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LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS  
OPERATIONS AND REGULATIONS COMMITTEE MEETING

Monday October 19, 1992

8:10 a.m.

The Legal Services Corporation  
750 1st Street, NE  
The Board Room  
11th Floor  
Washington, D.C. 20002

Board Members Present:

Thomas D. Rath, Chairman  
Jeanine E. Wolbeck  
George W. Wittgraf  
Jo Betts Love  
Norman D. Shumway  
Howard H. Dana, Jr.  
Basile Uddo  
J. Blakeley Hall

Staff Present:

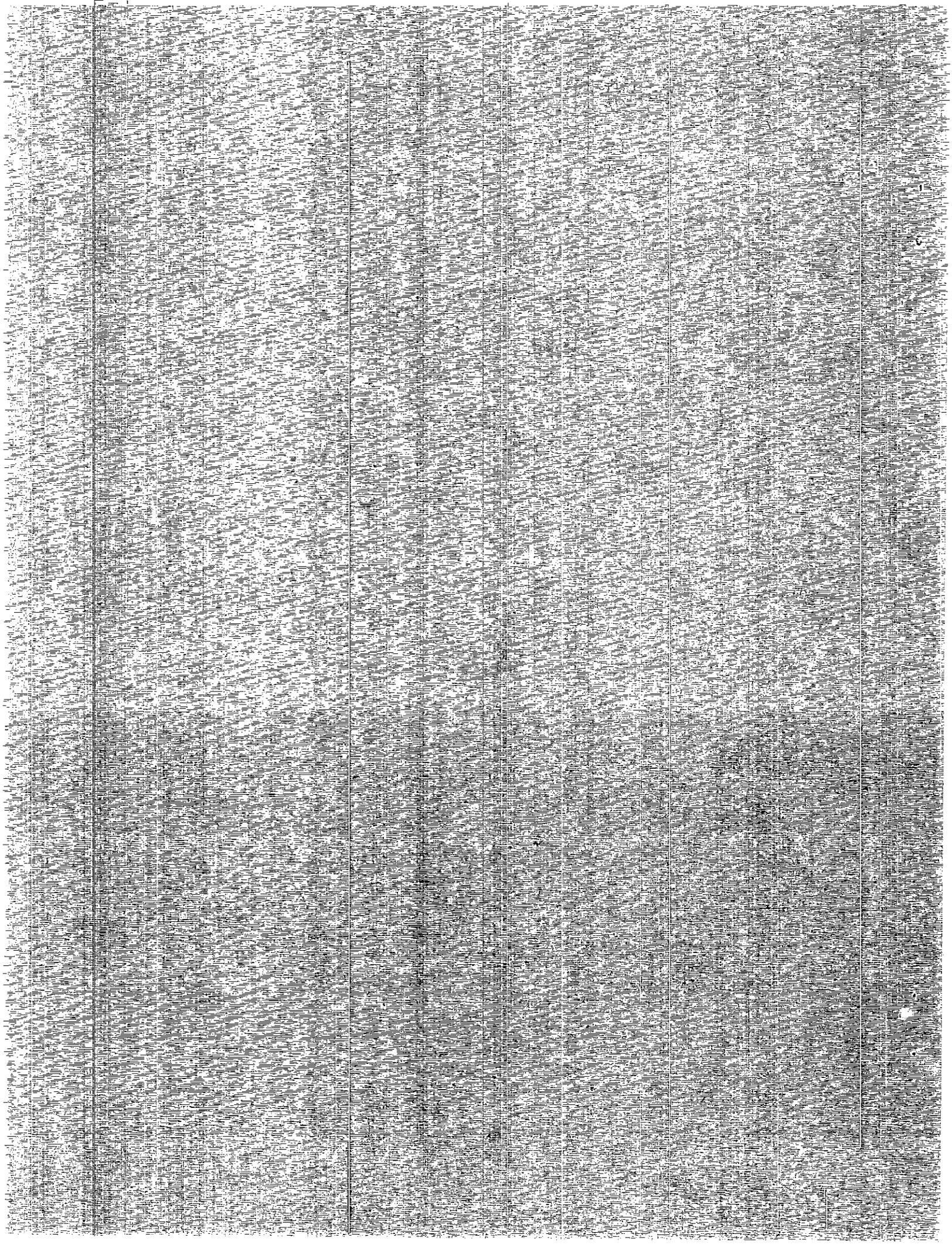
John P. O'Hara, President  
Emilia DiSanto, Vice President  
Patricia Batie, Secretary  
Suzanne Glasow  
Amanda Mears

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## C O N T E N T S

	PAGE
Approval of Agenda	3
Approval of Minutes of September 24, 1992 Meeting	4
Presentation by Suzanne Glasow:	
Consideration of Proposed Changes to Parts 1607, 1609, 1610, 1611, 1612, and 1626 of the Corporation's regulations [Suzanne Glasow and Alan Houseman]	5, 74
Consideration of Proposed Changes to the Corporation's regulation dealing with the Freedom of Information Act [Suzanne Glasow and Amanda Mears]	55

## MOTIONS:

3, 4, 62, 69

\* \* \* \* \*

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## P R O C E E D I N G S

(8:10 a.m.)

1  
2  
3 CHAIRMAN RATH: It being the appointed hour, we  
4 have a quorum of the committee at the table. For the record,  
5 I will call to order the meeting of the Operations and  
6 Regulations Committee of the Board of Directors of the Legal  
7 Services Corporation.

8 Present from the committee are Mr. Dana, Mr.  
9 Shumway. Ms. Love is here as well. Also with us this  
10 morning are Ms. Wolbeck and Chairman Wittgraf of the full  
11 Board, and I am Tom Rath.

12 The agenda has been published as part of the Board  
13 book, and I will entertain a motion for the approval of the  
14 agenda as published.

## M O T I O N

15  
16 MS. LOVE: So moved.

17 MR. DANA: Second.

18 CHAIRMAN RATH: Made by Ms. Love, seconded by Mr.  
19 Dana.

20 Do I hear any questions or comments concerning  
21 approving the agenda?

22 (No response.)

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1 CHAIRMAN RATH: Hearing none, all in favor say aye.

2 (A chorus of ayes.)

3 CHAIRMAN RATH: Contrary-minded?

4 (No response.)

5 CHAIRMAN RATH: So moved.

6 Next would be approval of the minutes of September  
7 24, which appear in draft form in the Board book.

8 M O T I O N

9 MR. SHUMWAY: So moved.

10 MR. SHUMWAY: Second.

11 CHAIRMAN RATH: It's been moved by Mr. Shumway.

12 MR. DANA: Second.

13 CHAIRMAN RATH: Seconded by Mr. Dana.

14 Are there any questions or comments, additions,  
15 deletions?

16 (No response.)

17 CHAIRMAN RATH: Hearing none, all in favor?

18 (Chorus of ayes.)

19 CHAIRMAN RATH: Contrary-minded?

20 (No response.)

21 CHAIRMAN RATH: So moved.

22 We now move to the agenda, Item 3 on the agenda,

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1 which is consideration of proposed changes to Parts 1607,  
2 1609, 1610, 1611, 1612, 1626 of the Corporation's  
3 regulations.

4 This is in furtherance of our discussion in  
5 Minneapolis. Why don't we have staff come up and sort of  
6 keep us current as to where we are?

7 Ms. Glasow, good morning.

8 PRESENTATION BY SUZANNE GLASOW

9 OFFICE OF GENERAL COUNSEL

10 MS. GLASOW: Good morning. My name is Suzanne  
11 Glasow from the Office of General Counsel. Victor Fortuno  
12 sends his regrets. He's caught in the terrible traffic jam  
13 on the 14th Street Bridge. Apparently, they're having a  
14 demonstration there this morning.

15 CHAIRMAN RATH: Probably wanted to sent Jeff  
16 Reardon back to Boston.

17 MS. GLASOW: Pursuant to a request by this  
18 committee from the last Board meeting, I did meet with Alan  
19 Houseman and Linda Pearl of CLASP, and we have come to some  
20 agreement on some of the provisions in 1612, and we are  
21 prepared these morning to go through these provisions and  
22 discuss them with this committee, and it would be probably

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1 helpful to have Mr. Houseman come up here.

2 CHAIRMAN RATH: Mr. Houseman, will you join us at  
3 the table? It's always a pleasure to see you.

4 MS. GLASOW: As a preliminary matter, I would like  
5 to point out to this committee that our new Appropriations  
6 Act retains the same restriction on the LSC Board's  
7 rulemaking authority. Basically, the Board is authorized to  
8 adopt any regulations. However, they may not become  
9 effective until October 1, 1993.

10 We're going to be discussing later changes to the  
11 FOIA regulation, I would like to point out, however, that  
12 those changes are merely internal procedure changes and, in  
13 my view, they don't necessarily require notice and comment.  
14 However, the Board can choose to go ahead and go through that  
15 procedure.

16 The restriction on rulemaking authority says that  
17 any rules adopted by the Board cannot become effective until  
18 October, 1993. The changes to the FOIA do not necessarily  
19 need to be adopted by the Board. The Board could have public  
20 comment notice, consider them, give kind of a resolution of  
21 approval. But I believe they could be published as final and  
22 become effective, because they are just internal procedural

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1 rules.

2 CHAIRMAN RATH: As I understand it, Ms. Glasow, you  
3 and Mr. Houseman have reached some level of agreement on  
4 changes to 1612, and the staff is prepared to recommend those  
5 changes to the Board.

6 The question I would ask is if this Board were to  
7 take that action now, these changes would not become  
8 effective until October, 1993, a year from now?

9 MS. GLASOW: That's correct.

10 CHAIRMAN RATH: A subsequent Board could change our  
11 recommendations and obviate what we would do in making these  
12 changes? Were another Board to come in between now and then  
13 and with a different mindset, they could change what we're  
14 doing now?

15 MS. GLASOW: They could. It depends on what the  
16 Corporation did. If you, for instance, adopted any changes  
17 to the rules, we could go ahead and publish those as final in  
18 the Federal Register.

19 I believe to undo that a different Board would need  
20 to again go through a notice and comment procedure and, of  
21 course, that can always happen with any regulation, with any  
22 new Board.

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1           CHAIRMAN RATH: Sure. But what you're suggesting  
2 today, and what I gather has been the work of your joint  
3 efforts, is a set of recommendations that, theoretically, the  
4 outside constituencies of this Corporation and the legal  
5 counsel staff agree on.

6           MS. GLASOW: That is correct.

7           CHAIRMAN RATH: And that would then be a basis for  
8 this Board to do something which, in effect, would hopefully  
9 help whoever else sat in these chairs down the road.

