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TRANSCRIPT
OF THE
LEGAL SERVICES CORPORATION
MEETING OF THE
OPERATIONS & REGULATIONS COMMITTEE

COLUMBIA ROOM
CAPITOL HOLIDAY INN
550 C ST., S.W.
WASHINGTON, D.C.

THURSDAY, MAY 23, 1985
9:20 A.M.

PRESENT:

Michael Wallace, Thomas Smegal, W. Clark
Durant, III, Lorain Miller, LeaAnne Bernstein

P R O C E E D I N G S

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3 CHAIRMAN WALLACE: We are going to call
4 the committee meeting to order. I apologize for the
5 delay. I think we have a quorum at this point.
6 This is the meeting of the Operations and
7 Regulations Committee of the Board of Directors of
8 Legal Services Corporation, notice having been duly
9 given. We welcome everyone here today.

10 The first item on the agenda will be the
11 approval of the agenda. It is in the committee book
12 which all members of the committee have and which is
13 available for anyone that is interested on the table
14 there. Have the members of the committee had an
15 opportunity to review the agenda?

16 MR. SMEGAL: Yes.

17 CHAIRMAN WALLACE: Is there a motion to
18 adopt the agenda as printed?

19 MR. SMEGAL: I so move.

20 MS. BENAVIDEZ: I second.

21 CHAIRMAN WALLACE: All in favor? Opposed?

1 The ayes have it and the agenda is adopted.
2 I don't know if the people have had a chance to look
3 over the minutes, but that would be the next item on
4 the agenda. I will point out a couple of things
5 that I noticed in the minutes, and I don't know how
6 we can clear them up unless somebody has a copy of
7 the transcript with them.

8 On page 3 of the minutes, second paragraph,
9 it says Mr. Mendez seconded the motion, and while he
10 was with us that day, he is not a member of the
11 committee. I doubt if he seconded the motion.

12 Same thing on page 9, Mr. Mendez seconded
13 the motion to adjourn.

14 Okay, we have got a transcript here. I
15 will ask the secretary to take a look to see if you
16 can figure out who made those motions and we can
17 correct the minutes accordingly.

18 Mr. Mendez, the reporter says you did
19 second the motion.

20 MR. MENDEZ: I will tell you I did not do
21 that and I will invite the collective members of the

1 group to --

2 MS. BERNSTEIN: It was probably me.

3 MR. SMEGAL: I vote that any time Mr.
4 Mendez's name appears, let it be Smegal.

5 CHAIRMAN WALLACE: By unanimous consent,
6 Mr. Smegal is accepting responsibility for things
7 attributed to Mr. Mendez, at least as far as
8 seconding motions is concerned.

9 MR. MENDEZ: I would keep that in mind.

10 MR. SMEGAL: And only with respect to this
11 committee.

12 CHAIRMAN WALLACE: That's right. The
13 minutes will be amended by unanimous consent.

14 Has anyone on the committee any further
15 corrections to make or inquiries to make with regard
16 to these minutes?

17 MR. DAUGHERTY: Mr. Wallace, there is a
18 typographical error on page 6.

19 CHAIRMAN WALLACE: Which is where?

20 MR. DAUGHERTY: Second paragraph, fifth
21 line, "the board could" is the word.

1 CHAIRMAN WALLACE: All right, we will
2 correct the typo by unanimous consent.

3 MS. BENAVIDEZ: What page was that?

4 CHAIRMAN WALLACE: On page 6, a spelling
5 change on the second paragraph, a misspelling.

6 All right, with the corrections that have
7 been made, the spelling and the names, the Chair
8 will entertain a motion that the minutes be approved
9 as amended. Is there such a motion?

10 MR. SMEGAL: So move.

11 CHAIRMAN WALLACE: Is there a second?

12 MS. MILLER: I second.

13 CHAIRMAN WALLACE: It has been moved and
14 second that the minutes be approved as amended. All
15 in favor say aye. Opposed? The minutes stand
16 approved.

17 Next on our agenda we have a report from
18 the Office of Field Services on private attorney
19 involvement. I believe that Patricia Paquette --

20 MR. DAUGHERTY: Mr. Chairman, Mr. Bovard
21 asked that I present the materials of Mrs. Bernstein

1 and requested --

2 CHAIRMAN WALLACE: Okay, I think that is
3 worth doing. It is all under private attorney which
4 is certainly where we are right now.

5 Ms. Paquette, make yourself comfortable
6 and we will let Mr. Daugherty review for us the
7 material that has been assembled on the history of
8 this board's struggle with the private attorney.

9 MR. DAUGHERTY: At your last meeting, Mrs.
10 Bernstein requested that we assemble for use some
11 terms relating to the consideration of this issue by
12 the American Bar Association in 1980, by the
13 Congress in 1981, and by the Legal Services
14 Corporation in 1981, 1983 and again last year.
15 Those materials are in the large notebooks that is
16 at each of your places, and there is an index to the
17 materials that appears in the front of it.

