: I want to say something, too.

10 CHAIRMAN WALLACE: All right. Three minutes each.

11 MR. UDDO: Let me just say that if you are determined
12 to vote on it, I guess we are going to have to get it in by 1:00
13 o'clock, but I have got some discussion that may take some time,
14 I hope take some time.

15 CHAIRMAN WALLACE: For board members, let me make
16 plain. I'm going to let board members talk as long as board
17 members need to talk to get the work done, and I'm going to ask
18 people to sit here and take later planes or do what they want to
19 do.

20 I am going to bring the hammer down a little on
21 members of the public because we have a vast quantity of written
22 input from the public. We have heard a very exhaustive

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1 presentation from Mr. Houseman at several board meetings that
2 covers most of the issues.

3 I think we have got the public input pretty clearly.
4 I am going to give people who have come here a chance to speak,
5 but I am going to keep a pretty tight time limit on it, unless
6 the board tells me not to, because I think I do want to leave
7 time, Mr. Uddo, for you and other members of this board to be
8 able to make your amendments and for us to vote and that time is
9 slipping away from us.

10 As I say, I've got a 7:30 plane, and I am prepared to
11 sit here all night.

12 Mr. Dean, would you come forward, please, sir?

13 Statement of Gordon Dean

14 MR. DEAN: I will try to keep this as brief as
15 possible.

16 I was actually not intending to comment today. I was
17 inspired by the question of Board Member Durant. It occurred to
18 me that one of the things that is being overlooked in this
19 process, there is much discussion for incentive of programs to
20 pursue fees on a very theoretical level.

21 People ignore that what we are talking about here is
22 the incentive for staff to pursue attorney's fees. Without

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1 question, it cannot be questioned that historically, the staff
2 of Legal Services are underpaid.

3 For example, when the concept of minimum access was
4 originally devised, based on 1974 data, the average attorney's
5 salary was \$12,333. That figure itself was somewhat depressed
6 because the funding for Legal Services programs had been frozen
7 for the four years prior to that.

8 I am pointing out, in terms of the cost of living
9 increases since 1974, which is approximately 250 percent, that
10 average salary would now be for attorneys about \$31,000. I
11 submit that I do not believe the average attorney's salary in
12 Legal Services is now \$31,000.

13 Last year, from my own experience, the average salary
14 in the New York City program, which is one of the higher paid
15 programs, was just about that amount for attorneys.

16 Another point on the attorneys' salaries is also
17 interesting to note. The disparity between Legal Services
18 attorneys in 1974 with other public interest attorneys was not
19 as great. I believe they were only in the neighborhood of five
20 to eight hundred dollars behind other public interest attorneys
21 in terms of average salaries at that time.

22 I do not have, and I do not know of, an existing study

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1 now which compares private nonprofit public interest attorneys'
2 salaries with Legal Services salaries, but I would refer to a
3 report that was prepared by the Project Advisory Group regarding
4 the 1980 fiscal year appropriation.

5 At that point, they estimated for Legal Services
6 attorneys programs to have competitive salaries with attorney
7 general salaries, employees in attorney general salary programs,
8 they estimated it would cost \$50 million then to be able to do
9 that.

10 I would submit that since that time, that situation
11 has gotten worse.

12 CHAIRMAN WALLACE: All right. That is three minutes,
13 Mr. Dean. I will ask you to wind up.

14 MR. DEAN: A couple other points. The comments in
15 terms of the average salaries go to explaining that attorneys
16 who have stayed with the program for years and who have a lot of
17 experience and who handle most of these cases we are talking
18 about, those people have no incentive to pursue attorney fee
19 awards if no benefit will come to them and no benefit will come
20 to the program.

21 These people work long hours. I was not an attorney
22 in the program; I was a paralegal, but I averaged ten to twelve

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1 hours a day. I would spend hours in the evening working on
2 cases. When you examine Mr. Durant's question, which originally
3 inspired me, which was "Why wouldn't programs pursue it when it
4 is no cost to them?", that assumes the cost can be calculated,
5 for example, in an attorney's hour of time.

6 If attorneys are spending the time in their evenings,
7 of their own time, working on pursuing attorney fee awards which
8 will benefit not only the program but themselves and the Board,
9 who is supposed to be encouraging them to be dedicated in
10 serving poor people is saying "We're going to take those fees
11 away from your program", what incentive do they have to stay and
12 work long hours to pursue these fees? I submit: None.

13 CHAIRMAN WALLACE: Thank you, Mr. Dean.

14 MR. DEAN: One more point, please.

15 CHAIRMAN WALLACE: Please, very briefly.

16 MR. DEAN: I'm sorry. You disrupted my concentration.

17 The last point is this: Attorney fee awards now serve
18 as one of the only bases we have to be able to compensate staff
19 additionally. Many of the special funding grants we get are
20 tied to hiring specifically more staff.

21 For example, in New York State, the Disability
22 Advocacy Project provides funds, but they tie it to a specific

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1 number of staff being hired and a specific amount of cases being
2 handled.

3 Often, it is the case that these funds do not cover
4 the full cost of those staff, including the fringe benefits.
5 Often, these do not cover the costs of other than personnel
6 program expenses, which have to be borne entirely by LSC funds.

7 The effect of taking attorney fees away from the
8 program will make programs less able to cover these kinds of
9 expenses, as well, and the ultimate result will be the loss of
10 experienced staff and the reduction of quality of legal services
11 to the clients.

12 CHAIRMAN WALLACE: Thank you, Mr. Dean.

13 Mr. Bricking, would you come forward, please, sir?

14 Statement of Dennis Bricking

15 MR. BRICKING: Thank you, Mr. Chairman.

16 My name is Dennis Bricking. I am the Director of a
17 Legal Services Program that serves 15 counties in West Central
18 Kentucky -- Louisville, Jefferson County and 14 rural counties.

19 We are one of the programs that have the lowest dollar
20 per poor person as of last year and I suspect this year, as
21 well, and one that would be affected by this proposal.

22 Briefly, to comment first of all on the comments that

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1 Mr. Wear has made about budgeting and the November date and the
2 retroactivity issue, I think that what is being missed here in
3 terms of our planning in terms of our '89 budget is that there
4 are at least three kinds of the posture of civil rights cases
5 that we have going in our offices, one of which is still in
6 progress, however near decision and however it seems like we
7 might be able to prevail. Clearly, we should not budget those
8 cases for the following year.

9 The other is those that have petitions in before
10 November 1st at this stage and that yes, they would be exempted
11 from this.

12 There is a third category that I think people are
13 missing here and that would affect our program and many other
14 programs and that is those cases where we have prevailed on the
15 merits, where there is an agreed order.

16 In a case involving the rights of retarded citizens,
17 we have recently, as of November, prevailed because Soshuri
18 (phonetic) was denied before the United States Supreme Court and
19 it was referred back to the District Court for implementation.
20 The order? We prevailed.

21 We did not have a situation where we budgeted cases
22 where we did not prevail. We budgeted for this year many cases

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1 where we already had prevailed on the merits, but we had not
2 filed the fee petitions, we had not obtained the fees. They
3 aren't in our hands, either because of negotiation with counsel
4 for the state or because of the fact that the order had not been
5 signed yet by the court.

6 So, that third category involves a sizeable amount of
7 money for many programs. In our case, we budgeted \$85,000 for
8 1989 on cases where we had prevailed, not where we thought we
9 might prevail. Those monies would be lost -- at least 75
10 percent of them -- under this proposal.