10          MS. GLASOW: Right. We are not in full agreement  
11 on all sections.

12          CHAIRMAN RATH: I understand.

13          MS. GLASOW: However, there are some we are in  
14 agreement on.

15          CHAIRMAN RATH: We are grateful for agreement,  
16 wherever it exists. So why don't you go ahead? Do you have  
17 a little presentation for us in terms of what you want to  
18 recommend this morning?

19          MS. GLASOW: Okay.

20          CHAIRMAN RATH: Do we have anything -- I know I've  
21 been getting lots of material.

22          MS. GLASOW: You should have received a memorandum

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1 at the hotel last night. It's dated October 19 and it's  
2 titled "Proposed Revisions to 45 CFR Part 1612."

3 CHAIRMAN RATH: The Chair will confess that he was  
4 at the hotel but did not receive any package.

5 MS. GLASOW: I have some copies.

6 MR. DANA: I'm sorry. I got it.

7 MR. SHUMWAY: I didn't get it.

8 MR. WITTGRAF: Mr. Chairman, were these agreements  
9 reached with or without Ross Perot mediating?

10 CHAIRMAN RATH: Well, now, here's the deal, see.  
11 Here's the deal.

12 (Laughter)

13 MR. WITTGRAF: I knew there were a lot of plans  
14 laying around Washington, and I wasn't sure.

15 CHAIRMAN RATH: Just laying around.

16 MS. GLASOW: I also point out there are copies of  
17 this memorandum out on the table for the public.

18 CHAIRMAN RATH: Thank you.

19 MS. GLASOW: The first issue is the meaning of the  
20 Rudman amendment, and it's a disagreement over the  
21 interpretation of the term "explicitly set forth." CLASP has  
22 noted the difference in language from the first time the

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1 Rudman amendment was published, which was "explicitly  
2 authorized," and next year it was changed to "explicitly set  
3 forth."

4 This is one of the issues we do not come to  
5 agreement on basically because the language of 1007(a)(5) in  
6 the LSC Act is very broad language is very broad language.  
7 So no matter whether we're applying the "explicitly  
8 authorized" or "explicitly set forth," there is not enough  
9 explicit language in 1007(a)(5) to accommodate the class  
10 concern here and, in my earlier memorandum -- the September  
11 16 memorandum -- I pointed out that because of the broad,  
12 inclusive language of 1007(a)(5), the Corporation has  
13 interpreted that language as including all reasonable  
14 lobbying activities that could be found within that language,  
15 and we have not changed our interpretation of that.

16 Do you have any comment, Mr. Houseman?

17 MR. HOUSEMAN: Well, I don't think you can ignore  
18 the language. The language says "explicitly set forth." It  
19 doesn't say "expressly authorized." Your language did. The  
20 new language says "explicitly set forth."

21 It seems to me, if you look at the statute, if you  
22 look at the language, it's clear on its face that it's trying

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1 to narrowly limit what the Corporation can impose in terms of  
2 restrictions on the private funds of recipients who are  
3 engaged in permissible legislative or administrative  
4 advocacy.

5           So I don't see how you can ignore the language.  
6 Now, operationally, this may or may not have a big impact on  
7 the rest of the issues that we're going to discuss, except in  
8 a couple of places, which I'll bring up. But I don't see how  
9 you can ignore the language.

10           I provided not legislative history. I provided  
11 background, most of which is in the public record, as to how  
12 we got to where we are today and why that language was  
13 changed from the '88 version to the '89 version.

14           There was a difference between the two, and I don't  
15 think you can just read the language to mean what was in the  
16 bill in 1988 and ont what's been in the bill since 1989  
17 forward.

18           CHAIRMAN RATH: Just so the Chair is responsible,  
19 it's CLASP's position, and I want to understand what  
20 counsel's position is, that this was not an inadvertent  
21 change; this was an intentional change designed to do  
22 something. Is that correct?

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1 MR. HOUSEMAN: Yes, that's my position.

2 MS. GLASOW: There's nothing in the legislative  
3 history that explains the change in language.

4 CHAIRMAN RATH: There's nothing that explains it,  
5 but from our involvement in the process, do we feel it was an  
6 inadvertent change where the two provisions are essentially  
7 identical, even though the words are different, or do you  
8 agree with Mr. Houseman that somebody was trying to do  
9 something when they changed these words?

10 MS. GLASOW: The only way you can get to that  
11 conclusion is that the language was changed.

12 CHAIRMAN RATH: Right.

13 MS. GLASOW: There's just an indication as to why.  
14 Therefore, any conclusion as to the reason for the change is  
15 speculative. Because our interpretation of the meaning of  
16 the two different terms would come out the same anyway, in  
17 essence, it's irrelevant.

18 CHAIRMAN RATH: All right.

19 MR. DANA: Mr. Chairman?

20 CHAIRMAN RATH: Mr. Dana.

21 MR. DANA: I think it is possible we have an  
22 institutional problem in that while I don't want to put any

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1 words in our Assistant General Counsel's mouth, I think that  
2 she is trying to preserve as much flexibility and as much  
3 discretion within the Corporation's parlance as she possibly  
4 can, and I think that maybe it's sort of like a politician  
5 given an opportunity to give the money back to the people,  
6 you know. It's just hard to do.

7 CHAIRMAN RATH: I don't know how we resolve this  
8 but the Chair will confess it has some familiarity with the  
9 author of these works, and I have to tell you I am not used  
10 to the author of these words doing anything which was  
11 irrelevant, especially on this particular subject.

12 I take it we do not have resolution of this issue  
13 between the two parties this morning.

14 All right. Keep going.

15 MS. GLASOW: There was a suggestion by CLASP to  
16 revise 1612.2 which is the provision in the Act that applies  
17 the provisions in the rule -- that applies the provisions of  
18 the rule to private funds.

19 We have come to agreement that it would be  
20 advisable to incorporate the Rudman Amendment into this  
21 section, thereby not requiring many changes throughout the  
22 rule, and the language is on Page 2 of our memorandum, which

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1 is a different page in your Board book.

2 CHAIRMAN RATH: In essence, what you're doing is  
3 you're striking the words "or private entities" from the  
4 final part of the first full sentence. Then you are adding a  
5 sentence which incorporates explicitly the -- I shouldn't use  
6 explicitly -- exactly the Rudman language.

7 MS. GLASOW: It's pretty close, yes.

8 CHAIRMAN RATH: So both sides have agreed to amend  
9 this provision by incorporating language which they do not  
10 agree as to its meaning. Is that correct?

11 MS. GLASOW: That's correct.

12 CHAIRMAN RATH: A brilliant compromise. All right.  
13 Continue.

14 I don't want to short-circuit the committee. Any  
15 questions on that?

16 (No response.)

17 CHAIRMAN RATH: Continue with 1612.3(b).

18 MS. GLASOW: This is the issue of use of funds for  
19 transportation. Presently, 1612.3(b) does not allow the us  
20 of LSC or private funds to pay transportation costs for lay  
21 advocates to accompany a client to any type of proceeding.

22 In 1987, the LSC Board rejected allowing payment

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1 for lay advocates because it found the term to be too vague.  
2 However, CLASP has offered persuasive examples of situations  
3 where lay advocates should accompany clients to proceedings.

4 One example includes the need for a mental health  
5 counselor or supportive friend to accompany an abuse victim  
6 to a hearing when the client needs emotional support.

7 Although limited LSC funds should not be used  
8 except for those program employees directly engaged in the  
9 legal activities or employees being trained to engage in such  
10 proceedings, the purposes of the rule are not thwarted by  
11 allowing programs to use their private funds to pay for  
12 necessary lay advocates.

13 We recommend the following language: "However,  
14 private funds may be used to pay transportation costs for lay  
15 advocates to accompany the client when necessary and  
16 appropriate."

17 We would also suggest that in the preamble to the  
18 rule, if this is adopted, that we would give some guidance  
19 and some examples of when such payment is necessary and  
20 appropriate.

21 CHAIRMAN RATH: I was going to ask whether you  
22 commonly have some kind of an annotation to accompany the

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1 rule for --

2 MS. GLASOW: Yes.

3 CHAIRMAN RATH: -- explanation purposes?

4 MS. GLASOW: When the rule is published as final in  
5 the Federal Register, it is a legal requirement that the  
6 rationale for all the changes is published, and that's  
7 contained in what's called the "Supplementary Information to  
8 the Rule" and it's a narrative on why each regulation was  
9 adopted.

10 CHAIRMAN RATH: Okay. Questions or comments from  
11 the committee on this provision?

12 (No response.)

13 CHAIRMAN RATH: Hearing none, would you proceed to  
14 1612.3(e).

15 MS. GLASOW: In this section, the Office of General  
16 Counsel concurs with the suggested revision to 1612.3(e)  
17 which merely makes the rule internally consistent. So  
18 therefore, we suggest the following language. Most of it's  
19 already there. The underlined language is the new part,  
20 which is "or Section 1612.13."

21 All together, it will read: "Knowingly assist  
22 others to engage in legislative or political activities,

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1 provided, however, that this paragraph shall not be construed  
2 to prohibit the administrative or legislative advocacy  
3 representation permitted by Section 1612.5 or 1612.13?

4 MR. SHUMWAY: What does that section provide,  
5 1612.13?

6 MS. GLASOW: 1612.13 is the private funds section  
7 that has some exceptions to the prohibition against using  
8 private funds for certain activities.

9 CHAIRMAN RATH: Any further questions or comments  
10 about that?

11 (No response.)

12 CHAIRMAN RATH: Would you proceed?

13 MS. GLASOW: Section 1612.3(f), which deals with  
14 attending coalition meetings, we concur in part on the  
15 suggestions by CLASP. CLASP suggests that the provision  
16 should read as follows:

17 "No funds made available by the Corporation shall  
18 be used to attend meetings of coalitions if a principal  
19 purpose of the meeting is to discuss or engage in legislative  
20 or political activities that are prohibited by this part,  
21 except that this prohibition does not apply to private funds  
22 received by a recipient.

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1 We agree that the first part of the suggested  
2 revision, "that are prohibited by this part," is acceptable  
3 because it clarifies that the restriction reaches only  
4 prohibited activities. The exception clause appears to be  
5 unnecessary if the revision to 1612.2, which incorporates the  
6 Rudman amendment, is adopted.

7 Moreover, the final exception clause suggested by  
8 CLASP sweeps more broadly than is required by the Rudman  
9 amendment because it would allow the use of private funds for  
10 activities prohibited by the LSC Act.