18 The first items, I., are those relating to
19 the American Bar Association's adoption of a
20 resolution at its meeting in Honolulu that year
21 asking the Congress to amend the Legal Services

1 Corporation Act, that the funds be made available to
2 mandate the opportunity for substantial involvement
3 of private lawyers in providing legal services to
4 the poor. In that section you have the resolution
5 of the Wisconsin Bar which would have mandated a
6 specific percentage, 65 percent in areas of
7 population below 150,000, 15 percent in larger
8 counties. The resolution of the general practice
9 section with a change of three words, the resolution
10 was adopted. Report from the standing committee on
11 legal aid of indigent defendants which opposed both
12 of the resolutions, and finally, some memorandum
13 between those committees discussing its meeting.
14 The most significant thing I think you will find in
15 those materials is the fact that it was generally
16 understood that the discussion was about compensated
17 private attorney delivery, that that is what was
18 contemplated by the general practice section, and
19 the Wisconsin Bar.

20 The next section of your book relates to
21 the II., relates to debates at the Legal Services

1 Board of Directors in 1980 at which time an
2 appropriations request for 1981 was developed.
3 Chairman McCalpin moved to include in that budget \$30
4 million for delivery through private attorneys
5 through alternative delivery mechanisms. That was a --
6 he did so partially in response to the ABA's motion,
7 partially in response to action in Congress which
8 would have required a Judicare system be set up on a
9 statewide basis that gained large support, and also
10 in response to delivery systems studies.

11 Mr. Sacks spoke eloquently in support of
12 the motion, said that it was the natural outgrowth
13 of the findings of the delivery systems study, that
14 with proper staff components and other control the
15 private bar can deliver high quality legal services
16 as the staff attorney model.

17 Many of the same issues being debated
18 today were debated then even though at that time we
19 were talking about additional money, the question
20 arose whether this was properly a national policy
21 decision to be made or whether it was one to be made

1 at the local level. That was addressed by Chairman
2 McCalpin who said that he thought it was clearly
3 what Congress contemplated when they mandated the
4 delivery system study. They contemplated that if
5 the Corporation found that private delivery models
6 were as effective, as economical as the staff
7 attorney model that was predominantly in use, it was
8 expected the Corporation would move in that
9 direction, and he argued that if it was appropriate
10 to single out the institutionalized population for a
11 national mandate as Corporation staff, Mr. Houseman
12 in particular as field programmer was recommending
13 that it was just as appropriate that a national
14 mandate be offered in this area. That is debated on
15 page 185 of the transcript of that meeting of
16 December 1980.

17 The next section of your materials is that
18 relating to Congress's debate on H.R. 3480 in which
19 there were two provisions offered -- this is III. --
20 two provisions that were adopted relating to private
21 attorney delivery. First, which you will find at

1 tab III.B, was reported by the House Judiciary
2 Committee that required the Corporation to make
3 available substantial amounts of funds to provide
4 the opportunity for legal assistance to be rendered
5 to eligible clients. The other a floor amendment
6 offered by Congressman Stangeland, amended by
7 Congressman Frank, but which you will find at tab
8 III.B, page H.O. 44 of the Congressional Record.
9 That provision required at least one recipient in
10 each state providing legal assistance to eligible
11 clients through the private bar component unless the
12 Bar refused or was unable to meet that demand.

13 Probably the most useful document in this
14 entire collection to you is that that appears at
15 III.A. If you don't have time to review anything
16 else, I would encourage you to review the item III.A.
17 That is a background paper that was developed by the
18 American Bar Association to explain its reasons for
19 seeking amendment of Legal Services Corporation Act.
20 It states, "we are concerned that the Corporation in
21 funding state and local legal services programs has

1 devoted over 98 percent of its funds to a single
2 delivery model staff attorney office. We believe
3 other valid models involving members of the private
4 bar have been neglected. Such models have been
5 neglected."

6 Utilizing lawyers with a particular
7 geographic location enables clients to select their
8 own lawyers. In many instances the members of the
9 private bar have greater experience and expertise in
10 particular legal fields, and finally, in rural areas
11 utilization may be more economical than attempting
12 to cover through circuit riders.

13 The statement was made that the
14 Corporation would have taken this step without
15 compulsion by the Congress in light of its previous
16 funding decisions during its expansion period and
17 lamenting the fact that the delivery system study
18 was not delivered on time, but only later after most
19 of the expansion had taken place.

20 Finally at IV. you have the debate on the
21 first LSC instruction on this issue and statement of

1 proposals adopted by the Board of Directors.
2 Following that a discussion of the reasons this
3 action followed passage by the House of the
4 provisions of H.R. 3480 that we discussed. In many
5 respects it was viewed as an implementation of that.
6 One of Mrs. Bernstein's reasons in asking for these
7 materials to be assembled was she raised a question
8 as to whether or not Mr. Houseman was correctly
9 representing matters. It was the consensus that had
10 developed around the instruction among the field
11 personnel and the Corporation staff and board, and I
12 think you will find that there is a little of both
13 in those materials which you will find there at IV.B.

14 You will find former PAG spokesman Bruce
15 Morrison and others commending the board, saying
16 basically this was along the lines that we discussed,
17 I am concerned a little bit about the terms in your
18 resolution, but we got to move in this direction
19 unless others take control of this process and we
20 lose control. Others, such as Willie Cook, spoke
21 against the program saying it would be devastating

1 to his program. There were others suggesting
2 caution.

3 Finally there are matters you are a bit
4 more familiar with. VI. is the amendment to that
5 policy in 1983 in which the amount was raised to
6 12-1/2 percent, and several statements that were
7 made at the board meeting in opposition to that
8 change, largely questioning the process by which it
9 was adopted and whether or not there was
10 justification for the change as opposed to opposing
11 the merits of the proposal.