11 I think that is what I call, in any law firm, rational
12 budgeting. We knew we had prevailed in those cases and yet, we
13 would lose this money, and I hope that does not occur.

14 Secondly, in terms of the ethical position, I believe
15 that it is important to look at our clients. Our clients should
16 be allowed the same kind of leverage and support they would have
17 if they had the private law representing them in any one of our
18 cases.

19 If you allow this to go through, our clients are then
20 with lawyers who cannot negotiate with the other side, possibly,
21 even if they are in the cases because they are not able to get
22 the attorney's fees or keep the attorney's fees.

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1 The other side, in many cases that I know of, behaves
2 differently, reacts differently, keeps the cases going longer,
3 does not settle on points, does not settle the case and,
4 basically, it damages our clients and it damages our ability to
5 represent our clients.

6 I have severe problems with the ethical bind that puts
7 us in vis-a-vis our clients.

8 MR. DURANT: Let me ask you a question. The thing
9 that continues to trouble me about what you are saying is that
10 if, in fact, that is such an important tool in the case, then it
11 seems to me you have an ethical obligation to pursue it.

12 The fact that the money might shift to other programs,
13 I mean, heck, when people take contingent cases where they get
14 anywhere from twenty to 25 to 33 percent on a case, knowing full
15 well that the balance of whatever the recovery is is going
16 somewhere else.

17 If, in fact, the case has merit, if, in fact, the case
18 ought to be done, can be won, and that a part of that dimension
19 is that there are going to be attorney's fees that are going to
20 be paid there, it shouldn't make any difference to the lawyer
21 that that money, then, is going to go help serve poor people in
22 other parts of the country.

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1 I mean, that is what happens to your tax dollars every
2 day.

3 MR. BRICKING: The bind that I am referring to would
4 lead to that conclusion, that you have to go forward, you have
5 to try to get the fees and you can't allow the other side the
6 luxury of saying they have no fees so they are going to carry
7 you into court and string the case out to the detriment of your
8 client.

9 MR. DURANT: Sure.

10 MR. BRICKING: The problem with that chilling effect
11 is that cases might not be brought, cases might not be pursued.
12 I can say what I would do and what our lawyers would do, but I
13 think across the country, it would cause a severe problem even
14 though you and I might agree on what should happen.

15 MR. DURANT: That assumes that your program is based
16 on a budget that is based on contingent fees. If the programs
17 get "X" dollars based on the formula that is set by Congress to
18 have staff lawyers and paralegals and others to be part of that
19 delivery and if a case fits within the priorities of the program
20 and ought to be pursued, whether it takes one month, six months
21 or five years, it is not as if somebody is not being paid for
22 that work. They are.

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1 MR. BRICKING: We have never been told until this
2 winter, until now, that we had to change our plans. Less than a
3 moment ago -- I'm not sure whether you were in the room -- we
4 don't budget any cases where we have not prevailed on the
5 merits, but in many of those cases, we haven't gotten the fees
6 yet. That is the case right now, today, in terms of 1989.

7 They are not contingent to us. We only budget those
8 when we have already prevailed on the merits of cases in our
9 favor or what have you and, in those cases, we'll lose the
10 money. That might be the case across the country. I know it is
11 with Chicago.

12 The last issue, I'm on the Board of Directors of our
13 local Bar Association and also on its Lawyer Referral Panel. I
14 sit on that policy-making group and we talk about these issues.
15 I have not seen the detail of the plan that is before you now in
16 terms of these referrals.

17 I know that the firms, the public interest law firms,
18 that have been suggested that exist outside New York, Chicago,
19 Los Angeles and the big cities do not exist in my area. I do
20 not know who is going to take these cases.

21 I know cases get referred back to us from the private
22 Bar, prison overcrowding cases, cases that are going to take

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1 five years. These are not plaintiffs' cases like an automobile
2 accident case.

3 These are much more speculative, as all of you know.
4 I don't know that this referral is going to do our clients any
5 good. To put this in the middle, to say that our main goal here
6 is to help private lawyers take these cases, not in the area
7 that I serve.

8 I am on a panel that tries to work out the referral
9 business at the state and the local level and many people do not
10 want to take cases unless they get a fee up front, even if it's
11 only fifty to a hundred dollars. Our clients don't have that
12 money.

13 These referral systems, whether it is a class action
14 lawsuit which would take more time and effort or whether it is
15 an individual case, I do not think you are dealing with the
16 reality in most parts of the country.

17 You might be in Chicago and New York -- I can't speak
18 to that -- but there aren't people out there looking for the
19 kind of cases that we deal with on food stamps, on Medicaid, on
20 the rights of the disabled, on the rights of the mentally
21 retarded. They won't be brought and that hurts our clients, and
22 I think this regulation hurts our clients.

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1 Thank you.

2 CHAIRMAN WALLACE: Thank you, Mr. Bricking.
3 Mr. Cutler?

4 Statement of Edward Cutler

5 MR. CUTLER: Thank you, Mr. Chairman.

6 I believe that the position of the American Bar
7 Association has already been presented by Mr. Shea. He did it
8 quite fairly. We continue to oppose the whole idea and
9 particularly the offset recovery provisions.

10 In addition to that, we are concerned about the
11 complications of the referral system, delays and discouraging
12 features of it, and really believe that this would discourage
13 some desirable lawsuits from being filed in the interests of the
14 worthy, poor clients that this Corporation is supposed to serve.

15 I am particularly concerned that a lot of heat is
16 going to be generated, more than fee generation out of this.
17 The impact has not really been felt, but the story of the
18 Chicago institution, for example, is a very real one.

19 It does not get a large percentage of the contribution
20 from this Corporation; it is a small fraction of its budget.
21 That is the kind of organization that is going to be discouraged
22 or even put out of business if they cannot continue to get money

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1 from the outside sources.

2 We are really worried that there are going to be too
3 many discouraging features in this program, and that money from
4 other sources will just not be available. I want particularly
5 to endorse a point that Mr. Houseman made, which came up in
6 yesterday's committee meeting.

7 That is, you are talking also about fees that are
8 generated with the use of non-Corporation funds. I think you
9 ought to pay special attention to that. Ought they not continue
10 to be encouraged to get money from outside sources and should
11 there be any kind of recovery or offset from fees generated by
12 the use of those outside funds?

13 I hope you will give particular attention to that, and
14 all I can say is that Mr. Shea has met with Mr. McAlpin and
15 others of our people and they have tried to work out a lot of
16 the mechanics and have worked out most of them.

17 These general policies, though, are board decisions
18 that have to be made. We hope you will not go the whole way
19 that these proposed regulations would go.

20 CHAIRMAN WALLACE: Thank you, Mr. Cutler.

21 Ms. Barnes, while you were out of the room, it was
22 suggested that you would like to speak to this issue. Would you

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1 care to come forward? We are asking people to hold to three
2 minutes because we are pretty close to overtime on our
3 projection already.

4 Statement of Gladys Barnes

5 MS. BARNES: Mr. Chairman, I thank you for the
6 opportunity of speaking and I regret you couldn't find me. Mr.
7 Taylor gave you the wrong number. I don't have a room this time
8 and I'm here on my own.

9 However, I wasn't present all during the time the
10 discussion was going on, but I feel that if you vote to change
11 this regulation, that it will certainly have an adverse effect
12 on our clients, not only on the clients but on the program in
13 the long run.