11 Basically, if we put in the language "that are  
12 prohibited by this part," it will conform it to the Rudman  
13 amendment restriction. If we add the extra language  
14 suggested by CLASP, it will go beyond the Rudman amendment  
15 and allow the use of private funds for activities that the  
16 Rudman amendment allows the restriction to apply to.

17 CHAIRMAN RATH: Mr. Houseman, do you intend to go  
18 beyond the Rudman amendment, or do you see it otherwise?

19 MR. HOUSEMAN: No. I think -- two points.

20 First, I don't think there is any way to read  
21 Section 1007(a)(5) in an explicit sense to prohibit attending  
22 a coalition meeting. My intent was not to go beyond the

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1 Rudman amendment.

2 My intent was to, in fact, point out that this  
3 language, as originally written, swept very broadly, saying  
4 you can't even attend a meeting of a coalition if a principal  
5 purpose is to engage in legislative or political activities.  
6 That is the purpose of the meeting, regardless of whether  
7 you're acting -- regardless of what your actions are  
8 motivated by or undertaken on behalf of.

9 You have to look back. Our suggestion was made in  
10 light of a suggestion essentially to do this in a much  
11 different way than we're doing now.

12 I still don't think that there's an explicit  
13 prohibition in Section 1007(a)(5) of attending a coalition  
14 meeting by recipients using private funds. The proposal by  
15 General Counsel's Office, however, and given the change that  
16 they've made in Section 1612.2, the proposal meets us more  
17 than halfway and, sort of in the spirit of compromise,  
18 they're willing to go along with it.

19 I don't think it meets the statutory criteria, but  
20 I think it cures most of the problems with the section that  
21 we have.

22 MR. SHUMWAY: So I take it then the difference of

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1 opinion here traces back to the difference of opinion about  
2 the Rudman amendment?

3 MR. HOUSEMAN: I think so. I'm not sure Suzanne  
4 does.

5 MR. SHUMWAY: Could I ask when we say that "are  
6 prohibited by this part," does "this part" otherwise include  
7 the Rudman amendment language?

8 MS. GLASOW: It does if the suggested change to  
9 1612.2 is adopted. If that's not adopted, then this probably  
10 would not cure Mr. Houseman's concerns.

11 MR. SHUMWAY: If that is adopted, Mr. Houseman,  
12 would you be satisfied with that?

13 MR. HOUSEMAN: Yes, I said we would be satisfied  
14 with it because I think it goes far enough that it meets the  
15 real concerns we have here.

16 MR. SHUMWAY: Are there further questions from the  
17 committee?

18 (No response.)

19 MR. SHUMWAY: Would you proceed?

20 MS. GLASOW: Section 1612.3(e).

21 MR. SHUMWAY: We just did that one.

22 MS. GLASOW: We just did that. I'm sorry. Section

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1 1612.3(f). We did that.

2 1612.4. This is the general prohibition in the  
3 rule, and the recommended revision, which incorporates the  
4 Rudman amendment to 1612.2 cures the concern expressed by  
5 CLASP here also.

6 Presently the Rudman amendment renders this section  
7 unenforceable in part, and I explained that in depth in my  
8 September 16 memo, but we are in agreement that the change to  
9 1612.2 would cure this problem.

10 MR. HOUSEMAN: Yes, we agree.

11 MR. SHUMWAY: Would you proceed?

12 MS. GLASOW: Section 1612.6. Presently, this  
13 section allows recipients to respond to requests for  
14 representations from governmental officials and bodies as  
15 long as the response is to a specific matter and is made to  
16 the requesting party.

17 CLASP urges that these two limitations in the rule  
18 go beyond the authority of the statutory language. First,  
19 they state that recipients should not be limited to  
20 responding to specific matters.

21 By adopting this limitation, the LSC board was  
22 attempting to prohibit the use of recipient staff from

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1 becoming virtual staff researchers of a legislative or  
2 administrative body or official.

3           The limitation was intended to prohibit responses  
4 to requests for information on a broad area, such as the  
5 housing needs of the poverty population. It would allow,  
6 however, a response to requests for information on a specific  
7 issue, such as whether public subsidy of low-rent housing or  
8 public subsidy of private home ownership is more costly.

9           Because such distinctions are somewhat vague, the  
10 applicability of the Rudman amendment here is uncertain.  
11 This Board may, in its discretion, make a policy decision to  
12 retain or delete the language.

13           Basically, I guess we're trying to say that a  
14 specific matter at times would be very hard to determine.  
15 And I guess that's what the last Board had trouble with.  
16 They found the language somewhat vague. Or not having that  
17 in there they found just left it too open-ended in terms of  
18 what the recipients could do.

19           So we don't have a strong recommendation on this  
20 language. We could retain it or take it out and that's, I  
21 feel, a policy matter by the board.

22           CHAIRMAN RATH: Mr. Dana?

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1 MR. DANA: Mr. Chairman, let me see if I understand  
2 the issue. The statute and the rider, generally speaking,  
3 authorizes an LSC attorney to answer a question posed to him  
4 or her by an elected official?

5 MR. HOUSEMAN: Or administrative official.

6 MR. DANA: Or administrative official.

7 MR. HOUSEMAN: Or staff.

8 MR. DANA: And what this regulation attempted to do  
9 was divide those questions in half, if you will. There are  
10 specific questions and then there are general questions. The  
11 statute doesn't make that distinction, correct?

12 MS. GLASOW: That is correct.

13 MR. DANA: And the rider says that we as a Board  
14 are not permitted to impose a regulation that is not  
15 explicitly set forth in the statute.

16 And I take it that CLASP's position is that, since  
17 the statute would authorize a public official to ask any  
18 question of a Legal Services attorney, our limiting that is  
19 not explicitly set forth in the statute. Correct?

20 MR. HOUSEMAN: That's correct.

21 MR. DANA: I mean, that's their position?

22 MS. GLASOW: Yes.

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1 MR. DANA: I understand.

2 MR. HOUSEMAN: Let me point out one other thing.

3 This is not legislative history -- at least not legislative  
4 history that the Supreme Court recognizes any more. When the  
5 House took up H.R. 2039, the subcommittee bill reported out  
6 of the subcommittee by Mr. Frank had in it language that  
7 attempted to make a similar restriction on responding to  
8 requests.

9 In the full committee, by unanimous voice vote --  
10 and I'm just going to read the committee report on this --  
11 the full committee rejected all of the language that  
12 attempted to limit the ability of legislators or  
13 administrative officials or staff in any way.

14 Reading from the committee report, H.R. 2039, by  
15 voice vote the committee struck from the bill reported by the  
16 subcommittee language that would have required that  
17 officials' requests be specific and limited in time, and some  
18 other things that aren't relevant right this second.

19 And secondly, in the floor debate on May 6, 1992,  
20 when this bill was on the floor of the House, when the Gekas  
21 amendment was up, which would have banned legislative and  
22 administrative advocate and prohibited responding to

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1 requests, this issue was debated fully as to limiting the  
2 ability of a legislator to ask for information from a Legal  
3 Services program.

4 And, as I think you all know, the House voted down  
5 the Gekas amendment and permitted the language from the  
6 committee bill on this issue to remain. Thus, the House  
7 adopted legislation consistent with the committee position.  
8 The Senate bill is identical on this issue to the House bill.

9 CHAIRMAN RATH: Mr. Dana.

10 MR. DANA: I'm not sure what the form of the motion  
11 should be, but it does seem to me that the -- it seems to me  
12 the intention of the Rudman amendment is pretty clear, and  
13 this regulation is also pretty clear. It purports to divide,  
14 to parse and subdivide that which the statute does not  
15 subdivide.

16 So it is an attempt to restrict that is clearly not  
17 authorized and certainly not explicitly authorized by the  
18 statute and, therefore, I think it should be repealed.

19 MS. GLASOW: In the second part of that provision,  
20 CLASP urges that recipients and their employees should be  
21 able to respond to more than the requesting party. They  
22 point out that governmental bodies often require that written

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1 representations be provided in many copies and be distributed  
2 to other members.

3 The language and legislative history of the  
4 lobbying exception do not support this interpretation.

5 First, the language of 1007(a)(5) in the 1974  
6 version of the Act clearly allowed for representations to be  
7 made only to the requesting party. The language of that was  
8 "a governmental agency and legislative body, a committee, or  
9 a member thereof requests personnel of any recipient to make  
10 representation thereto."

11 Because the question as to whether this exception  
12 permitted recipients to undertake activities such as  
13 testimony and the drafting or reviewing of legislation,  
14 Congress amended this exception in 1977 to include examples  
15 of the types of representations to be made to governmental  
16 bodies or officials.

17 Noting that these enumerated types of  
18 representations were already implicit in the '74 language,  
19 the Senate conferees agreed to the language. There was no  
20 mention of change in the requirement that such  
21 representations be made to the requesting body or official  
22 and language with the same meaning as "thereto" was included.

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1 The language now reads "to such agency, body, committee, or  
2 member."

3 In addition, the use of the term "representations"  
4 in the '74 Act and its consistent use in the legislative  
5 history of the '77 amendments to the Act as a general term  
6 including all types of activities allowed under the lobbying  
7 suggestion strongly suggests that the phrase "to make  
8 representations to such agency, body, committee, or member"  
9 means that all types of representations listed in the  
10 lobbying exception must be made to the requesting body or  
11 member thereof.

12 I will note, and I noted it in a footnote, that the  
13 language of this provision is not the best language. Some of  
14 it just doesn't make sense. For instance, the clause "to  
15 testify, draft or review measures," as written, means that  
16 recipients could testify measures, and that just doesn't make  
17 sense. So it isn't the best written provision in the world.

18 However, the legislative history makes it clear  
19 that Congress intended to allow recipients to undertake a  
20 variety of types of representation, and that those  
21 representations should be made to the requesting party.

22 Nevertheless, CLASP has pointed out that there are

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1 times when it is impossible to comply with governmental  
2 bodies' or officials' requests, because often the  
3 governmental procedures require that copies of the  
4 communication be provided to persons, committees, et cetera,  
5 other than the requesting party.

6 This problem can be cured by adding the following  
7 language, underlined language, the last sentence of  
8 1612.6(a). It would read as follows:

9 "This exception for responses to officials does not  
10 authorize communication with anyone other than the requesting  
11 party or an agent or employee of such party unless the  
12 request specifically requires in writing that copies of the  
13 requested communication be distributed to other specific  
14 persons or entities."

15 Providing this exception is not required by the  
16 Rudman amendment and is a policy decision left to the Board's  
17 discretion. When I say "this exception" I mean the  
18 underlying language.

19 I'm not sure Mr. Houseman agrees with this  
20 entirely. You may have some comments.

21 MR. HOUSEMAN: Let me make it quite clear what the  
22 differences are. There's a drafting difference which I'll

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1 get to second. There's a more fundamental difference, which  
2 I'll get to first.