12 Finally at VII. and VIII., the '83
13 instructions, the questions and answers that explain
14 its revisions, and finally some comments filed on
15 the regulation that you have before you now,
16 regulation adopted in April of 1984, including the
17 comments filed at that time by Mr. Roche of Legal
18 Services of the Southern Piedmont who questioned
19 whether or not the regulation was, in fact,
20 consistent with your statutory mandate to provide
21 economic and effective services. He suggested that

1 was a determination that could not be made on a
2 nationwide basis, and, in fact, suggested that this
3 regulation was in contravention of that mandate.

4 This is certainly -- it's bulky, but it is
5 still most incomplete. It is incomplete -- it
6 starts 15 years after federal funding for Legal
7 Services began. It reflects many years of
8 controversy between the advocates of the staff
9 attorney model, the advocates of the Judicare model.
10 In his history of Legal Services Mr. Houseman makes
11 the statement, "Only OEO's refusal to fund Judicare
12 programs stopped Judicare from being the method of
13 delivery around the country."

14 Clint Bamberger took the position that
15 Judicare would be prohibitively expensive and would
16 not provide the aggressive advocacy required.

17 That debate continued. It was part of the
18 debate on the Legal Services Corporation Act which
19 was resolved in favor of having other delivery
20 models. There was competition between local bar
21 associations sponsored providers and OEO providers

1 for expansion funds that resolved in most cases in
2 favor of the staff attorney programs. It omits
3 significant findings of the delivery system study
4 that the models tested were comparable in terms of
5 cost and quality. Several of the models pro bono
6 Judicare with the staff component and contracts were
7 comparable in terms of impact. The others were not.
8 Indeed that issue was one that colored the whole
9 debate over the -- between staff and Judicare models
10 from the beginning. Mr. Bamberger, the first
11 director of Legal Services, was concerned that the
12 use of private attorneys who only dealt with a case
13 at a time would not provide the mechanisms or the
14 impetus for looking at, seeing a pattern of abuse
15 and problems bringing about social change as he saw
16 the mandate of the Economic Opportunity Act.

17 CHAIRMAN WALLACE: Mr. Secretary, I
18 appreciate your able summary of a lot of material
19 here. I haven't been home in Mississippi for two
20 weeks so this stuff didn't catch up to me until last
21 night. I finished going through it at about 1:00 in

1 the morning. I encourage all members of the
2 committee and all members of the board to go through
3 this material. I appreciate your efforts in putting
4 it together. I appreciate Mrs. Bernstein's
5 initiative in asking for it. Certainly there is a
6 lot in here and no summary can possibly do justice
7 -- as good a job as you did to try to put it into
8 perspective, but I think there is a lot that we need
9 to learn by going through this and I appreciate it.
10 I saw Mr. Houseman smiling while you were quoting
11 him which I have done myself here in confirmation.
12 Whether anybody agrees with the conclusions that we
13 draw, there is no doubt I think that we are reading
14 the stuff that is put before us and the stuff we can
15 find. There is a lot of stuff here.

16 MR. DAUGHERTY: If I might highlight one
17 other item in here. Legal Services debates are hot
18 and heavy, but they are conducted on a professional
19 level. There is one item in here that represents
20 the notes of a person attending a meeting that was a
21 private meeting, that meeting of the ABA and LSC

1 leadership in December of 1980, II.B, and I think
2 perhaps the emotions that underlie some of this
3 debate are perhaps more accurately reflected in
4 those very heated discussions than in some of the
5 more polite discussions that occurred in the open
6 setting.

7 CHAIRMAN WALLACE: I know you are not the
8 general counsel, but I found that meeting
9 interesting, not only for the substance, but the
10 fact that it took place with this irregularly
11 scheduled meeting of the board. It was an exception
12 to the Sunshine Act. It looks like a lot of people
13 sitting around a room having a very fruitful
14 discussion, but I was not sure whether it was legal
15 to do things that way.

16 Does anybody know the answer to that
17 question?

18 MR. DAUGHERTY: Let me tell you the
19 setting and I will have to defer to others on the
20 legality of it. The American Bar Association was
21 holding its midwinter meeting. The Board of

1 Directors held its meeting concurrent with that. It
2 was discussing the appropriations request. It
3 occurred the very next day. This was a followup to
4 the ABA's action at its summer meeting call for a
5 substantial private bar involvement, and it was a
6 meeting called by Chairman McCalpin and chaired by
7 him, and whether or not it constituted a discussion
8 of matters, I have to defer to others.

9 CHAIRMAN WALLACE: Maybe you should. It
10 looks like a very useful meeting. I wouldn't mind
11 doing something like that myself. I'm not sure it
12 is a legal thing to do.

13 In any event, I will close with that and I
14 will ask members of the committee if they have
15 questions or further requests.

16 Ms. Bernstein.

17 MS. BERNSTEIN: I appreciate getting it
18 together in one place, too. I hope the rest of the
19 board will read it. I know it looks like an awful
20 lot of material. I appreciate the way it is put
21 together chronologically, because I think the

1 documents speak for themselves and people can
2 understand the debate a little bit better given the
3 entire perspective. I would just add one more
4 document to this and ask that we send it to the
5 committee and the board, and I think it possibly has
6 been sent before. I know I received it, but it
7 might have been in another context, is Professor
8 Schwartz' report on the delivery system study in
9 which he analyzed the assumptions that the delivery
10 system study had taken when it was begun, and the
11 problems with the delivery system study in not
12 attempting to measure in any way productivity of any
13 model, comparing between models, and between
14 programs in a given model, and I think that is the
15 additional piece of information that I think the
16 board should have as background for considering some
17 of these difficult questions. So if you would get
18 Professor Schwartz' paper.