14 I urge you to vote the convictions of your heart with
15 both the clients and the program in mind.

16 Thank you.

17 CHAIRMAN WALLACE: Thank you, Ms. Barnes.

18 At this time, public comment is closed. I will
19 recognize the president. The president thought he had something
20 to say, but under the exigencies of time, he apparently does
21 not.

22 The committee report is what is attached to Mr. Shea's

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1 memo is Attachment 2. That is the vehicle before the board. He
2 has reviewed in great detail Attachment 1, which is what the
3 Board Members have asked him to do.

4 MOTION

5 CHAIRMAN WALLACE: What I am going to do, similar to
6 what I did earlier this morning, is to move to substitute
7 Attachment 1 for Attachment 2 and, of course, that will be
8 available for amendment. Mr. Uddo had said that he has some
9 things he would like to change and other people may have things
10 they would like to change.

11 So, at this time, I move to amend the committee report
12 by substituting the language found as Attachment 1 for the
13 Committee Report. Is there a second?

14 MR. DURANT: I'll second.

15 CHAIRMAN WALLACE: Mr. Durant has seconded it.

16 The main item before the Board is now Attachment 1
17 which is subject to second degree amendments. Before I
18 recognize people for purposes of amendment or debate, let me say
19 a couple of things of my own.

20 I had not planned to make a speech. Mr. Durant has
21 asked me to respond to some of the things that have been said
22 this morning, and I will go into that as quickly as I can.

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1 First of all, Mr. Elliot said that if this is a way of
2 getting at types of lawsuits we don't like, we ought to do that
3 directly. For my part, it is not a way of getting at lawsuits I
4 don't like. If I want to do that, I will do it directly, as I
5 said to Senator Carey when I was confirmed.

6 I have not done that and that is not what this is. If
7 there is a class of lawsuits that I do not think we ought to be
8 bringing, I will go after it directly.

9 Two, Mr. Houseman has indicated in his remarks that,
10 in many cases, regardless of this regulation, people would bring
11 the cases-in-chief because they are consistent with the
12 regulations.

13 I believe, because they are consistent with program
14 priorities, I believe that to be the case. I believe that most
15 cases that have been brought will be brought, regardless of the
16 availability of attorney's fees.

17 Mr. Houseman has said in some cases, people will not
18 bring those cases. I also believe that to be the case. The
19 comments we have from the New York Bar before us this morning
20 say, "Sometimes, however, the decision to take such cases hinges
21 upon the possibility of collecting a large fee award at the end
22 of the case."

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1 I believe that to be true and I believe that to be
2 illegal and that is why I favor this regulation to remove the
3 possibility of fee collection from the minds of our recipients
4 as they are deciding whether or not to take a case. They ought
5 to be thinking about the merits, their priorities, and not the
6 reasonability of recovering fees at the end of the case.

7 Third, Mr. Houseman has said a 25 percent incentive
8 may not be enough to recover fees. I've done a little attorney
9 fee work in my time, including 1988. I think it is a rare case
10 where 25 percent will not be enough in the real world.

11 In the real world -- and this goes to what Mr.
12 Bricking says -- attorney's fees are generally settled along
13 with the merits. They are a club that can be used by the
14 plaintiff against the defendant to enforce a settlement, so you
15 do not get the two-step consideration. First, we win on the
16 merits and then we go after the attorney's fees; it happens
17 sometimes.

18 I do not believe there is an ethical problem in that
19 case; when the attorney has no prospect of recovering the money,
20 he has no potential conflict of interest. He can use the
21 prospect of attorney's fees as a pure club to go after the
22 defendant.

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1 Those of us in private practice who have tried to
2 settle contingent fee cases know the ethical dilemmas you are
3 getting into when you are trying to settle your fee with the
4 client at the same time you are trying to settle the judgment
5 with the defendant. You won't have that problem anymore. This
6 removes, in my mind, an ethical impediment.

7 Finally, I would say if there is the rare case where
8 25 percent won't cover the cost of fee petitions, then I would
9 suggest that our people will just have to go ahead and do their
10 duty, which is to be stewards of public funds and to recover
11 those public funds.

12 They ought to do that whether or not they get any
13 money, but I recognize the weaknesses to which the flesh is heir
14 and that is why I have a 25 percent fee in here for most cases.

15 Fourth, some low-funded programs won't benefit. Some
16 people at the lowest per capita funding will not benefit. That
17 is true, but that is because they are not really low-funded
18 programs. They have other sources of funds that other programs
19 do not have.

20 They have attorney's fees and people who have
21 attorney's fees in addition to their per capita grant are not
22 the lowest-funded programs. They may lose, but the true lowest

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1 funded programs, the ones that have only the per capita grant to
2 go on, are going to get more money, and those are the folks that
3 I am most concerned about.

4 So, let's look at all resources, take them all into
5 account, and the lowest funded programs are going to be the
6 beneficiaries of this program.

7 Finally, if there are special cases, if there are
8 tremendous hardship cases where people were planning on things
9 that do not materialize because of this regulation, it would
10 seem to me that the Corporation has some discretion within its
11 budget to make hardship grants.

12 We have this merit grant provision. There may be money
13 in there that we can use to get people through hard times and,
14 in the most extreme cases, there are plenty of private people of
15 good will that have been here before us today who can help to
16 raise the funds to get the rare case over the crunch.

17 I think most people are going to be able to devise
18 their budget now that we have the non-retroactivity program in
19 here. I think most people will be covered by that. If they are
20 not, it can be handled on a case-by-case basis.

21 Those are the remarks that Mr. Durant asked me to make
22 and I will now shut up and open the floor for other debate and

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1 for amendments to Attachment 1.

2 Are there any amendments to propose?

3 MS. SWAFFORD: Are you going to make a motion? Could
4 I have the floor?

5 CHAIRMAN WALLACE: I recognize Ms. Swafford.

6 MS. SWAFFORD: Okay. I am not prepared to amend, but
7 something has occurred to me when Mr. Bricking was talking. I
8 thought he made a really good argument in terms of where they
9 had prevailed and where they had budgeted it and where this
10 November cut-off date is not going to help them.

11 If you have ever been looking forward to a fee and
12 then found out you weren't going to get it, it really is
13 upsetting. Just based on that, I just wonder if that date, if
14 we couldn't work that date to where they have budgeted on the
15 basis of a case, not that they think they are going to win, but
16 they have prevailed.

17 CHAIRMAN WALLACE: Let me ask you this, Mrs. Swafford.
18 It seems to me that if the merits of the case had been resolved
19 before November 1, then they may reasonably have relied on
20 getting the funds somewhere down the road.

21 Would you agree with me that if the merits had not
22 been resolved, then it might be unreasonable to budget for 1989

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1 on a case that had not been resolved yet?

2 MS. SWAFFORD: There is a good argument there. The
3 bottom line, though, is that they have prevailed at this point
4 and they have budgeted at this point. It just looks to me like
5 it's not a really big word to -- well, I don't like to use the
6 word "dicker" -- but dicker with this date a little bit.

7 CHAIRMAN WALLACE: To my mind, it's not so much
8 dickering with the date as dickering with the concept.

9 Let me make this proposal, Mrs. Swafford, and see what
10 you think. If we change this to say it would not apply to fees
11 received as a result of post-judgment petitions, applications or
12 motions filed in cases which were disposed on the merits by
13 December 31, 1988, and settlement agreements entered into before
14 December 31, 1988, would that solve your problem?