3 I think when you read the language, it seems to me  
4 quite clear on the face of the language in the statute --  
5 1007(a)(5) -- that if a government agency, legislative body,  
6 committee, member thereof, requests someone in a program --  
7 personnel of a recipient -- to testify, draft or review  
8 measures, or to make representations to that agency, body,  
9 committee, or member, that it can, in response to that  
10 request, make representations to that agency, committee,  
11 body, or member.

12 There's nothing in the statute that says that it  
13 can only respond to the requesting party who asked it. Now,  
14 where the difficulty comes is this: you may be asked by a  
15 member, or a committee member -- and let's just stick with  
16 the legislative process -- to make, to provide information to  
17 that member and to the rest of the committee. It happens all  
18 the time.

19 I can give you hundreds of examples from my own  
20 practice here in D.C. where a member of Congress calls up and  
21 says "I am co-sponsoring a bill with so-and-so. I need this  
22 information. Would you please provide it to me and provide

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1 it to so-and-so's staff?"

2           According to the language in the regulation, I  
3 couldn't provide it to so-and-so's staff even if the member  
4 asked me to. And that's the fundamental difference here.  
5 I'm not suggesting that one could, on the basis of the  
6 statutory language, go off and do things that weren't  
7 requested.

8           What I'm saying is if the request asks for  
9 information to the member and to other members or to  
10 committee staff or something like that or, in a formal sense,  
11 often when you're asked to testify, as probably all of you  
12 know, LSC goes up to testify before Congress, they have to  
13 deliver 30, 40 copies of their testimony. And they're handed  
14 out, and they deliver them, and there's a specific procedure.

15           But you may be asked to testify by only one member  
16 of the committee, not by the committee chairman. It depends.  
17 The letter comes in all kinds of different ways. The request  
18 comes in all kinds of different ways.

19           What our argument is is simple. If a member  
20 requests information and requests you to provide that  
21 information to other members, you ought to be able to do so.  
22 There's nothing in the statute or the legislative history

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1 that suggests that you shouldn't be able to do so. You can't  
2 find it.

3 Again, this is another example where the latest  
4 effort in 2039, where similar kinds of restrictions on  
5 members' rights were suggested by the subcommittee and the  
6 committee unanimously voted those down. So that's the gist  
7 of this.

8 In terms of the specific change that they  
9 suggested, the problem with it is, the language specifically  
10 requires in writing that copies be distributed. Many  
11 requests don't come in writing and, in 1987, this regulation  
12 was changed to eliminate a requirement that requests be in  
13 writing.

14 The requirement in the regulation now is that the  
15 program must document that there was a request, but not that  
16 the requester has to ask in writing that something be done.  
17 Many requests come over the phone. I get them all the time.  
18 Committee staff call up, say "I need this information; I need  
19 it right now."

20 So this language that specifically requires it in  
21 writing is internally inconsistent. We could take care of  
22 this problem, it seems to me, either -- I think the way to

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1 take care of it is to strike the entire sentence. I don't  
2 think it's necessary.

3 But if we're going to stick with the sentence, then  
4 I would say "unless otherwise suggested by the request,"  
5 because it's not just copies of testimony, it may be other  
6 things that a member or administrative official wants you to  
7 do, and give that information to others.

8 CHAIRMAN RATH: Can I stop this for a minute?

9 MR. HOUSEMAN: Sure.

10 CHAIRMAN RATH: Just slow it down? I want to make  
11 sure I understand the nature of the discussion.

12 Does the regulation, as presently constituted,  
13 contemplate a situation where a request is made -- someone,  
14 for sake of this discussion who has a right to make the  
15 request makes a request -- and what the regulation says is  
16 that you can respond only to the requester?

17 MS. GLASOW: That is correct.

18 CHAIRMAN RATH: And then what does the regulation  
19 contemplate about greater dissemination being on the  
20 requester?

21 MS. GLASOW: It prohibits it at this point.

22 CHAIRMAN RATH: How can that possibly work? That

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1 seems to me an absolute contradiction and I, with all respect  
2 to the fine city in which we sit today -- I mean, this has  
3 got to be fought out at state legislatures and city councils  
4 and you name it around the country.

5           And when you give a document or you appear before a  
6 body for any reason, that's a public document you've created.  
7 We have no right -- I take it it would be inconsistent for us  
8 to have a regulation that then says "You can give your  
9 document -- you can give your response to Member A who  
10 requested it" and then somehow we have a regulation which  
11 carries forward over the requester's ability to disseminate  
12 that further. That person putatively is a public official.

13           MS. GLASOW: I need to clarify a point. Once the  
14 requester has received the document, he can make as many  
15 copies as he wants and disseminate it as much as he wants.

16           The intent behind this limitation by the former  
17 Board was to not have the use of LSC funds be used for a lot  
18 of copying and dissemination, and that was really the intent.

19           MR. DANA: But, Mr. Chairman, for instance, a  
20 Member of Congress could ask the LSC to give their views on a  
21 particular piece of legislation, "And while you're at it,  
22 copy every other member of Congress."

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1 CHAIRMAN RATH: I think you have to use some common  
2 sense there.

3 MR. DANA: I think that -- I take it that Mr.  
4 Houseman would regard that as a perfectly appropriate  
5 carrying out, following the request of the Member of  
6 Congress.

7 He said "I want you to distribute this to every  
8 member of Congress; I want you to send it to their home  
9 offices; I want you to send it to all their field offices, in  
10 case they're going by. They might hear it."

11 You've got the LSC right in the middle of a  
12 legislative lobbying effort. I think that that restriction  
13 is intended to -- is not intended to inhibit a response, but  
14 it's intended to get the Corporation out of the business  
15 of --

16 MR. SHUMWAY: Making copies.

17 MR. DANA: -- making copies and lobbying, as  
18 opposed to responding to a request.

19 MR. HOUSEMAN: Howard, you can always -- I mean,  
20 your example -- I mean, that's an example. I don't recall  
21 that ever occurring, but possibly it has.

22 The example that I was talking about is much more

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1 common, and this regulation restricts it. The example is a  
2 member says "I want you to testify; show up with 20 copies --  
3 that's the rule of the committee -- and you have to  
4 distribute them ahead of time."

5 That is very common, both at the Congressional  
6 level and at the state level, and this clearly prohibits  
7 that. It was intended to prohibit it. The regulatory  
8 history indicates it was prohibited.

9 Mr. Wallace and I went around and around on this in  
10 the 1987 regulation process, on this very point.

11 MR. DANA: Showing up with 20 copies is not  
12 prohibited.

13 MR. HOUSEMAN: Well, if you read the -- I can try  
14 to find it -- no. But distributing them -- which is often  
15 the requirement of committee rules, and in small legislature,  
16 that's just the way it works -- is.

17 So I think your -- I understand your example, and  
18 it sounds terrible when you hear it, but the common practice  
19 of sending copies to others, or making copies available to  
20 the full committee or subcommittee and sending them directly  
21 to committee people, that common example is restricted by  
22 this. That's what happens all the time in the legislative

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1 process.

2 Now, maybe we can clear it up with language that I  
3 suggested. The major concern I had with their suggestion was  
4 the requirement in writing.

5 As you said, unless the request specifically  
6 requests or specifies that copies be distributed to other  
7 specific persons or entities, that would probably be  
8 satisfactory.

9 MS. GLASOW: What we were trying to accommodate  
10 with this new language was a situation where a recipient  
11 would not be able to engage in some kind of administrative  
12 proceeding because the proceeding procedures themselves  
13 required that copies be distributed or you must give three  
14 copies or you must submit a copy to each member of the agency  
15 procedure committee, or whatever it is.

16 So we're trying to accommodate those situations  
17 where the recipient simply couldn't respond without going  
18 beyond this prohibition. But we were trying, in essence, not  
19 to allow the situation where it was so open-ended that indeed  
20 the recipient could spend a lot of funds and time giving out  
21 copies everywhere.

22 That's why we required the written documentation of

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1 procedures. If they're written procedures, that would be the  
2 written documentation. If it's a request by a legislator who  
3 is a member of a committee and says "My committee is  
4 considering this issue; I'd like you to give copies to each  
5 committee member" -- but it would have to be written.

6 MR. DANA: The problem with it is, from my point of  
7 view, I don't think it addresses -- a person says, writes you  
8 out, "I would like to have your views on this piece of  
9 legislation pending before Congress and I would like you to  
10 send it to everybody and to their home offices and make sure  
11 you get it to them at their home and at work and back in the  
12 District, just get it out, and I want your views on all of --  
13 I know what your views are, I think, but I want it in  
14 writing, and in writing I want you to send it to everybody"  
15 -- I think that exception authorizes that kind of a wholesale  
16 communication of views.

17 MS. GLASOW: That's true. We could limit it even  
18 further by just saying only when required by procedures in  
19 order to participate in a proceeding of some sort.

20 MR. DANA: That, it seems to me, addresses Mr.  
21 Houseman's concern. If there is a standard rule -- if, for  
22 instance, somebody was communicating with this body and they

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1 come up here with a letter to the Board, we might have a rule  
2 that says you have to have a copy for everybody -- like the  
3 Judge's comment in a pornography case.

4 It seems to me that that kind of a committee rule  
5 needs to be complied with and, if this restriction doesn't  
6 permit that, that should be changed. I suppose if Congress  
7 were to pass a rule that said "Any time you communicate with  
8 one of us you must send copies to all of us at our homes and  
9 back in the District" that would be another matter. That  
10 would be an authorization by Congress to do this sort of  
11 thing.

12 Maybe the idea should be to have you and CLASP work  
13 on this some more and come up with something that is more --  
14 since there's no urgency about passing this, since it won't  
15 take effect, as near as I can tell, ever, we've got time to  
16 work on that.

17 MR. SHUMWAY: Then aside from the comment which Mr.  
18 Dana just made, is the basic difference between the parties  
19 at the table the language "in writing"?

20 MS. GLASOW: I'm sorry?

21 MR. SHUMWAY: Aside from the suggestion that Mr.  
22 Dana just made, is the basic difference between the two of

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1 you the words "in writing"? I take it Mr. Houseman would  
2 have a broader context, and that is your suggestion, Ms.  
3 Glasow?

4 MS. GLASOW: I know he doesn't agree with the "in  
5 writing." I'm not sure he would agree to the more narrow  
6 restriction Mr. Dana is asking for.

7 MR. SHUMWAY: That's something that will have to be  
8 worked out. I think, as Mr. Dana pointed out, that's worthy  
9 of further study.

10 Any other questions on this section?

11 (No response.)