19 It is referred to -- and I saw it last
20 night and if I had a yellow tab I would have found
21 it this morning. It is referred to in here that the

1 ABA had commissioned this long ago and that was
2 completed, I think, a year and a half or so ago.

3 MR. DAUGHERTY: Professor Schwartz is with
4 Syracuse University, I believe. He was retained by
5 both the ABA section on general practice and the
6 Standing Committee on Legal Aid and Indigent
7 Defendants to monitor the delivery system study and
8 to offer a critique for their membership.

9 MS. BERNSTEIN: Thank you.

10 CHAIRMAN WALLACE: Any further questions
11 from members of the committee on this material or
12 members of the board?

13 MS. BERNSTEIN: I'm sorry, one further
14 thing. For any of the board members who are going
15 to sit down some beautiful summer evening and go
16 through all of this cover to cover, I would suggest
17 you have also received the 1979 House investigative
18 report on Legal Services and that would be something
19 -- if you have already read it, it would be
20 something for you to get back out and look at again
21 in the context of this issue to again help put the

1 whole thing in perspective.

2 CHAIRMAN WALLACE: Any further comment?

3 Mrs. Swafford.

4 MS. SWAFFORD: I am a member of your
5 committee, but I would like to say for all future
6 committees and the entire action of the Board, I
7 really like the way this is put together and I
8 really appreciate a summary where we can refer to
9 tabs because I spend so much of my time looking for
10 what it is they are talking about. This is a method
11 that I really appreciate.

12 CHAIRMAN WALLACE: Thank you, ma'am. I
13 think we all concur in that judgment. This is a
14 good piece of work and I will be referring to it
15 often on this project and I appreciate it.

16 Thank you, Mr. Secretary.

17 Ms. Paquette, I'm sorry we called you up
18 prematurely and made you wait. Let me say before
19 you begin that I believe the data which you are
20 going to be speaking from is in this yellow book and
21 there are copies over on the table for anybody that

1 does not have it. Since we first got into this
2 project back in February, I have been asking for
3 good data. We have all been getting bits and pieces
4 as it comes along. I know over the past couple of
5 weeks Ms. Paquette has gone through audits of just
6 about all of our programs. I think there were some
7 that couldn't be done for one reason or another. We
8 are beginning to get some data as to who is in
9 compliance, where the money is going and what kind
10 of job it is doing.

11 At that point I will let you proceed about
12 your report.

13 MS. PAQUETTE: The information is
14 contained in the yellow-covered supplemental book.
15 I was asked about six days ago to go through
16 approximately 205 of the LSC audit files that have
17 financial reporting years ending December 31st.
18 Those are the first programs that were required to
19 report the PAI expenditures separately through their
20 audit.

21 We found that there were a lot of

1 variations in the method of reporting, and I have a
2 four-page summary which precedes the tables that are
3 included in this book explaining some of the methods
4 used by auditors in programs to report this
5 information. Those comments have been considered by
6 the staff in writing the staff comments to the PAI
7 regulation, so that I think that exercise was real
8 helpful for all of us to determine from that first
9 batch how programs would be reporting their PAI
10 expenses.

11 I would like to point out, however, that
12 you have charts 1 and 2 which are substantially the
13 same information, but sorted in two different ways.
14 Chart 21 is sorted by region so if you are looking
15 for a particular program, program number, it would
16 be easier to find. Chart 1, which starts on page 5
17 of my report in the booklet, has some errors, and I
18 would like to read those into the record now so that
19 we are not unfairly representing any of the programs
20 that are in these charts.

21 CHAIRMAN WALLACE: Please proceed.

1 MS. PAQUETTE: On page 5, the first two
2 programs that are reported at the top of the page,
3 Prairie State Legal Services which is in LSC 51406,
4 that program is substantially in compliance. It has
5 at least 12 percent expenditures for PAI, and the
6 figure that was wrong on that chart is in column E.
7 The PAI expenditures should be \$200,286 and not the
8 20,891 that is reported on the chart, so that would
9 put them substantially higher than what is reported
10 here. They are at least at 12 percent.

11 The second program, Legal Aid of Northeast
12 Minnesota, recipient 504266, they are also reporting
13 at least 12 percent expenditures for PAI, and the
14 figure that is incorrect there is in column C.
15 Their basic field dollars was picked up wrong, and
16 their basic field dollars are \$354,475.

17 Going down --

18 MR. HOUSEMAN: D is wrong, too.

19 MS. PAQUETTE: Yes, that would change the
20 columns. I was trying to report to you where the
21 major error was so we are going to have to change

1 the columns across.

2 CHAIRMAN WALLACE: Column F is the
3 expenditures percentage and --

4 MS. PAQUETTE: It will change the
5 percentage and it will change the required amount
6 which is column D because that was based off a much
7 higher number and we will be making those
8 adjustments.

9 In the four-page narrative I mentioned
10 that the only program that had received a waiver of
11 meeting the 12.5 percent was New Hampshire, but we
12 have since learned that Greater Boston Legal
13 Services which is about a third of the way down the
14 page has also received an exemption and they have
15 reported here 7.1 percent for their PAI expenditures
16 so they would not necessarily not be in compliance
17 since they, too, along with New Hampshire, have
18 received an exemption.