15 It doesn't seem to me you can budget for 1989 on
16 things that haven't happened before December 31, 1988.

17 MS. SWAFFORD: There are some programs that tell me
18 they have budgeted as far back, say, as February 1988.

19 CHAIRMAN WALLACE: If they have budgeted on cases that
20 were not resolved on the merits and the fee petitions had not
21 been filed, they acted very imprudently, it seems to me.

22 I am prepared to make an allowance for people who

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1 acted prudently as to cases that were disposed of on the merits
2 during the previous year, but anybody that made plans a year in
3 advance for cases that were not resolved I think has other
4 problems besides us.

5 MS. SWAFFORD: Let me ask you this. Would you be
6 willing to add to that, that it would be consideration on an
7 individual basis, where the recipient could prevail in terms of
8 their own particular hardship?

9 CHAIRMAN WALLACE: Well, I don't know what --

10 MS. SWAFFORD: A situation that could be that?

11 CHAIRMAN WALLACE: I don't even know what you mean by
12 that.

13 MS. SWAFFORD: I mean, you set the date, but that on
14 an individual case, in the case of each recipient, that they
15 would have an opportunity to appeal to the Corporation in terms
16 of not being held to that date.

17 CHAIRMAN WALLACE: That they be allowed to keep their
18 money or some portion of that money?

19 MS. SWAFFORD: Yes, yes.

20 CHAIRMAN WALLACE: And to delegate that responsibility
21 to the president?

22 MS. SWAFFORD: Yes.

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1 proposal, say aye?

2 (Chorus of ayes.)

3 CHAIRMAN WALLACE: Opposed?

4 (No response.)

5 CHAIRMAN WALLACE: That is adopted.

6 Ms. Swafford, do you have -- Mr. Uddo, we have pre-
7 empted you.

8 MS. SWAFFORD: Well, I didn't want to make a motion.
9 I'm sorry.

10 CHAIRMAN WALLACE: You wound up making one.

11 MS. SWAFFORD: I would up making one. The other one
12 is 1609.6 with regard to the 75/25 percent. Wouldn't it be
13 fairer to just set a limit and say you can't make over so much,
14 and that way, you wouldn't have the problem of what has been
15 referred to as skewing case selection.

16 In other words, if they knew they were going to make
17 it -- you know, I'm not really hard on this; I just wanted to
18 discuss it here a little bit.

19 CHAIRMAN WALLACE: What do you have in mind?

20 MS. SWAFFORD: Well, \$50,000.

21 CHAIRMAN WALLACE: Saying that anything below \$50,000
22 shall be considered de minimis and not subject to this

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1 regulation?

2 MS. SWAFFORD: Yes, that's what I had in mind.

3 CHAIRMAN WALLACE: Well, I'm not --

4 MOTION

5 MS. SWAFFORD: So moved.

6 CHAIRMAN WALLACE: That is not one I'm going to
7 second, Mrs. Swafford. Is there a second? Let me see, just to
8 make clear where we are going to put it. I think it would be--

9 MS. SWAFFORD: I think it would be in the section
10 1609.6. I'm not sure about that, where the 75 percent is. I
11 don't think we should use 75 percent and 25 percent. I think we
12 should set an amount.

13 I might not be right about this and I could be
14 persuaded otherwise.

15 CHAIRMAN WALLACE: Seventy-five percent of such sums
16 received --

17 MS. SWAFFORD: Received by recipients shall be
18 corrected by the Corporation.

19 CHAIRMAN WALLACE: As I understand it, and I'm not
20 sure I understand it, do you want to say anything less than
21 \$50,000, they get to keep all of it and anything more than
22 \$50,000 is subject to the 75 percent scheme we have?

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1 MS. SWAFFORD: You know, Mike, I'm not sure that I
2 would like to say that; I just would like to explore it.

3 CHAIRMAN WALLACE: All right. Well, let me ask you,
4 because I don't want to hold up Mr. Uddo's motions while you are
5 exploring it, to give it some thought and write something down
6 and I will recognize you --

7 MS. SWAFFORD: At a later point.

8 CHAIRMAN WALLACE: -- before we are done.

9 MS. SWAFFORD: All right.

10 CHAIRMAN WALLACE: Do you have any other comments?

11 MS. SWAFFORD: One other quick item with regard to
12 cases where recipients have been appointed by the Court to
13 represent a client. Should those fees not be returned to the
14 recipient as opposed -- where they had to do it, where they
15 might not have chosen to do it, but where they were appointed by
16 the Court to represent the client?

17 CHAIRMAN WALLACE: Do you know of any such cases?

18 MS. SWAFFORD: Yes, I do. Yes, I do.

19 CHAIRMAN WALLACE: Go ahead.

20 MS. SWAFFORD: Do you want me to give an example?

21 CHAIRMAN WALLACE: Yes.

22 MS. SWAFFORD: It is in Tennessee, and I recognize my

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1 fiduciary responsibility to the nation at large, but I do know
2 where a recipient was appointed to represent a client and where
3 they were unable to get another lawyer, and the federal court
4 appointed them to do so. It was a prison case and it lasted
5 four or five years and it was a considerable fee.

6 CHAIRMAN WALLACE: In that prison case, they also
7 appointed private outside counsel.

8 MS. SWAFFORD: Yes, they did, yes, they did, in
9 Nashville.

10 CHAIRMAN WALLACE: Here is my view. I do not want--
11 I mean, there is a federal statute that permits judges to
12 request lawyers to represent indigent parties in civil cases. I
13 think there is an appeal at the Supreme Court as to whether that
14 would be mandatory.

15 I would not want to vote for anything that would
16 suggest to federal judges that they can use the Legal Services
17 Program as a grab bag to pull lawyers out of. Our lawyers ought
18 to be treated like every other lawyer.

19 They ought to be treated exactly like Bass, Berry &
20 Sims. If Bass, Berry & Sims is going to be requested, we ought
21 to be requested on the same terms. That's the way I feel about
22 it, because otherwise, anytime you go to Bass, Berry & Sims, and

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1 I picked them just because I know they were the private counsel
2 in this case.

3 MS. SWAFFORD: They just happened to be the counsel,
4 yes.

5 CHAIRMAN WALLACE: There is a tendency to go to the
6 judge and say, "We can't afford to do this, but we've got a
7 publicly funded organization over there that can. Why don't you
8 pick them?" To the credit of Bass, Berry & Sims, they didn't do
9 that. They took their part of the case and they worked very
10 hard at it.

11 But, I would not want private lawyers in the other 49
12 states to go to that judge and say, "Relieve me of my duty.
13 Dump it on LSC."

14 MS. SWAFFORD: Thank you. I don't have anything
15 further to say. I just wanted this to be considered.

16 CHAIRMAN WALLACE: I appreciate that. Now, I will
17 recognize Mr. Uddo while Mrs. Swafford is going to try to create
18 an amendment.

19 MR. UDDO: Before I get to what I was going to say, it
20 seems to me that if you want private attorneys treated the same
21 as LSC recipients, you probably ought to do what she has
22 suggested because otherwise, LSC recipients are going to be a

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1 free source of legal representation.

2 Some judges may be tempted to say, "Whoever the
3 defendant is, is not going to be out attorney's fees if we
4 appoint a Legal Services' grantee instead of a private firm."