12 MR. SHUMWAY: All right, then. Would you proceed?

13 MS. GLASOW: Section 1612.13 on private funds.  
14 I'll talk about Paragraph (b) first.

15 Pursuant to the Rudman amendment, recipients may  
16 use private funds to engage in grass roots lobbying on behalf  
17 of an eligible client. In addition, only solicitation that  
18 is in violation of professional responsibilities is  
19 prohibited by the LSC Act.

20 Revision to Paragraph (b) as suggested by CLASP  
21 would bring the rule into conformity with the Rudman  
22 amendment. The revision suggested by CLASP revises Paragraph

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1 (b) as follows.

2 "A recipient may use private funds to engage in  
3 legislative activities" -- and they would delete the clause  
4 "except for grassroots lobbying" -- "at the request of a  
5 current eligible client of a recipient to the extent such  
6 activities are necessary to provision of legal advice and  
7 representation with respect to such clients' legal rights and  
8 responsibilities, but no recipient shall solicit a client in  
9 violation of professional responsibilities for the purpose of  
10 making such representation possible."

11 We have no objection to that language.

12 MR. SHUMWAY: What professional responsibilities  
13 are referred to there?

14 MS. GLASOW: Basically, each state has their own  
15 code of professional responsibilities.

16 MR. SHUMWAY: Okay. Any questions about that?

17 (No response.)

18 MR. SHUMWAY: Would you go ahead?

19 MS. GLASOW: Paragraph (d). CLASP has suggested  
20 the following revisions to Paragraph (d) as indicated by the  
21 underlining and cross-outs, and I will read it as they  
22 suggested it be changed.

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1 "Private funds provided for the provision of legal  
2 assistance to eligible clients may be used to support the  
3 preparation, production, or dissemination of any article,  
4 newsletter, or other publication or written matter, or other  
5 form of mass communication which contains references to or  
6 articles about proposed or pending legislation so long as the  
7 publication does not contain any publicity or propaganda."

8 Merely factual and educational articles about  
9 pending legislation is not prohibited by 1007(a)(5).

10 However, any grassroots advocacy for or against pending  
11 legislation is prohibited except when done on behalf of an  
12 eligible client.

13 Therefore, to conform the paragraph to the Rudman  
14 amendment, the following revision is recommended by OGC:

15 "Private funds provided for the provision of legal  
16 assistance to eligible clients may be used to support the  
17 preparation, production, or dissemination of any article,  
18 newsletter, or other publication or written matter, or other  
19 form of mass communication which contains references to or  
20 articles about proposed or pending legislation, so long as  
21 the publication does not contain any publicity or propaganda,  
22 unless the publicity or propaganda is necessary to the

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1 provision of legal advice and representation to an eligible  
2 client."

3 MR. SHUMWAY: Mr. Houseman.

4 MR. HOUSEMAN: This language goes fairly far to  
5 meet our concerns, and I think we would go along with it. I  
6 just want to point out the problem is not in the language  
7 here, unfortunately. The problem is in the definition of  
8 "publicity or propaganda" which appears in another part of  
9 the regulation.

10 The meat of that problem, in terms of articles, is  
11 that the regulation, in its definition -- I seem to not have  
12 it in front me; maybe you do, Suzanne. Let's see if I can  
13 find it.

14 The meat of the problem is that the regulation says  
15 that when you write an article, you can't provide information  
16 about whom to contact or how to support or pose such pending  
17 or proposed regulations. That's what the regulatory language  
18 is.

19 Now, what does that mean in reality? What it means  
20 in reality is that if you write an article about some  
21 legislation, you can't mention that it's before a particular  
22 committee of the Congress or the state legislature, because

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1 that, in theory, would be telling them whom to contact.

2 So if you write an article about LSC reauthorizing  
3 legislation, you can mention that H.R. 2039, or let's say S.  
4 2870 is being considered, and you could explain it, but if  
5 you went so far as to say it's being considered by the Senate  
6 Committee on Labor and Human Resources, that would be  
7 prohibited and, if you went so far as to say it's being  
8 considered by the Senate Labor and Human Resources Committee  
9 on July 2, whenever it was, that would be prohibited.

10 That's the problem with the definition as applied  
11 to articles or newsletters. So while this language on its  
12 face that's been proposed here doesn't trouble me, what  
13 troubles me is the definition, which we haven't addressed  
14 anywhere else.

15 I just saw this on Saturday, and maybe there's a  
16 way that we could work with this language to stay with the  
17 intent of what staff has suggested and to cure my concerns  
18 without -- maybe it's possible to do just within the  
19 framework of the language. I'd have to try working on that.  
20 I haven't done that yet. It may be.

21 I agree that you can't use articles and newsletters  
22 to agree, in direct or indirect -- which is the statutory

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1 terms -- advocacy, unless you're doing so in light of the  
2 rules.

3 So I agree with the intent of what's proposed here,  
4 and the limitation that's suggested here. It's the language,  
5 because of its definition of publicity and propaganda, that  
6 gives me concern.

7 I'm sorry to be so long-winded, but it's the only  
8 way I can explain what my problem is with it.

9 So it's possible probably to reach -- to do  
10 something to cure this problem, but the problem really is  
11 because of these definitions that appear in another part of  
12 the reg that sweep so broadly in their sweep what is or is  
13 not meant by publicity and propaganda.

14 I might point out that that definition of publicity  
15 and propaganda is not the definition that has been utilized  
16 by the General Accounting Office in every opinion it's ever  
17 written, of which there's about 50 -- three on LSC and  
18 there's about hundreds of others maybe -- 50 or 60 others --  
19 on other agencies.

20 In their defining publicity and propaganda they  
21 never, ever went so far as to suggest that publicity and  
22 propaganda meant that if you wrote a neutral article

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1 describing legislation and you mentioned when that  
2 legislation was being taken up that that somehow crossed the  
3 line.

4           Indeed, there are explicit GAO opinions that permit  
5 government agencies who are bound by a similar restriction in  
6 another statute prohibited from engaging in publicity and  
7 propaganda. There's a series of GAO opinions that say of  
8 course they can inform the public what is going on with  
9 legislation and when it's going to be taken up, et cetera.

10           So that's a long way of saying that the intent of  
11 this draft -- we're in agreement on the intent. The problem  
12 is refining the language in a way that doesn't sweep things  
13 that should be permitted from being prohibited.

14           MR. SHUMWAY: Well, it seems to me that, however  
15 publicity or propaganda may be defined, that definition has  
16 been qualified here by the language "as necessary to the  
17 provision of legal advice and representation to an eligible  
18 client."

19           You're not happy with that qualification? In other  
20 words, just focusing upon this section of the regulation and  
21 laying aside the definition of publicity and propaganda?

22           MR. HOUSEMAN: I'm fine with that. I'm just saying

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1 that unless you chnge --

2 MR.\*p846XSHUMWAYt the greater issue deals with the  
3 definition --

4 MR. HOUSEMAN: Right.

5 MR. SHUMWAY: -- and we should address it there?

6 MR. HOUSEMAN: I'm very happy with this, if we  
7 could clean up the definition. I don't have any problem with  
8 this.

9 MR. SHUMWAY: Okay. Are there further questions by  
10 committee members?

11 MR. DANA: Yes.

12 MR. SHUMWAY: Mr. Dana?

13 MR. DANA: Implicit in your concern -- and let me  
14 see if I can understand this -- is that there may be a need  
15 to -- is there some publicity and propaganda, as the  
16 regulations define it, that is not related to the legal  
17 advice and representation of an eligible client?

18 MR. HOUSEMAN: Yes, that's my concern. I should  
19 have said that clearly, but yes. My concern is with the  
20 definition of publicity and propaganda, not with what's here.

21 MR. SHUMWAY: An example of that would be  
22 newsletters, I suppose.

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1 MR. HOUSEMAN: Right.

2 MR. SHUMWAY: Not client-specific but,  
3 nevertheless, falling within the definition of publicity or  
4 propaganda; is that right?

5 MR. HOUSEMAN: That's true.

6 MR. SHUMWAY: Do you agree, Mr. Dana?

7 MR. DANA: I guess so, yes. But -- I guess I'm  
8 trying to come back to the definition of what you can do with  
9 private funds.

10 Can you do anything with private funds? Doesn't it  
11 have to be -- is there no limitation on --

12 MS. GLASOW: Basically, the LSC Act has an  
13 exception, an eligible client exception, to grassroots  
14 lobbying. The Appropriations Act does not have that  
15 exception. The Appropriations Act will not allow any LSC  
16 funds to be used for any grassroots lobbying; and that is  
17 basically what publicity and propaganda is, in essence.

18 So what we're talking about here is, because of the  
19 Rudman amendment we cannot restrict a recipient's private  
20 funds to grassroots lobbying on behalf of an eligible client  
21 because that exception does exist in the LSC Act.

22 I should point out, too, that the Appropriations

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1 Act, when it's talking about dissemination of information,  
2 which is just neutral reporting on pending legislation,  
3 cannot use LSC funds for that, even just neutral reporting.  
4 But the LSC Act allows that to be done. So we cannot  
5 restrict the use of private funds for that.

6 MR. HOUSEMAN: Let me see if I can answer your  
7 question, briefly.

8 The statute doesn't use the term "publicity and  
9 propaganda," first. What the statute prohibits is both  
10 direct and indirect activities. And I spelled it out in my  
11 memo on Page 4, a long time ago, without going into detail.

12 I agree that you can't use private funds to do  
13 direct or indirect legislative advocacy -- indirect would be  
14 like grassroots lobbying -- in the context of a newsletter or  
15 an article. We agree on that. There's no disagreement on  
16 that.

17 So I'm not suggesting you can do anything with  
18 private funds. You can't do that unless you fall within one  
19 of the exceptions. The question, though, is the statute  
20 doesn't prohibit you writing an article about pending  
21 legislation and indicating in the article where that  
22 legislation is pending, and that kind of thing. That's what

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1 the dispute is about here.

2 MS. GLASOW: It's really a question of whether  
3 writing down the committee, the name of the committee that's  
4 considering pending legislation is grassroots lobbying. The  
5 Board considered it basically so close to lobbying that they  
6 prohibited that under the definition.

7 MR. SHUMWAY: It strikes me that some of these  
8 distinctions may be dividing hairs so finely that they would  
9 really be impossible in the enforcement.

10 How can we ever -- I mean, just interpreting what  
11 is publicity or propaganda, I think, would be a monumental  
12 task. But, in this kind of application, I think it just  
13 becomes almost impossible.