19 There are two others just a little further
20 down the page, Northwest Florida Legal Services
21 which is 6100701, has under column E reported as 24,774.

1 It appears that property expenditure did not get
2 included in that figure so that figure would
3 increase slightly to \$26,369, changing their PAI
4 expenditure from 7.5 percent to 8.0 percent.

5 If you are still with me, four more down
6 the line, which is Legal Services of Virgin Islands
7 has a similar situation where the property was not
8 picked up, so that their column E instead of being
9 \$34,056, would change to 36,556 and that would
10 change the PAI expenditure percentage from 8.1 to 8.7.

11 Since the report mentions that we did not
12 include in these charts the state and national
13 support Judicare Native American programs, it has
14 been brought to my attention that Southeast Missouri
15 Legal Services, which is number 526006, is
16 predominantly Judicare so we would be eliminating
17 them from this chart.

18 Those are the only changes that I wish to
19 make right now. It has been brought to my attention
20 that Legal Aid Society of Central Texas, number
21 740010, that there was some footnotes in their audit

1 that were not taken into consideration. Footnote 5,
2 apparently, that we will be reviewing.

3 Part of the difficulty that is mentioned
4 in my narrative is the way in which some of the
5 programs are reporting this. Generally if a program
6 had a financial statement, a financial report or a
7 fund column in which they listed PAI expenditures,
8 we used those that were reported and did not
9 necessarily look further unless there was a footnote
10 that was particularly noted that we would go and
11 look for adjustments. In some instances, as the one
12 for central Texas, perhaps we missed footnote number
13 5. If there was no financial report or fund column
14 reported, then I did go to the footnotes to the
15 financial reports and if I could not find any there,
16 then went to the management supplemental letters
17 making every effort to pick up whatever PAI figures
18 we could gather for this report.

19 We have not had a chance to review all of
20 the other figures because we haven't had the
21 comments back from the programs. As I understand

1 this is being distributed to the programs so they
2 can look for their own and bring to our attention
3 some errors we have made. We have done two or three
4 internal checks and balances through the computer
5 and through internal audit to make sure we have
6 reported the correct figures, but the ones below 10
7 percent are the ones we put the emphasis on for this
8 meeting to make those adjustments. It should be
9 noted that property was included and picked up.
10 However, depreciation was not picked up. Only a few
11 of the audits out of the 183 that actually reported
12 PAI expenditures reported depreciation as an expense
13 toward their 12.5 percent. It was not used
14 consistently by most of the auditors or programs so
15 that that figure was not picked up where it was
16 reported and it was not done in a lot of instances
17 and there may be some questions by programs why we
18 did not pick up depreciation. We chose not to do
19 that.

20 I believe that would kind of summarize
21 what has been prepared here, and if any of the board

1 members have any questions I would be happy to
2 answer them since I was the one that took primary
3 responsibility to put this together.

4 CHAIRMAN WALLACE: All right, I appreciate
5 the responsibility that you took. Let me say first,
6 I don't know when this got out to the other members
7 of the board. Maybe it didn't because I didn't see
8 it until Friday night because as I said I have been
9 living out of a suitcase for two weeks. I asked
10 that it could get out on Monday to everybody it
11 could get out to, but just the sort of corrections
12 that you made here today indicate there may be other
13 corrections that need to be made, and I hope we will
14 hear about those before our next meeting. This is a
15 massive amount of effort and it tells a lot about
16 what is going on, and I think after the people
17 involved in it have had a chance to make the kind of
18 responses that some have already made, I think we
19 are going to have some pretty good data here.

20 MS. PAQUETTE: It is our intention to
21 expand this and continue to do this with all of the

1 audits as they come in. This is our first attempt
2 at it.

3 CHAIRMAN WALLACE: Ms. Bernstein.

4 MS. BERNSTEIN: You referred to property
5 being picked up. Would you explain to the committee
6 why we are including property in an expenditure for
7 private attorney involvement?

8 MS. PAQUETTE: For the most part, property
9 was picked up but it was really classified as
10 equipment as a capital expenditure so it was not the
11 purchase of land.

12 MS. BERNSTEIN: No, I'm even concerned
13 about the equipment, if it is -- I guess I just want
14 more explanation here because obviously my concern
15 is that if the program is expending 12-1/2 percent
16 and they have come into compliance for the first
17 year -- we have barely got a full year of data at
18 the 12-1/2 percent. If they have expended money on
19 equipment for that first year, that is not going to
20 be probably repeated, or I hope it won't be, the
21 second year, and I am wondering if -- I'm not saying

1 that that should be a question for that first year
2 because starting up any program involves some
3 capital expenditure. I'm wondering whether or not
4 we are really looking at the possibility of less
5 compliance in the less year because the process
6 maybe has not been set up for actual monies to go
7 toward the compensated model or pro bono, support
8 system or whatever, that would be ongoing. In other
9 words, you can only use so many typewriters.

10 MS. PAQUETTE: My review showed that
11 percentage for property was very small.

12 MS. BERNSTEIN: That's what I'm asking.

13 MS. PAQUETTE: If it was a \$12,000
14 purchase, something like \$700 would be put to PAI.

15 CHAIRMAN WALLACE: That is something we
16 may want to follow up often with Mr. Nusbaum because
17 he will be up in a couple of minutes to talk about
18 audits.