5 CHAIRMAN WALLACE: That presumes the grantees will not
6 file fee petitions at the end of the case, and I don't assume
7 that. I assume they will do their duty and, if they win a case,
8 they will file whatever fee petition is appropriate.

9 MR. UDDO: My understanding of what Ms. Swafford was
10 suggesting is that this would be a significant enough
11 disincentive that she thought that that would not happen. Isn't
12 that basically what you said?

13 MS. SWAFFORD: Essentially, yes. That is,
14 essentially, yes, if we go with the set amount for the court
15 appointed.

16 MR. UDDO: Let me get to my proposal. My proposal is
17 to take all of the offset and recapture provisions out of the
18 regulation altogether. I think that they are without rational
19 basis from anything I have heard so far with respect to any goal
20 that has been articulated.

21 Mike, I know you said that this is not an attempt to
22 try to dissuade grantees from taking certain kinds of cases. It

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1 may not be, with respect to the subject matter of the cases, but
2 I think this is pretty clearly an attempt to try to induce, as
3 Ms. Swafford said, a movement away from skewing of resources,
4 from the fee-generating cases to what may be the more mundane
5 cases in a particular delivery area.

6 I think there is something to that and I think that is
7 really what this regulation is about. I do not think there is
8 any way that this regulation can be justified as an equalization
9 proposal. I do not think that there is any evidence that this
10 is going to equalize funding to any significant extent.

11 We are dealing with variables that we do not know
12 enough about. We do not know if fee petitions are going to dry
13 up after this and, therefore, all the projections about
14 equalization go right down the tubes with the lack of fee
15 petition.

16 I think that we have got to be honest in our
17 characterization of this regulation and I do not think it is
18 primarily an equalization regulation. I think it is a
19 regulation that is attempting to say, "We ought not have our
20 grantees preferring fee-generating cases to the neglect of other
21 important cases in their delivery area."

22 I do not have any problem with that; in fact, I think

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1 that is probably a wise thing to say. My problem is that I
2 think the other parts of the regulation will be sufficient to do
3 that.

4 I think the parts of the regulation that say you are
5 not supposed to prefer these kinds of cases, you are not
6 supposed to take them except as a last resort, you are not
7 supposed to take them if there are private attorneys in your
8 delivery area that are willing to take them, you are not
9 supposed to take them if there are referral services that can
10 get them to somebody else.

11 I think you put all those hoops there and you say now,
12 our grantees have got to jump through all those hoops before
13 they take fee-generating cases, you are going to achieve the end
14 that I think everybody has got in mind here.

15 I do not think that the recapture off-set provisions
16 add anything to that. I think that those provisions then become
17 almost punitive. If you have jumped through all the hoops and
18 you have taken a case that we say you are allowed to take under
19 this regulation that is consistent with the rest of the
20 regulations, now we are going to penalize you and not let you
21 get the money that you earned on that case.

22 I think that is my problem with it, because once they

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1 have met all the standards of the regulations, they ought to be
2 able to keep the money. I do not think we should be
3 discouraging our grantees from being able to benefit from other
4 sources of funds when they have adhered to all the other
5 regulations and they have only taken the case because there
6 ain't nobody else around that can take it, and it's a
7 meritorious case and it is a case, as Clark said with his
8 example in Michigan, that was a good case to take. He called
9 the guy and congratulated him for taking the case.

10 Why shouldn't that program get the money that they are
11 entitled to under a fee-shifting statute or whatever? So, I
12 think the whole recapture provision is really baseless. I do
13 not think it is going to do anything for equalization. I do not
14 think it is going to do anything more for trying to get the
15 resources put in the right place.

16 I think we would be much better advised, in a
17 practical and in a theoretical sense, to deal with the problem
18 as a regulatory problem. Don't fool with the fee shifting.
19 Let's see what happens.

20 If the regulatory part of the statute is not
21 sufficient, if we find that there are all kinds of dodges and
22 games to get around these provisions and a year from now, we or

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1 our successors say that we still have programs that are putting
2 too much of their effort into these fee-shifting cases, then
3 maybe you talk about the recapture or some other provision to
4 try to solve that problem.

5 I am also not persuaded that it is a very big problem
6 at this point. The figures I have say that of all of our
7 grantees, there are 19 programs that average more than \$100,000
8 a year for the years '85 through '87, nineteen programs out of
9 nearly 400. Of those 19, there are eight that averaged over
10 \$200,000 and, of those, only three averaged over \$500,000. This
11 is the information that I have.

12 All the rest of them, I think, almost all of them, get
13 darn close to falling into that de minimis category -- \$52,000;
14 \$21,000; \$36,000; \$27,000. Why we should be taking away 75
15 percent of somebody's \$24,000 fee that they may have put an
16 enormous amount of effort into in making a perfectly meritorious
17 case we hope it is and should be, why we would be interested in
18 taking 75 percent of that away, I just don't understand.

19 It seems to me that we ought to be concerned about the
20 resources and how they are being expended and the rest of the
21 regulation does that. The regulatory provisions, the reporting
22 provisions, do it just fine.

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1 CHAIRMAN WALLACE: I think there is only one thing we
2 have to go through and that is, to delete the suggested revised
3 proposal on pages 7 and 8, and the top of page 9, which is
4 1609.6 as it reads in the substitute motion.

5 If you delete that, Mr. Uddo, then what remains is the
6 existing regulation which you will find at the bottom of page 6,
7 which is simply the accounting provision that already exists in
8 the regulation.

9 I think that one motion to delete the proposed
10 amendments to 1609.6 and to leave what we have at the bottom of
11 page 6 in place will accomplish the purpose that you have set
12 forth.

13 MR. UDDO: With the one exception, that I think the
14 reporting provision should be a little more precise, and I would
15 retain the first part of the revised proposal (a) which makes it
16 a quarterly reporting obligation.

17 CHAIRMAN WALLACE: All right.

18 MR. UDDO: If this were to pass, I would like to have
19 more consistent and more regular reporting so that we can
20 determine whether or not other steps need to be taken.

21 CHAIRMAN WALLACE: All right. So, what will remain if
22 Mr. Uddo's motion is adopted is what you find at the bottom of

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1 page 6, fees awarded, so on and so forth, plus what you find at
2 the bottom of page 7, which are the first two sentences of
3 subsection (a). That is Mr. Uddo's motion to amend.

4 MR. EAGLIN: Second.

5 CHAIRMAN WALLACE: Mr. Eaglin has seconded the motion.
6 Mr. Uddo, I think, has spoken in favor of the motion but if
7 you've got anything else to say, you will be recognized at this
8 time.

9 MR. UDDO: No, I would just urge the support of the
10 motion.

11 CHAIRMAN WALLACE: Any debate?

12 (No response.)

13 CHAIRMAN WALLACE: Let me say something at this point
14 and then I will see if there is any further debate. I agree
15 wholeheartedly with what Mr. Uddo said as a characterization of
16 this motion.

17 I wrote you notes that its purpose is to keep
18 recipients from preferring fee-generating cases to other cases
19 that might otherwise be brought; that is certainly my purpose in
20 supporting the regulation.

21 I believe that the way to do it is by recovering those
22 funds and, once you've got them, equalization is a good thing to

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1 do with them. But, I would not dispute your notion that
2 equalization is not the primary thing in my heart.