14 MS. GLASOW: That is, in essence, what the Board  
15 was attempting to do when they passed these provisions. This  
16 certainly would be an easy restriction to enforce because if  
17 the article did name the committee, then that's a violation.  
18 So it's not that that's unenforceable. The real question is  
19 whether that's publicity or propaganda.

20 MR. SHUMWAY: In that sense, yes, but I can think  
21 of all kinds of other shades that would come within the same  
22 picture that would be very difficult of interpretation and

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1 difficult of enforcement.

2 Are there other questions, committee members?

3 (No response.)

4 MR. SHUMWAY: Let's move on.

5 MS. GLASOW: Training. Our general analysis on  
6 this issue is set out in the Board book at Pages 102 and 104.  
7 That's part of our September 16 memo.

8 To summarize that, I'd like to point out there's no  
9 disagreement with the language proposed by CLASP. Training  
10 on how to engage in legislative advocacy and administrative  
11 rulemaking is not prohibited by the LSC Act, because such  
12 training does not advocate or encourage any particular public  
13 policy or political activity. It merely teaches legal  
14 professionals the skills necessary to better provide legal  
15 assistance to eligible clients.

16 The language proposed by CLASP provides as follows:  
17 "A recipient may use private funds to disseminate information  
18 about particular public policies or political activities when  
19 supporting or conducting training programs to train clients  
20 or others about the law and to engage in training about how  
21 to provide representation before administrative or  
22 legislative bodies."

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1           We have on objection to this language. It brings  
2 the rule in conformity with the Rudman amendment.

3           MR. SHUMWAY: Okay. Proceed.

4           MS. GLASOW: Organizing. In addition to  
5 prohibiting use of funds to initiate the formation or to act  
6 as an organizer of certain specified groups, Section 1612.10  
7 currently provides that no funds may be employed for any  
8 communication or any meeting to advocate that any one  
9 organizer join any organization.

10           The term "communication" does not include advice  
11 given to an individual client during the course of legal  
12 consultation.

13           The legislative history of this provision as  
14 pointed out by CLASP distinguishes between actually  
15 initiating and organizing groups and "encouraging poor people  
16 aggrieved by particular problems to consider organizing to  
17 foster joint solutions to common problems." And that  
18 explanation was set out in both committee reports to that  
19 legislation.

20           According to this legislative history, the  
21 prohibition cited above is not authorized by the LSC Act.  
22 Thus, under the Rudman amendment, private funds may be used

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1 for such activities.

2 The following revision to 1612.13 is therefore  
3 recommended: "Private funds may be used for any  
4 communication or meeting to encourage poor people to consider  
5 organizing in order to foster joint solutions to common  
6 problems."

7 This provision does not permit a recipient to  
8 initiate the formation or to act as an organizer of any  
9 association, federation, labor union, coalition, network,  
10 alliance, or any similar entity.

11 MR. HOUSEMAN: We're in agreement on this.

12 MR. SHUMWAY: Okay. Any questions by committee  
13 members or other Board members present?

14 (No response.)

15 MR. SHUMWAY: The question now, I suppose is, what  
16 do we do with these proposed revisions? And I think that we  
17 perhaps ought to wait until Mr. Rath returns. He's on a  
18 telephone call?

19 MR. O'HARA: Yes.

20 MR. DANA: Can we take a brief recess? Aren't  
21 there some other regulations that we could deal with in the  
22 meantime?

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1 MR. SHUMWAY: Are there others, Ms. Glasow?

2 MS. GLASOW: Yes. I'll have to get my other  
3 binder.

4 MR. SHUMWAY: Okay.

5 MS. GLASOW: I would like to call up an attorney in  
6 the Office of Inspector General. She may have some comments  
7 on this proposal.

8 MR. DANA: Before we get to the new regulation,  
9 what is the status or what's the Chairman's pleasure? Are we  
10 going to be dealing with the issues about which there was  
11 little controversy at the last meeting? Namely, the sort of  
12 undoing the non-regulations or the almost regulations? Do  
13 you remember those miscellaneous sections?

14 MR. SHUMWAY: What is it you propose to take up  
15 with this?

16 MS. GLASOW: These are the proposed amendments to  
17 the FOIA regulation. Is that what you were -- maybe you were  
18 not discussing that.

19 MR. SHUMWAY: What did you have reference to,  
20 Howard? I'm sorry.

21 MR. DANA: My reference related to -- and I don't  
22 know that there's any magic in the order in which we do it --

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1 but I thought we were going to be talking about 1607, 9, 10,  
2 11 -- those matters that have been suspended or are in a  
3 state of not quite an action, not quite extant. But this is  
4 fine.

5 MR. SHUMWAY: So far, our discussion has focused on  
6 1612. Isn't that correct?

7 MS. GLASOW: That is correct.

8 MR. SHUMWAY: And are you proposing now to talk  
9 about the other regulations -- 1607, 9, 10 --

10 MS. GLASOW: At the last committee meeting, we went  
11 through the rationale for all those rules, so the only -- the  
12 issue before the committee now is whether they -- it's really  
13 the committee's prerogative at this point to state what they  
14 want to do with that.

15 Do they want to discuss it further; do they want to  
16 make a motion to either adopt the proposed revisions,  
17 withdrawals of the rules?

18 MR. SHUMWAY: What you propose to provide to the  
19 committee at this point deals not with one of those other  
20 rules?

21 MS. GLASOW: That is correct.

22 MR. SHUMWAY: Mr. Dana, did you want to focus on

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1 those other rules or are you willing to look at something  
2 else pending the return of Mr. Rath?

3 MR. DANA: I'm happy to look at something else.

4 MR. SHUMWAY: All right.

5 MS. GLASOW: Okay.

6 MR. SHUMWAY: Then without objection, would you go  
7 ahead, Ms. Glasow?

8 MS. GLASOW: Okay. The Office of General Counsel  
9 has prepared revisions to the Corporation's regulation  
10 dealing with the Freedom of Information Act -- FOIA.

11 MR. SHUMWAY: This is Item 4 on the agenda?

12 MS. GLASOW: Yes.

13 MR. SHUMWAY: All right. Go ahead.

14 MS. GLASOW: Our work on this rule was initiated by  
15 a request from the Office of Inspector General to make some  
16 revisions to this rule to accommodate the special status of  
17 records created by the Office of Inspector General.

18 Because they do investigatory-type activities,  
19 there are special confidentiality needs of that office and,  
20 working with the attorney in that office, we have come up  
21 with some proposed revisions.

22 Would you like to introduce yourself?

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1 MS. MEARS: Good morning. For the record, my name  
2 is Amanda Mears. I'm counsel to the Office of Inspector  
3 General for the Corporation.

4 MS. GLASOW: All we're asking the committee to do  
5 at this point is to let us know your desire as to whether you  
6 feel this needs consideration so that we could publish it in  
7 the Federal Register for notice and comment.

8 As I stated earlier this morning, we really view  
9 these as internal procedural changes, don't necessarily need  
10 public notice and comment. So that's a prerogative you have.

11 It would be helpful always to get any public  
12 comment. The last time we reviewed the FOIA rule in 1988,  
13 the Corporation received only three comments, and we revised  
14 it at that time pursuant to a change in the FOIA statute that  
15 dealt with the standard to determine fee waivers.

16 Other agencies have revised their FOIA rules to  
17 accommodate their Inspector Generals, and they were not  
18 necessarily published for notice and content, because they  
19 are just internal procedural changes.

20 There's a lot of other technical changes that OGC  
21 has made to this rule, basically in recognition of just a  
22 change in our structure over time, change of address, the

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1 fact that the records room doesn't exist as such, the fact  
2 that we no longer have regional offices.

3 It's a lot of real technical changes, and I don't  
4 know if there's a need to go through all of those because, at  
5 this point, we're just asking you to give us a sense of  
6 whether you want us to publish it as a proposed rule to work  
7 with it further or just get a sense of what you would like us  
8 to do with this.

9 MR. SHUMWAY: Mr. Dana.

10 MR. DANA: Mr. Chairman, I'm not sure I fully  
11 understand what you want us to do, but if what you would like  
12 is authorization to publish this for notice and comment, I  
13 certainly think we should do that.

14 I will tell you that I have very strong misgivings  
15 about your view that we can make this effective. I think we  
16 have rules and regulations. I think Congress has been very  
17 clear that it doesn't trust this Corporation to pass rules  
18 and regulations, and I'm not sure that we can change our  
19 rules and regulations, especially something relating to how  
20 we interact with a world that wants to know information about  
21 us.

22 I hardly think a FOIA request is entirely internal.

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1 It relates to the extent to which we disseminate information.  
2 I thought the proposed rule seemed to make perfect sense, and  
3 I think we ought to put it out for notice and comment. But I  
4 think we -- at least I, for one -- have some misgivings about  
5 your view that this is not a rule and regulation within the  
6 purview of the appropriation rider.

7 MR. SHUMWAY: Your point, as I understand it, Ms.  
8 Glasow, is that we have made changes to FOIA before, simply  
9 on the basis of their being internal changes, without going  
10 through the publication requirements that --

11 MS. GLASOW: No, the Corporation has not done that  
12 because the last changes we made were substantive changes --

13 MR. SHUMWAY: I see.

14 MS. GLASOW: -- to the statutory changes. Other  
15 agencies have just published them as final, as internal  
16 procedural changes.

17 MR. SHUMWAY: I see.

18 MR. HOUSEMAN: Can I just make one point?

19 MR. SHUMWAY: Mr. Houseman.

20 MR. HOUSEMAN: The statute, the Corporation's  
21 rulemaking statute is not the Administrative Procedure Act.  
22 The Administrative Procedure Act permits certain kinds of

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1 internal policies to be published without going through  
2 notice and comment.

3 Unlike the Administrative Procedure Act, the  
4 Corporation's Act says "The Corporation shall afford notice  
5 and reasonable opportunity to comment prior to issuing rules,  
6 regulations, and guidelines." And that language has no  
7 exceptions, as the Administrative Procedure Act does -- which  
8 I don't have here -- but the Administrative Procedure Act has  
9 an exception for internal policies. The Corporation's  
10 statute explicitly doesn't.

11 Secondly, this was a rule. It's published as a  
12 rule. I don't think you can take something that's called a  
13 rule and published as a rule and turn it into something else  
14 just for convenience's sake.

15 So I agree with Mr. Dana on this. I would like to  
16 point out that the statute LSC Act, which I just read from,  
17 is far broader than the Administrative Procedure Act.

18 MR. SHUMWAY: Ms. Glasow, any response to that?

19 MS. GLASOW: Basically, that is true. But I'm  
20 reading the Rudman amendment. It says rules adopted by the  
21 Board since the inception of this Corporation -- we have  
22 amended the appendix to 1611, which changes the monetary

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1 figures for the poverty guidelines and we publish it as final  
2 every year, and that's never been challenged.