19 Do we have other comments or questions
20 from members of this committee on this presentation?

21 MR. SMEGAL: I'm just seeing this for the

1 first time. I would like a brief explanation of
2 columns I, G and K, those three breakdowns of how
3 the PAI monies were expended.

4 MS. PAQUETTE: Okay. Not all of the 183,
5 but it is noted 16 of them did not report I, J and K.

6 They were particularly for the programs
7 that reported a total financial line item report
8 which gave expenditures like consumable supplies,
9 space, telephone, travel, and although there wasn't
10 consistency as to how they reported those
11 expenditures, I was able to group them into those
12 three categories, where fees and contracts were
13 predominantly external contracts with private
14 attorneys, or another type of organization, a pro
15 bono bar association group or something like that,
16 so column I is pretty much the external fees that
17 were paid out of the program.

18 Column J would be the proportion of staff
19 personnel for the program that was paid in
20 administering or running the private bash program.
21 Particularly pro bono programs would have a private

1 coordinator --

2 MR. SMEGAL: The intake?

3 MS. PAQUETTE: The intake, column K, the
4 nonpersonnel would include all of your other
5 expenditures which would have included your
6 telephone, rent, consumable supplies, utilities,
7 travel, training, all of that that took place. In
8 column K, as I noted in my narrative, many of the
9 programs did extensive training of the private bar
10 so that those figures were often included into other
11 expenses or into travel conference so there is some
12 money in column K that was actually expended for the
13 purpose of private attorneys as well as the column I.

14 CHAIRMAN WALLACE: Let me make one further
15 request -- okay.

16 MR. SMEGAL: There is a followup question.

17 CHAIRMAN WALLACE: I'm sorry, go ahead.

18 MR. SMEGAL: About seven or eight
19 organizations down, there are zeros all the way
20 across. Obviously they have a number over in column
21 E.

1 MS. PAQUETTE: Right. Those are the
2 programs that in the narrative when you get a chance
3 to read that it mentions that those audits gave a
4 figure for PAI expenditures. Let's say it is
5 \$23,000, but they didn't say in the audit how much
6 of it was for staff or contracts or other
7 expenditures, so I picked up those figures so we at
8 least could report that they had reported a PAI
9 expenditure and to determine what their percentage
10 was, but I through the audit review was not able to
11 determine how that money was spent.

12 CHAIRMAN WALLACE: Those ought to be
13 question marks instead of zeros. You are telling us
14 the money was spent, but we don't quite know under
15 what column it would fall.

16 MS. PAQUETTE: It is an interpretation of
17 what the current reg requires you to report and it
18 gives the fund accounting and financial accounting
19 as optional, so programs reading it as optional have
20 complied by giving us the total figure and we have
21 left that as an option. It is information that is

1 very valuable, but all were not required to report
2 it.

3 MR. SMEGAL: So such an organization as
4 the Chenung Legal Services is in compliance. The
5 fact they have not given you a breakdown, you are
6 not going to go back and tell them they are out of
7 compliance.

8 MS. PAQUETTE: Exactly, unless it is
9 something picked up by the audit department in their
10 desk audit, they would be in compliance and we
11 highlighted those programs. If you notice, they
12 have an asterisk preceding their name. That was the
13 purpose of doing that. It is just that they were
14 not represented clearly across the chart.

15 CHAIRMAN WALLACE: Let me clarify that
16 response if we can with another question. This
17 program, for instance, would be in compliance as far
18 as its manner of reporting, but as far as its
19 expenditure, they may have spent in fact \$14,400 on
20 PAI, but that is not what they were required to
21 spend under the regulation?

1 MS. PAQUETTE: Exactly, and the desk audit
2 through the audit department would raise that issue.

3 CHAIRMAN WALLACE: Okay. One then I hope
4 that we will be able to put together over the next
5 month is not just what dollars are being spent, but
6 if we can break down these programs by case closures,
7 that would be interesting data to have, too. I know
8 we had the McDiarmid report which I cited to the
9 Senate which has some data nationwide on case
10 closing. If it is possible to give us case closing
11 program by program that would be very useful. I
12 don't know if it is possible.

13 MS. PAQUETTE: It is possible. The data
14 was not available at the time we were putting these
15 charts together. That will be available as soon as
16 it is available to us.

17 CHAIRMAN WALLACE: One other thing I want
18 to mention, I know it was compiled in connection
19 with your report, I had asked the staff to give me
20 some information on the extent to which the programs
21 have contacted the Office of Field Services to say

1 we are not making our numbers, we are having
2 problems with this, can you give us some help, can
3 you give us a waiver. You told us two waivers were
4 given.

5 There is a memorandum that I have seen,
6 and it is not in the board book or this supplemental
7 material but I am going to cite it because if anyone
8 wants to see it, I don't see any reason why it
9 should not be made available, it is the memo of May
10 13, 1985 to John Meyer, listing the programs that
11 have contacted LSC to discuss the problems with this
12 project and there are really only four programs that
13 are on this list that contacted us with their
14 problems.