3 It may be in somebody else's heart, but you have
4 accurately, to my mind, characterized the purpose, which is to
5 keep people from preferring fee-generating cases.

6 My difference with Mr. Uddo's motion is in the notion
7 that the regulatory consultation set up by the rest of this
8 regulation is sufficient to achieve that purpose. We have heard
9 very eloquent presentations here and previously about the
10 importance of financial incentives in these cases.

11 I believe that the current system creates financial
12 incentives to prefer these fee-generating cases and that the
13 only effective way to achieve our purpose is to remove that
14 financial incentive.

15 That is why, with all due respect for Mr. Uddo, who
16 asked for more time to study this proposal, he did study the
17 proposal, he has done his homework and I commend him for it, I
18 wind up in disagreement with him and will vote against his
19 amendment.

20 Further -- Mr. Uddo?

21 MR. UDDO: Can I just say one thing, Mike? The
22 disincentive, as I read these numbers, really only applies to a

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1 small number of programs, the financial disincentive. I don't
2 think you can say any program that is making under \$100,000 a
3 year in these fees is seriously skewing their resources to get
4 fees.

5 I am not even sure I would pick \$100,000 but that is
6 only 19 programs that have averaged more than \$100,000 a year in
7 fees. So, I agree with you that financial incentive can be
8 important, but you may be throwing the baby out with the
9 bathwater because there are an awful lot of other programs that
10 have relatively small amounts that are helpful to them that help
11 us leverage resources.

12 They are not out there just drumming up fee-generating
13 cases. They are just a supplement to what they are doing. I
14 think we are taking a meat ax to something that doesn't deserve
15 it.

16 I think a year of experience of just the regulations
17 might get those 19 programs down to the level of where they are
18 not going out drumming up fee-generating cases, but when they
19 have got them and they're good and they get through the
20 regulations, they are entitled to make a few bucks on them.

21 MR. DURANT: Let me respond to that.

22 CHAIRMAN WALLACE: I will let you respond to that, Mr.

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1 Durant. I was trying to figure out some of the mechanics.

2 MR. DURANT: From your perspective, I mean, your point
3 is that most of the programs are not getting that much out of
4 attorney fee cases and that you are saying to leave the door
5 open for all those other programs that are getting less than
6 \$100,000 because they may be pursuing cases that are worth
7 doing. Is that your point?

8 MR. UDDO: Yes, that is my point. My point is that
9 the financial disincentive really seems to impact only a small
10 number of programs because the rest of them aren't making that
11 much money, even though they are going to end up losing 75
12 percent on them.

13 CHAIRMAN WALLACE: As I understand it, and Bob was
14 talking to me, you are concerned about the de minimis problem.
15 That is what Mrs. Swafford is concerned about. If that is what
16 you are concerned about, then rather than deleting the whole
17 section, you need to be working in a corner with Mrs. Swafford
18 on a de minimis amendment to offer.

19 I will say, parliamentarily, no amendment to Mr.
20 Uddo's amendment is in order at this point. If it is defeated,
21 Mrs. Swafford and you and anybody else can be recognized if you
22 want to have a de minimis question.

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1 MR. UDDO: I call the question.

2 MS. SWAFFORD: Why don't we call this?

3 CHAIRMAN WALLACE: A substitute is not in order. Mr.
4 Wear?

5 MR. WEAR: Just a couple of quick comments, Mr.
6 Chairman. This idea of the offset of these fees is not a new
7 idea. It surfaced in a couple of bills that were introduced on
8 the Hill, the last one in 1986 sponsored by Senators Hatch and
9 Rudman, and they would have recaptured or offset all of the
10 fees, not 75 percent or some de minimis amount either way.

11 I do not think that it is an unreasonable sort of
12 program. The intent is to take the profit out of taking fee-
13 generating cases so that those programs will not skew their
14 priorities to that.

15 It has been pointed out that there are not a lot of
16 programs in that category; if that's so, it won't impact on a
17 lot of programs and all of this debate about how it is going to
18 have this magnitude of impact on all of the Legal Services
19 providers, you know, it mostly is not going to splash, if you
20 will, on those programs.

21 It's going to impact on a few of them, that's right,
22 and it's going to impact on those programs that are taking large

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1 amounts of fees.

2 MR. UDDO: Let me disagree with you, because if you've
3 got forty or fifty thousand dollars in attorneys' fees and you
4 are going to be giving up 75 percent of it, that's an impact and
5 it is an undesirable impact. I don't think there is any
6 question about that.

7 It is going to have its greatest impact on a very
8 small number of programs, I'd say, you know, maybe eight or ten
9 programs could significantly be impacted by this. Frankly, I
10 think they would be impacted and I suspect they would be
11 impacted just by the regulation without the fee-shifting part.

12 Not to belabor it, but the Act that you referred to
13 did not pass, as far as I am aware.

14 CHAIRMAN WALLACE: But then we haven't had a
15 reauthorization bill of any kind in eleven years, so if we were
16 acting by normal rules, we would have gone home long ago.

17 Is there further debate?

18 (No response.)

19 CHAIRMAN WALLACE: What we have here is Mr. Uddo's
20 motion to delete the recovery provisions. If it passes, the
21 recovery provisions will be deleted; if it fails, the floor will
22 be open for further amendments or proposals on this same subject

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1 or any other subject.

2 On Mr. Uddo's amendment, Mr. Durant, how do you vote?

3 MR. DURANT: No.

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

5 MS. MILLER: Yes.

6 CHAIRMAN WALLACE: Ms. Benavidez?

7 MS. BENAVIDEZ: Yes.

8 CHAIRMAN WALLACE: Mr. Eaglin?

9 MR. EAGLIN: I vote yes.

10 CHAIRMAN WALLACE: Mr. Uddo?

11 MR. UDDO: You skipped Mrs. Swafford.

12 CHAIRMAN WALLACE: Mrs. Swafford?

13 MS. SWAFFORD: No.

14 CHAIRMAN WALLACE: Mr. Uddo?

15 MR. UDDO: Yes.

16 CHAIRMAN WALLACE: The Chair votes no. Mr. Valois?

17 MR. VALOIS: No.

18 CHAIRMAN WALLACE: Mr. Hall?

19 MR. HALL: No.

20 CHAIRMAN WALLACE: The Uddo amendment is defeated by a
21 vote of four to five. Mr. Valois?

22 MR. VALOIS: I would propose to be inserted at the

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1 appropriate place the following: "This regulation shall not
2 apply to a recipient's recovery of the first \$25,000 of fees
3 from fee-generating cases per annum", so that we know what we
4 are talking about.

5 CHAIRMAN WALLACE: What I would suggest is that this
6 sentence, in a slightly modified form, would be appropriate at
7 the end of 1609.6(a) which you will find at the bottom of page 7
8 and top of 8. At the end of page 8, you would add this phrase,
9 that "The collection provisions of this subparagraph shall not
10 apply to a recipient's recovery of the first \$25,000 of
11 attorneys' fees per annum."

12 That is your motion?

13 MOTION

14 MR. VALOIS: I accept it.

15 CHAIRMAN WALLACE: Is there a second?

16 MR. DURANT: Second.

17 CHAIRMAN WALLACE: Mr. Durant has seconded what I will
18 characterize as the de minimis provision based on the debate we
19 have already had today.

20 Is there further debate, Mr. Uddo?

21 MR. UDDO: Yes. My problem with it is that it is too
22 de minimis and I am going to vote against it because I would

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1 then propose the same motion with \$100,000 be moved. I am going
2 to vote against that as too de minimis.