3 MR. SHUMWAY: It might help us if you describe the  
4 problem and what it is you want to do about it, and then  
5 maybe we can evaluate how to proceed.

6 Mr. Dana?

7 MR. DANA: Mr. Chairman, isn't the issue -- and  
8 maybe I'm missing something. Are you asking us not to  
9 publish it for notice and comment? Or are you asking for us  
10 to publish it for notice and comment?

11 MR. SHUMWAY: I think she said we could go either  
12 way; it depends upon what the Board wants to do.

13 MS. GLASOW: That's basically it. I'm saying I  
14 think there's a strong argument that it's not necessary.  
15 However, we can always publish for notice and comment. It's  
16 always very helpful to get whatever comments are available  
17 out there.

18 The bigger issue is whether, if we publish for  
19 notice and comment and the Board does adopt any changes,  
20 whether we have to wait for October 1, 1993 for them to  
21 become effective. And my argument there is because of just  
22 procedural changes that are not substantive, like the

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1 appendix to 1611, I believe that --

2 MR. DANA: The appendix to 1611 is a fact. There's  
3 no discretion there. That comes from some other agency, does  
4 it not?

5 MS. GLASOW: We modify the numbers. We modify the  
6 numbers.

7 MR. DANA: Modify them by 1.25?

8 MS. GLASOW: Right.

9 MR. DANA: And you publish that number. That is a  
10 -- from time to time that fact changes, and you reflect that  
11 fact. You're asking us to change our regulations, which  
12 requires some judgment, some discretion, some understanding.  
13 It has nothing to do with the fact.

14 It's like publishing the tide tables -- excuse  
15 me -- when the sun rises and when the sun sets. It's  
16 probably not something for this Board to pass on. But if it  
17 was interested to, if our grantees were concerned about it,  
18 you could disseminate that information.

19 MS. GLASOW: I'm basing this basically on what  
20 other agencies have done. There is a strong argument that  
21 they are just procedural changes, but if this Board feels  
22 that there's more substance to them, they can certainly find

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1 that way.

2 M O T I O N

3 MR. DANA: Mr. Chairman, I would move that we  
4 publish this proposal for notice and comment in the Federal  
5 Register.

6 MR. SHUMWAY: Could I ask you to hold the motion  
7 until we hear --

8 MR. DANA: Sure.

9 MR. SHUMWAY: -- the proposal? Because I really  
10 can't evaluate it properly until I know what the problem is  
11 and what we're trying to do about it, and then perhaps we can  
12 view it either as a substantive matter or procedural matter.  
13 Would you be willing to do that?

14 MR. DANA: Sure. I withdraw my motion.

15 MR. SHUMWAY: Would you proceed to tell us more  
16 about it?

17 MS. GLASOW: Basically, the Inspector General Act  
18 of 1978 was amended in 1988 to provide for the statutory  
19 establishment of Offices of Inspector General at 33  
20 designated federal entities. Legal Services is one of those  
21 entities.

22 The primary function of LSC's OIG is to promote

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1 economy and efficiency, and prevent and detect fraud, waste,  
2 and abuse in LSC-funded programs as well as the operations of  
3 LSC.

4 The independent and investigative nature of the OIG  
5 necessitates that most of its records be kept separate and  
6 confidential. Consequently, OIG records will often fall  
7 under the protection of FOIA's Exemption B-7 for law  
8 enforcement records.

9 In order to protect the independence of the OIG and  
10 the confidentiality of OIG records, this rule proposes to  
11 amend Part 1602 to give authority to process and to deny or  
12 grant FOIA requests for OIG records to officials within the  
13 OIG.

14 Accordingly, we make various changes. We define  
15 Office of Inspector General records and we insert the term  
16 "OIG office" or "assistant attorneys in the OIG" in various  
17 places -- "assistant Inspector Generals" -- in various  
18 provisions of the FOIA to show that for OIG records they will  
19 be treated separately.

20 MR. SHUMWAY: So a purpose, then, is to give  
21 greater confidentiality or to preclude from access through  
22 FOIA the records of the OIG?

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1 MS. GLASOW: It's to give the Office of Inspector  
2 General rather than the Office of General Counsel, who  
3 normally processes these FOIAs -- there are times when the  
4 Office of General Counsel cannot view the OIG records of  
5 confidentiality aside from what we're doing and, therefore,  
6 consideration of a request for OIG records should go to the  
7 OIG office and be considered there, and they would make a  
8 decision, basically, as to whether they could be released or  
9 whether they fall within one of the FOIA exceptions.

10 MR. SHUMWAY: Mr. Dana.

11 MR. DANA: Procedurally, if a FOIA request comes to  
12 the Corporation, just the Corporation, would this rule or  
13 regulation -- the Corporation would make a Xerox of that  
14 request and send it down to the IG office and the IG would  
15 treat the request as independent of the General Counsel? The  
16 General Counsel would deal with everything except the office  
17 of IG and the IG would deal with the other?

18 Or, are you suggesting that a request to the  
19 Corporation is not a request to the Office of Inspector  
20 General and a separate FOIA request needs to be made to the  
21 Office of Inspector General?

22 MS. GLASOW: Basically this rule is telling the

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1 public that if you are asking for Inspector General records,  
2 you make the request to the Office of Inspector General.

3 Now, sometimes somebody won't clarify that and it  
4 might come to OGC and we would identify it as a request for  
5 OIG records and then we would forward it to the OIG under  
6 this rule.

7 MS. MEARS: Can I clarify that?

8 MS. GLASOW: Yes

9 MS. MEARS: If I can clarify that, I believe if you  
10 read the current FOIA regulations as well as the proposed,  
11 any public person, a requester under FOIA, is to mail their  
12 request to the Office of General Counsel at this address.

13 If in the General Counsel's office, then, they see  
14 that it asks for OIG records, then it will be logged in as  
15 any FOIA request, but then forwarded to the IG office. This  
16 is to maintain a central location for the receipt of the FOIA  
17 requests and also the disposition of them because, under the  
18 FOIA, each year, each agency or corporation that's subject to  
19 FOIA has to make a report to Congress, and it was our view  
20 that those should be centralized at least for the time being.

21 There's no reason to have two separate lists within  
22 the Legal Services Corporation FOIA request. That's my

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1 understanding of how it will operate.

2 MR. SHUMWAY: I'm curious as to how this comes to  
3 be a problem. Has there been some lapse in responding to  
4 these requests, or is there an example that justifies -

5 MS. MEARS: When I was first hired as counsel to  
6 the Inspector General and was tasked with looking at several  
7 areas of what we needed to do, one of the things that I did  
8 look at was the current FOIA regulations for Legal Services  
9 Corporation and how FOIA requests for OIG activity records  
10 would be handled.

11 Each agency, as you know, is free to promulgate its  
12 own regulations in furtherance of the FOIA Act as long as it  
13 complies with the FOIA Act.

14 Many agencies have a less restrictive -- I noticed  
15 -- had a less restrictive type of procedure. The way the  
16 Legal Services Corporation procedures are set forth,  
17 specifically, in black and white, only the General Counsel  
18 and the so-called records officer, under the Legal Services  
19 Corporation, were authorized to grant or deny requests.

20 Now, that posed a problem for the future for  
21 Inspector General records, because if a request was made for  
22 investigative records which we, in fact, had -- we've

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1 processed approximately seven of them recently -- it posed a  
2 problem to comply with our own regulations -- "our" meaning  
3 Legal Services -- because if only the General Counsel and the  
4 records officer had the authority to grant or deny, that  
5 would necessitate hand-carrying all of these investigative  
6 records up to either of those two persons for them to look  
7 through and review to see whether they were subject to  
8 disclosure or subject to exemption under the FOIA.

9 MR. SHUMWAY: Just to further my question, then,  
10 we're not talking about a problem that has existed, but we're  
11 talking about something that may occur in the future, trying  
12 to avoid that?

13 MS. MEARS: It has come up.

14 MR. SHUMWAY: It has?

15 MS. MEARS: I talked to Mr. Fortuno about this when  
16 I first realized it back in June, and we discussed that it  
17 would be necessary in the future to probably review these  
18 records, and he welcomed it because he believed there were  
19 other technical revisions that needed to be done.

20 In the interim, though, we agreed on an interim  
21 procedure, that in the event that we received a request under  
22 FOIA, that probably the provision under 1602.10 which allows

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918 16TH STREET, N.W. SUITE 803

WASHINGTON, D.C. 20006

(202) 296-2929

1 -- gives the General Counsel discretion to take whatever  
2 action would be appropriate for, I believe, consistency and  
3 equity, and that he could probably delegate to us under that  
4 provision the authority to grant or deny. That is, in fact,  
5 how we have operated under that.

6 We both agree that it's not a good idea to do that,  
7 that we should be up front with the public about who is going  
8 to handle these and who is going to make these decisions to  
9 grant or deny. That's really the purpose -- to comply with  
10 FOIA and also to provide a mechanism to maintain the  
11 confidentiality of OIG records, but to comply with FOIA at  
12 the same time.

13 CHAIRMAN RATH: Just to follow Mr. Shumway's  
14 question, my understanding of how this comes to be on the  
15 agenda today, based upon my discussions with Mr. Fortuno  
16 about placing it on the agenda, was this was a request that  
17 was being driven by a concern that existed inside the  
18 Inspector General's office. Is that correct?

19 MS. MEARS: Yes. Yes. I believe I -- I meant to  
20 state that if I didn't. This was something I looked at when  
21 I first joined the office.

22 CHAIRMAN RATH: The issue before us today on this

**Diversified Reporting Services, Inc.**

918 16TH STREET, N.W. SUITE 803

WASHINGTON, D.C. 20006

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1 particular agenda item is not to adopt it but simply whether  
2 to publish notice of potential rulemaking and invite public  
3 comment on the same?

4 MR. SHUMWAY: Or to adopt it as an internal change.  
5 We have an option in that regard that Ms. Glasow has laid out  
6 before us.

7 CHAIRMAN RATH: Are there any further questions?  
8 Otherwise, we may want to discuss what the committee wishes  
9 to recommend to the Board.

10 Mr. Dana?

11 M O T I O N

12 MR. DANA: My motion would be to publish it for  
13 notice and comment.

14 CHAIRMAN RATH: Is there a second to that motion?

15 MS. LOVE: Second.

16 CHAIRMAN RATH: Ms. Love seconds.

17 So you're saying publish for comment as opposed to  
18 going the route of making internal change?

19 MR. DANA: We have a Regulation 1602, and we're  
20 proposing to change it, and I think we have a process for  
21 doing so, and I am as -- and I think we ought to publish it.