15 That is something that concerns me. It
16 doesn't concern me so much that we have got 25
17 percent of the programs under the budget because I
18 can see how people can have problems, but what does
19 concern me is we have 25 percent under budget, but
20 we only have a half dozen that appear to have done
21 anything about it. If there are other programs that

1 are within the sound of my voice or will hear
2 through the reports on this that have contacted us
3 and we just haven't picked it up in our files, I
4 would like to hear about that, because to me that is
5 the most important part of this data, is that we
6 have got a lot of programs not only that aren't in
7 compliance, but don't seem to have made a lot of
8 effort to cooperate with LSC in getting into
9 compliance. The fact of compliance, everybody has
10 got problems, but the fact that there has been no
11 communication about those problems really does
12 disturb me. If there is more data that we have got
13 or any of the programs can get to us, I would love
14 to see it. That is something that concerns me very
15 much.

16 MS. PAQUETTE: I am aware of the same four
17 waivers that you mentioned, two of which are in the
18 report.

19 CHAIRMAN WALLACE: I think we have that
20 memo. I see no reason why people can't see it. If
21 it is an incomplete set of data and if other people

1 know about other programs that contacted us, let's
2 hear about it.

3 Any further questions for this witness?

4 MS. BERNSTEIN: I was wondering, to what
5 extent do we have the data to break out what the
6 mode of delivery is from the audits that you have?
7 In other words, to what extent could you add another
8 couple of columns, and in one of those columns have
9 percent for pro bono, percent for compensated,
10 percent for contract. In other words, can we get
11 any additional information on what our percentage of
12 expenditures is, and then along with that another
13 column -- and I know we are shrinking this down to
14 where we will all use magnifying glasses, but is
15 there a chance we could get cases closed under each
16 system, so that we have some sort of comparison? If
17 we have a program that is utilizing 10 percent in a
18 compensated, 2 and a half percent in a pro bono and
19 we find out that they are closing 30 percent of
20 their cases with that mix, are we going to be able
21 to, you know, have this for the other programs? Do

1 we have that kind of information?

2 MS. PAQUETTE: Those are two other pieces
3 of information. The audit does not require that so
4 that data was not available to me as I was compiling
5 these charts. There is a PAI report that they are
6 compiling, and the only way I am aware that we would
7 know of the percentage of the types of plans, be it
8 Judicare, PAI, pro bono or others would be through
9 their PAI plan that was submitted to Legal Services
10 for approval, so there are three distinct groups of
11 documents that we would have to go through to gather
12 this information, but it is not available just
13 through the audit process. Some of the audits will
14 say it is a pro bono plan or a Judicare plan, but
15 many programs have mixed models and that is not
16 elaborated on in their audit.

17 MS. BERNSTEIN: Do they tell us what the
18 program mix is?

19 MS. PAQUETTE: The PAI plan is where it
20 would be. That had to be approved.

21 MS. BERNSTEIN: But the PAI plan is not

1 necessarily how it happened because they have got to
2 deal with reality after they plan in theory.

3 MS. PAQUETTE: I am not aware where we
4 would get that exact data.

5 MS. BERNSTEIN: I guess the staff, without
6 asking for people to put themselves on the line for
7 information that evidently is not quite there yet.
8 You see the sense of my question. I am really
9 trying -- I would like us to have some more
10 information because I think an ancillary part of
11 this whole discussion is not only whether or not
12 programs are funneling out money, but whether or not
13 they have made the right decisions in the way they
14 are funneling out the money, and I know that this is
15 something that is hard for us to compile the data,
16 but I would like to have, to the extent we can, as
17 much information at the next meeting on whether or
18 not the decisions, even if a program is 12-1/2
19 percent, you know, expenditure, whether or not that
20 is resulting in a decent amount of cases closed. In
21 other words, I would like the cases closed out there

1 at the very least.

2 MS. PAQUETTE: And I would like to note
3 that since this committee is redrafting the
4 regulation, that is the time to get that type of
5 language in there if that is what you want in the
6 future, because that helps us with the consistency
7 of the data that we are collecting.

8 CHAIRMAN WALLACE: Before you get off, the
9 kind of information we are looking for I think has
10 been communicated from this committee. We would
11 certainly like to see it by the next board meeting.
12 I think we would all like to see it, if possible,
13 about 10 days before the next board meeting, and it
14 ought to go out not just to us, but all the programs
15 that get the board book on a regular basis through
16 the mail. When you send it out please do a cover
17 letter and say look, we would like to be able to
18 vote on this thing in Detroit, if we possibly can,
19 and if you folks have responses to make, try to get
20 it to us before Detroit so we will have a chance to
21 digest it instead of just trying to read it around

1 the table. I think it is in everybody's interest
2 that we resolve this matter but not on incomplete
3 information, and if we can just say here is what we
4 got, look it over, give us a response in writing so
5 we can all look at it in advance and then let's all
6 talk about it in Detroit, maybe we can get this show
7 on the road. I think we have come a long way down
8 the road with this information and I appreciate your
9 help on it.

10 MS. PAQUETTE: Thank you.

11 CHAIRMAN WALLACE: Let me state the
12 Chair's intentions at this point. I do want to get
13 public comment on things we have been talking about.
14 We have other witnesses from the staff on PAI. I
15 think we ought to finish them and get public
16 comments on everything that was presented.