3 CHAIRMAN WALLACE: All right.

4 MS. SWAFFORD: Could that be just a friendly
5 amendment? Would you accept that, Mr. Valois?

6 MR. VALOIS: I know a de minimis when I see one and it
7 is not \$100,000.

8 CHAIRMAN WALLACE: All right. The parliamentary
9 position we are in is that if you want \$100,000, you will have
10 to vote no on this motion and then there can be a substitute
11 motion.

12 MR. UDDO: Would you take fifty, Bob?

13 MR. VALOIS: Vote these down and then we will see what
14 happens.

15 CHAIRMAN WALLACE: I am doing amendment trees in my
16 head, like my days on the House floor, trying to think what is
17 in order and what isn't. I'm also thinking where the votes may
18 be, and I want the will of the majority to prevail.

19 What I would like to suggest is that anybody who is in
20 favor of any de minimis provision should vote for this. We will
21 get it onto the main substitute and then I will recognize you to
22 propose that we raise \$25,000 to \$100,000. I don't want you to

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1 get caught in the switches, Basile, voting against \$100,000--
2 voting against 25 and then not having the votes for 100 and
3 going home with zero.

4 MR. UDDO: I kind of figured those votes are going to
5 stay the same either way.

6 CHAIRMAN WALLACE: Well, maybe they will and maybe
7 they won't.

8 MS. SWAFFORD: What you are saying is to go ahead and
9 vote for the amendment.

10 CHAIRMAN WALLACE: If you want any de minimis
11 provision.

12 MS. SWAFFORD: If you want a de minimis provision,
13 vote for the 25 and --

14 CHAIRMAN WALLACE: Then I will recognize Mr. Uddo to
15 propose that the substitute be changed further to delete 25 and
16 jack it up to a hundred. Then we'll see where the votes are on
17 that.

18 MR. UDDO: I'll accept that advice. I'll vote for it
19 to get a de minimis provision in and then propose the
20 replacement of \$100,000.

21 CHAIRMAN WALLACE: I'm not sure that is
22 parliamentarily perfect, but I'm trying to be fair and, unless

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1 anybody objects, that is the way we will do it.

2 All right. We are going to vote on Mr. Valois'
3 \$25,000 de minimis provision. Mr. Durant, how do you vote?

4 MR. DURANT: Yes.

5 CHAIRMAN WALLACE: Ms. Miller?

6 MS. MILLER: No.

7 CHAIRMAN WALLACE: Ms. Benavidez?

8 MS. BENAVIDEZ: Yes.

9 CHAIRMAN WALLACE: Mr. Eaglin?

10 MR. EAGLIN: Yes.

11 CHAIRMAN WALLACE: Ms. Swafford?

12 MS. SWAFFORD: Yes.

13 CHAIRMAN WALLACE: Mr. Uddo?

14 MR. UDDO: Yes.

15 CHAIRMAN WALLACE: The chair votes no. Mr. Valois?

16 MR. VALOIS: Yes.

17 CHAIRMAN WALLACE: Mr. Hall?

18 MR. HALL: Yes.

19 CHAIRMAN WALLACE: The \$25,000 de minimis provision is
20 now in by a vote of seven to two, as I count it. I will now
21 recognize Mr. Uddo for any further amendments he would like to
22 propose.

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MOTION

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MR. UDDO: I would like to amend the motion that just passed to change the figure from \$25,000 to \$100,000 and I think that makes some sense according to the break-out of the figures because that is the point at which you begin to see some real differences in the amounts of money that programs get.

MS. SWAFFORD: I'll second.

CHAIRMAN WALLACE: The \$100,000 provision has now been moved and seconded.

Is there any debate on the \$100,000 provision?

MR. VALOIS: A couple of observations. I'm just a country boy from North Carolina arguing about the difference between \$25,000 and \$100,000. But, the impact of \$100,000 and \$25,000, the major thing to which it needs to be compared before you can properly evaluate the difference is the size of the program. \$100,000 to the largest program in the country may well be de minimis.

One hundred thousand dollars to a three-man Legal Services office in Eastern North Carolina is not de minimis, so I do not see how you can properly characterize it as -- may I see that chart you've got?

MR. UDDO: Bob, where do you think somewhere between

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1 25 and 100 is fair?

2 MR. VALOIS: Are we negotiating now?

3 MR. UDDO: We are negotiating.

4 MR. VALOIS: I see.

5 MR. UDDO: Bob, it seems to me that maybe we are using
6 the wrong words, de minimis. I am saying the three-person firm
7 in North Carolina, if they have jumped through the hoops and
8 they are entitled to bring the case and they put the work in, I
9 don't think we should be trying to take \$75,000 back from them;
10 that's my point.

11 It's not whether it is de minimis to that program or
12 not. I'm saying if it is a legitimate case that meets the
13 standards we have imposed, don't jump on it. Now, when you
14 start talking three or four hundred, five hundred thousand
15 dollars, the resources are maybe getting too skewed there.

16 MR. DURANT: We are not asking people to do these for
17 free. It's not as if they are not being paid.

18 MR. UDDO: I'm not suggesting that they are, but they
19 are entitled to them and what we are concerned about -- our
20 goal, and I think we've got pretty much agreement on this, is
21 not to get the dollars back and put them somewhere else. That's
22 a nice thing to do if you get the dollars back, but the goal is

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1 to keep people from preferring fee-generating cases to the
2 neglect of other things that their service area demands.

3 I think that you will do that with the \$100,000
4 provision.

5 CHAIRMAN WALLACE: Does anybody want to negotiate
6 further or does anybody want to vote? What is the pleasure of
7 the board?

8 MR. UDDO: I'd like to vote. Let's vote on that and
9 then we'll see if we will negotiate.

10 MR. DURANT: Wait a minute now. If he's going to
11 vote, he thinks he's going to win.

12 MR. UDDO: No, there's only one way we are going to
13 find out.

14 MR. VALOIS: I offered to negotiate and he thinks I'm
15 going to lose.

16 CHAIRMAN WALLACE: Since I don't hear anything else on
17 the floor, let us vote on Mr. Uddo's amendment to raise the
18 \$25,000 limit to \$100,000.

19 Mr. Durant, how do you vote?

20 MR. DURANT: Well, I'm --

21 CHAIRMAN WALLACE: You can do what Uddo did and
22 abstain. I'm not telling you how to vote.

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1 MR. DURANT: I'm voting against it.
2 CHAIRMAN WALLACE: Ms. Miller, how do you vote?
3 MS. MILLER: Yes.
4 CHAIRMAN WALLACE: Ms. Benavidez?
5 MS. BENAVIDEZ: Yes.
6 CHAIRMAN WALLACE: Mr. Eaglin?
7 MR. EAGLIN: I vote yes.
8 CHAIRMAN WALLACE: Ms. Swafford?
9 MS. SWAFFORD: Yes.
10 CHAIRMAN WALLACE: Mr. Uddo?
11 MR. UDDO: Yes.
12 CHAIRMAN WALLACE: The chair votes no. Mr. Valois?
13 MR. VALOIS: No.
14 CHAIRMAN WALLACE: Mr. Hall?
15 MR. HALL: Yes.
16 CHAIRMAN WALLACE: All right. The \$100,000 limit is
17 established by a vote of six to three. The item before the
18 Board for further debate and amendment is the Wallace substitute
19 which is Attachment 1 as amended by the \$100,000 de minimis
20 provision and also is amended by the language Mrs. Swafford and
21 I worked out on retroactivity.
22 Is there any further proposal for amendment to this

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1 regulation?