22 Otherwise, we would have one set of regulations

**Diversified Reporting Services, Inc.**

918 16TH STREET, N.W. SUITE 803

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1 that we tell the world is what we're operating under and we  
2 have a secret set that we have in-house. And I just don't  
3 think that makes sense.

4 CHAIRMAN RATH: They wouldn't be secret, would  
5 they, Mr. Dana?

6 MR. DANA: Well, who would know about them? You'd  
7 know about them. I'd know about them.

8 CHAIRMAN RATH: I suppose anybody who asked would  
9 be informed that there would be a process.

10 MR. DANA: That's the reason we publish that as a  
11 general rule. Everybody would know that our dealing -- the  
12 way we deal with FOIA requests is set forth in a regulation  
13 now, and if we are, in fact, going to change that -- and I  
14 think we should -- we ought to change our regulations.

15 CHAIRMAN RATH: I have to tell you that it makes  
16 sense to me to do it as a change in regulation. What I want  
17 to make sure that I understand, and I don't hear much to the  
18 contrary, is if there's an ongoing or immediate problem that  
19 needs to be addressed quicker or sooner or with more  
20 expedition than a regulation might deal with.

21 I thought I heard there was not one, that this was  
22 more anticipating something.

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1           MR. DANA: I think they are, in fact, operating  
2 under a variation on this theme as a delegatee of the General  
3 Counsel already so, in effect, we are adopting rules that  
4 make our current practice consistent.

5           CHAIRMAN RATH: Let me ask, Ms. Glasow, there's  
6 really no question that the cleaner way to do it is to change  
7 the regulation; is that correct?

8           MS. GLASOW: Yes. I think there's no question  
9 there, and there's really no emergency situation because we  
10 do have this fallback on the delegation that would preclude  
11 us going through notice and comment.

12           CHAIRMAN RATH: Are there any other questions or  
13 comments hearing that? Is that helpful to the committee?  
14 Mr. Shumway?

15           MR. SHUMWAY: It seems to me that the question  
16 boils down to whether we consider this change substantive or  
17 procedural -- those old double horns.

18           If, indeed, it is substantive, then obviously we  
19 need to go through the publication routine. If it's just a  
20 matter of procedure, then I think we could do it internally  
21 without publication. It can be done much quicker and with  
22 greater ease, I suppose.

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1 I guess I'm not convinced that it really falls in  
2 either category. My mind isn't made up. Is there a third  
3 category we could put it in?

4 MR. DANA: One course of action would be to publish  
5 it and get notice and comment. That does not decide the  
6 substance versus procedure question.

7 I think at some point we should talk about whether  
8 or not we have the luxury of of changing our procedural  
9 rules, if this is a procedural rule. It's how we interact  
10 with the public, and I'm not sure we can change that without  
11 going through a -- without basically changing a rule or  
12 regulation of the Corporation.

13 But I don't see any harm in giving the public an  
14 opportunity to react to the proposal. I think probably we  
15 won't hear a thing.

16 CHAIRMAN RATH: With an attempt to reach a  
17 consensus here, I think we're making too much of this, and I  
18 think we ought to go ahead and publish and let's get on with  
19 it. If we have a problem in the meantime, we can act more  
20 expeditiously. So that's how I would be inclined to vote.

21 Are there any other questions or comments on the  
22 motion that's before us, which is to proceed with

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1 publication?

2 (No response.)

3 CHAIRMAN RATH: If not, all in favor of the motion  
4 to proceed with publication say aye.

5 (A chorus of ayes.)

6 CHAIRMAN RATH: Contrary-minded?

7 (No response.)

8 CHAIRMAN RATH: So moved. Thank you very much.

9 MR. DANA: One observation is wouldn't it be  
10 appropriate for the comments to come back to the Corporation  
11 as opposed to the Office of Inspector General?

12 MS. GLASOW: I'm sure it will, on the proposed  
13 rule, definitely. They will come back to the Office of  
14 General Counsel and we'll go through a regular rulemaking  
15 procedure.

16 MR. DANA: And we would exchange that and make sure  
17 everybody got copies?

18 MS. GLASOW: That is correct.

19 CHAIRMAN RATH: That's fine. Thank you.

20 I appreciate Mr. Shumway's consideration of the  
21 Chair's other responsibilities this morning, and I take it we  
22 have not acted dispositively on Question 3, Item 3 in our

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1 Agenda, and we'll go back to it.

2 Perhaps you want to, Mr. Shumway, sort of give me a  
3 sense of where you think we are.

4 MR. SHUMWAY: We went through, paragraph by  
5 paragraph, the memorandum that Ms. Glasow prepared for us  
6 dated October 19, 1992. This memorandum dealt primarily or  
7 perhaps exclusively with 1612. It did not touch upon the  
8 other areas. I guess the reason being is that we discussed  
9 them at some length in our last meeting and they perhaps are  
10 less problematic.

11 I was concerned last month when we talked about  
12 this -- and, frankly, my concerns have not been abated --  
13 concerned about why we should move to make these proposed  
14 changes now. I understood then that a reason for doing so  
15 was to send a message to Congress that we wanted to behave  
16 ourselves better, or not be prone to make certain  
17 regulations.

18 That reason has come and gone, as I understand it.  
19 The reauthorization that we were looking at is not passed and  
20 we're shortly going to greet a new Congress. I am also  
21 mindful of the fact that there may be changes in the  
22 personnel of this Board in a few months, and it would seem to

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1 me to be more appropriate to leave the matter of changing  
2 these regulations to a new Board.

3           Some may say "Well, gee, we spent a lot of time  
4 discussing this, digging up all of this information." I  
5 would agree, but I would point out that if, indeed, we don't  
6 act today, all of that discussion and all of that information  
7 will not be lost. It will be available in the records of  
8 this committee and the full Board, and certainly be  
9 accessible to a reconsideration of the matter by any Board  
10 that may succeed us.

11           I would just think that, rather than our putting  
12 this kind of change into place, it might be more appropriate  
13 to save it for another day when there's another Board, maybe  
14 another disposition, another direction that they may want to  
15 take, and I'd be reluctant to make the changes for that  
16 reason.

17           CHAIRMAN RATH: I want to ask you, Ms. Glasow, a  
18 question. On the various proposals that are in front of us  
19 for these sets of changes, running from Part 1607 to Part  
20 1626 of the regs, are there any changes that the Office of  
21 Legal Counsel feels are imperative to be done now, that are  
22 an impediment to the way we currently operate, that really

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1 give you a difficulty or cause you to pause before you  
2 approve something because that reg really needs to be fixed?

3 MS. GLASOW: No.

4 CHAIRMAN RATH: I have to say that I share many of  
5 the concerns raised by Mr. Shumway on this. I know Mr. Dana,  
6 I think, may want to argue somewhat differently, and why  
7 don't I give him that opportunity now?

8 MR. DANA: I've said it a hundred times, and I'll  
9 say it briefly this time. We have, for the last two or three  
10 years, served on this Board, had regulations that Congress  
11 has suspended their effectiveness of. I think that it is  
12 prudent to get the message.

13 In other words, I think we ought to get it, which  
14 is we ought to suspend those regulations, just because  
15 Congress has consistently said they don't want us to enforce  
16 them.

17 But if this Board wants to keep its options open to  
18 possibly enforce it as soon as regulations change, then I  
19 think Congress will exercise its discretion to keep our  
20 ability to pass regulations in check, and so regulations that  
21 we all think are good, we can't pass because we are still  
22 being held in a state of suspension.

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1 True, things may change. Different people may sit  
2 here. When that's going to happen, I don't know. I don't  
3 think we should stop being directors just because our terms  
4 are in doubt. But since we've got these -- since we have  
5 this restriction in place and it's probably going to be in  
6 place for another year, I've learned that we can't bring this  
7 matter up in April or May and get it done by September, so  
8 maybe next year I'll bring it up in February.

9 CHAIRMAN RATH: Let me say I appreciate your  
10 comments, Howard, and I have to say that, on substance, I'm  
11 prepared to vote for the changes. I have no problem with it.  
12 I really am struck by the timing issues that Mr. Shumway has  
13 alluded to and I'm prepared to bring these back up in  
14 November, depending on what occurs in early November. But  
15 I'm also a realist.

16 MR. DANA: May I make a suggestion?

17 CHAIRMAN RATH: Yes, sir.

18 MR. DANA: That we have -- fortunately, I don't  
19 think we'll have a meeting in November -- but that we have  
20 prepared, however the election works out, a resolution for  
21 our consideration in December which deals with first, the  
22 relatively non-controversial undoing of that which never

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1 really made it into the books of final regulations -- mostly  
2 the 1607, 9, 10, 11, and 26. Maybe not 26. And then we  
3 continue to work and narrow the issues on 1612.

4 CHAIRMAN RATH: Could I just interrupt for a  
5 moment? Could we include in that those areas of 1612 where  
6 there's apparent agreement this morning?

7 MR. DANA: Yes, certainly. But I would like to,  
8 since 1612 is an amendment to a regulation, I'd like to treat  
9 that as a separate motion. But I think we need -- at least I  
10 need -- the appropriate form of a motion that you two have  
11 worked on that does what we've been trying to do, drafted for  
12 our consideration.

13 Then we'll have it. We'll have moved it on and,  
14 whether it's us or somebody else, sometime, we'll at least  
15 have gotten it that far.

16 CHAIRMAN RATH: Mr. Shumway, does that make sense  
17 to you?

18 MR. SHUMWAY: Yes. I'm not adverse to considering  
19 the matter further. I think, with the Chair, that many of  
20 these changes are fully justified. But there still is some  
21 work to do, especially in 1612.

22 I think, as the parties addressed this this

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1 morning, they indicated that, given more time, they may be  
2 able to work out some of the problems that emerged and I  
3 think that if the matter could be put over until perhaps  
4 December, it might be a good way to go.

5 CHAIRMAN RATH: Ms. Love, is that agreeable to you?

6 MS. LOVE: Yes.

7 CHAIRMAN RATH: Yes, she says. I think that's what  
8 we're going to do. I don't know that we need a motion or  
9 anything else. I just would ask that the counsel and CLASP  
10 continue to work together.

11 There is nothing further on the agenda of this  
12 committee this morning, other than to acknowledge with  
13 pleasure the additions of Messrs. Uddo and Hall to the table.  
14 We always welcome your participation at these fine meetings,  
15 even wit Mr. Uddo's time.

16 Hearing no further business to come before this  
17 meeting, I will declare the meeting adjourned.

18 (At 9:52 a.m., the meeting was concluded.)

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