2 MR. WOOTEN: Can I raise just a question, and that is
3 the definition in the Valois-now-Uddo amendment of recipient?

4 CHAIRMAN WALLACE: I think "recipient" for purposes of
5 this part has been defined over here in 2(b) which is on the
6 page 2 of Attachment 1. That is the definition.

7 MR. WOOTEN: My point, Mr. Chairman, is I think you
8 used the word "program".

9 CHAIRMAN WALLACE: No, I think I dictated "recipient".
10 Here are the notes that I dictated from and it is "recipient".
11 I appreciate Mr. Wooten pointing it out, because we do not want
12 to use the wrong term, but we did say "recipient", but that is
13 taken care of in the definition, so "recipient" as used in the
14 Valois/Uddo combo is --

15 MR. UDDO: Bob is not going to want to keep his name
16 on that.

17 CHAIRMAN WALLACE: It is now defined according to
18 2(b), so we've got the right words.

19 MR. VALOIS: Can we just call it the "Uddo mistake"?

20 CHAIRMAN WALLACE: The "Uddo mistake", fine.

21 MR. UDDO: Can we call the question on the main
22 motion?

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1 CHAIRMAN WALLACE: I am concerned. Is there any
2 further debate to attachment 1 as amended?

3 (No response.)

4 CHAIRMAN WALLACE: Let me tell you the procedure.

5 This is a motion in the nature of a substitute.
6 First, we will vote to substitute this for the committee report.
7 If we vote "aye", then we still have to vote on final passage.

8 If you like Attachment 1 better than Attachment 2,
9 vote "yes" and then you can still vote "no" on final passage if
10 that is what you want to do. I want to make that real clear to
11 everybody.

12 The first vote is on the substitute, Attachment 1 as
13 amended, substituting for Attachment 2.

14 MR. DURANT: This is your motion, right?

15 CHAIRMAN WALLACE: This is my motion, as amended.

16 Mr. Durant, how do you vote?

17 MR. DURANT: I vote in favor of your motion as
18 amended.

19 CHAIRMAN WALLACE: Ms. Miller?

20 MS. MILLER: Yes.

21 CHAIRMAN WALLACE: Ms. Benavidez?

22 MS. BENAVIDEZ: Yes.

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1 CHAIRMAN WALLACE: Mr. Eaglin?
2 MR. EAGLIN: Yes.
3 CHAIRMAN WALLACE: Ms. Swafford?
4 MS. SWAFFORD: Yes.
5 CHAIRMAN WALLACE: Mr. Uddo?
6 MR. UDDO: Yes.
7 CHAIRMAN WALLACE: The Chair votes yes. Mr. Valois?
8 MR. VALOIS: Yes.
9 CHAIRMAN WALLACE: Mr. Hall?
10 MR. HALL: Yes.
11 CHAIRMAN WALLACE: All right, that is nine to nothing.
12 Now, the question recurs as to final passage of the
13 committee report as amended. This is the last train out of the
14 station, whether you are for attachment 1 as amended or against
15 it. Any further debate?
16 (No response.)
17 CHAIRMAN WALLACE: Mr. Durant?
18 MR. DURANT: Yes.
19 CHAIRMAN WALLACE: Ms. Miller?
20 MS. MILLER: Yes.
21 CHAIRMAN WALLACE: Ms. Benavidez?
22 MS. BENAVIDEZ: Yes.

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1 CHAIRMAN WALLACE: Mr. Eaglin?

2 MR. EAGLIN: No.

3 CHAIRMAN WALLACE: Ms. Swafford?

4 MS. SWAFFORD: Yes.

5 CHAIRMAN WALLACE: Mr. Uddo?

6 MR. UDDO: Yes.

7 CHAIRMAN WALLACE: The Chair votes yes. Mr. Valois?

8 MR. VALOIS: Yes.

9 CHAIRMAN WALLACE: Mr. Hall?

10 MR. HALL: Yes.

11 CHAIRMAN WALLACE: The amended regulation is adopted
12 by a vote of eight to one. As I understand, Mr. Valois, there
13 is no further report from your committee at this time?

14 MR. VALOIS: Other than we tentatively announced
15 yesterday, for anybody that was here today and not yesterday,
16 that we would meet again on April 13th at a place to be
17 determined.

18 CHAIRMAN WALLACE: All right.

19 MR. VALOIS: I hope I will complete those two things
20 at that time. I will say something that Mr. Houseman said that
21 I am sure the General Counsel heard. Mr. Houseman did question
22 whether we needed to republish a particular part of a revision

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1 which appeared yesterday, so I will leave that to your good
2 judgment.

3 CHAIRMAN WALLACE: All right.

4 MR. UDDO: Are we having a board meeting at that same
5 time or has that been decided?

6 MR. VALOIS: That was a day that was suggested to me
7 that would precede the board meeting.

8 CHAIRMAN WALLACE: Is there a report from the Task
9 Force on Client Board Training?

10 MR. UDDO: I think I can do it in five minutes. We
11 met, we had four client members from Region Six come before us
12 to speak to us. It has already been reported to you that there
13 was some question about client training as opposed to client
14 board member training.

15 We informed the people who testified that that was not
16 within the jurisdiction of our committee. We did get some, I
17 think, helpful input from the people who spoke. One criticism
18 was we did not publicize the meeting enough, which we have made
19 a commitment to try to avoid for future meetings.

20 By and large, I think the bottom line was we are going
21 to continue to try and get as much input as we can from clients.

22 CHAIRMAN WALLACE: All right. Mr. Shea, do you have

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1 something you need to say?

2 MR. SHEA: I understand that there may be some
3 interest in moving on, but may I make clear that my
4 understanding of the tenor of this rule as recently amended
5 would be that the 75/25 provision that still remains would apply
6 to the excess of over \$100,000?

7 CHAIRMAN WALLACE: Bull's eye.

8 MR. UDDO: That's what it reads.

9 MR. SHEA: I just wanted to make sure that that was my
10 understanding of the way you ended up in this process.

11 CHAIRMAN WALLACE: That's where we ended up.

12 MR. UDDO: I move to adjourn. Can I?

13 CHAIRMAN WALLACE: We can move to adjourn. Is there a
14 second?

15 MS. SWAFFORD: Second.

16 CHAIRMAN WALLACE: Mr. Wear, do you have something
17 that needs to be said?

18 MR. WEAR: Mr. Chairman, we had discussed preliminary
19 meeting dates for the next Board Meeting. There is a committee
20 meeting of the Ops & Regs Committee on April 13th and a Board
21 Meeting on April 14th. That is Thursday and Friday in, I
22 believe, the second week in April.

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1 CHAIRMAN WALLACE: Okay. If that worked out with the
2 Ops & Regs Committee, it is fine with me.

3 Let us vote on the motion to adjourn. All in favor,
4 say aye?

5 (Chorus of ayes.)

6 CHAIRMAN WALLACE: Opposed?

7 (No response.)

8 CHAIRMAN WALLACE: Hearing no dissent, this meeting is
9 adjourned.

10 (Whereupon, at 1:40 o'clock p.m., the Board Meeting
11 was adjourned.)

12

* * * * *

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