17 Mr. Osterhage, if you would come forward
18 and give us your report we would appreciate it.

19 MR. OSTERHAGE: I am in the Program
20 Development and Substantive Support Unit, my name is
21 Keith Osterhage.

1 Pursuant to the comments that just
2 preceded me I would like to speak to those
3 immediately. The program development staff who I am
4 representing in the comment part here, we are just
5 one segment of staff working on this along with
6 audit and general counsel and led by Patricia
7 Paquette and Tom Bovard. The materials that we
8 submitted specifically are trying to be in tune and
9 reflect the tone which Mr. Wallace has just provided
10 us, that is it is not enough to look only at the
11 input side of PAI, we need to look at the outcome or
12 the output side. We are hopeful that our
13 cooperative efforts with the Office of Information
14 Management and the data which they collected and
15 compiled will be disaggregated and plugged into new
16 charts where we will have columns of what the
17 percentage expenditure was, what was put into the
18 PAI, and the percentage of total cases that were
19 completed by PAI, so I have some measure of
20 comparison in that regard.

21 Moreover, we would like to identify those

1 programs which are extremely successful or on the
2 successful end of whatever that distributional
3 pattern looks like. We feel that both the
4 Corporation and other programs, particularly those
5 with difficulty in PAI, might be assisted if the
6 staff is able to identify those successful programs
7 and then identify those elements of successful
8 programs which could be adopted by others.

9 Because PAI and related pro bono
10 activities are of great importance and because the
11 staff of Program Development is very supportive of
12 this concept, we have proceeded and are now in the
13 process of recruiting a specific coordinator for PAI
14 and pro bono activities, and we hope once again in
15 the future, the monitoring of PAI, to keep tabs on
16 these types of statistics for timely presentation to
17 the board, should be addressed by having that
18 position filled. Moreover, that coordinator, in
19 addition to monitoring and attracting PAI will also
20 be available in the program development sector of
21 the Corporation to provide assistance to those

1 programs who are requesting it and the coordinator
2 will be able to do it for a number of reasons.
3 Number 1, that will be their specific area of
4 expertise. They will be tracking the statistics
5 and will be able to identify more successful aspects
6 of the program. And third, they will be situated in
7 the program development unit which is engaged in
8 developing alternative systems and using the private
9 sector, they will be able to draw on the models we
10 are developing to see if they are applicable for use
11 by local programs in developing the PAI requirement.

12 Beyond that, the reports submitted by
13 Program Development, there are two in this booklet
14 here. One basically summarizes the national
15 aggregate statistics on PAI data, and we feel that
16 upon reviewing the information that we have to date
17 and working in conjunction with the report submitted
18 by Marjorie McDiarmid of the Northern Virginia
19 office, there is a great deal of agreement that PAI
20 has become in the national aggregate sense
21 increasingly successful to the point that the

1 learning curve, if you will, has gone up so that by
2 the fourth quarter of 1984 we saw 13.84 percent of
3 cases closed resulting from PAI. We know from the
4 audit information that whether you use a weighted or
5 a discrete average, between 12.1 and 13.1 percent of
6 the funds that have been expended by those cases
7 listed in her audit report were expended for PAI, so
8 we are seeing an expenditure which is resulting in
9 an output that slightly exceeds the expenditure.
10 Because those are aggregate statistics, it only begs
11 the question more. That is to say, give us a
12 distribution so we can identify those that are more
13 successful, those that are average and those that
14 need assistance. Our unit would like to be
15 providing that to you by the next meeting, that in
16 conjunction with our appointment of a coordinator.

17 The other presentation which we provided
18 to you was a paper which outlined the scope of this
19 aggregate analysis and rankings. The national data
20 suggests not only are over 12-1/2 percent of the
21 cases being provided by PAI but staff is suggesting

1 the hypothesis that those cases are probably, since
2 all cases are not equal, that the cases closed by
3 PAI are probably more complex, and therefore we also
4 need to address not just total number of cases or
5 percentage of total cases, but to look at the types
6 of case areas and the reason for closure. Part of
7 this is just logical. We feel that because of the
8 intake and referral process, this a relatively
9 simple case, of course, logically it would be
10 handled by the staff program. It would not make
11 sense to refer it. I'm not suggesting that the
12 staff programs do not do complex cases. I am
13 suggesting that the logic of the system suggests
14 that they probably would be doing more complex cases.
15 We need to look at that as well because that says
16 something about the cost effectiveness to the cost
17 benefit of PAI. It is not just a matter of looking
18 at 12-1/2 percent of the money producing 12-1/2 of
19 the cases. If those cases are weightier or more
20 complex, this is a cost beneficial use of the money.

21 In getting over 13 percent of the cases

1 there is another factor in reporting the cost
2 effectiveness of this regulation. That would
3 basically be the essence of the program development
4 comments but I would be happy to answer specific
5 questions.

6 CHAIRMAN WALLACE: I appreciate the
7 presentation and I think we all agree we are going
8 to need some more detail on it. I am impressed by
9 the data that 32 percent of court cases are handled
10 by PAI, but I can see just looking at it that that
11 is because a lot of the cases are going to be
12 domestic and you don't deal with a domestic matter
13 without a court decision. That is going to skew the
14 data a little bit. The other graph 3 includes
15 negotiated settlement, et cetera, and gets it down
16 to 22 percent, but those I would think look like
17 complicated cases on the face of them as much as you
18 can make out of statistics. Obviously we have got,
19 just by the nature of the beast, some things that
20 skew the data a little bit and I am glad you are
21 going to be looking into it because I want to see

1 what wild factors that are in here that may account
2 for these figures. Certainly it is encouraging data.
3 Closing cases is not a perfect way to measure what
4 you are getting for your money.

5 MR. OSTERHAGE: Just as we have seen a
6 learning curve of the programs adjusting to this
7 regulation and their output performance rising over
8 time, a natural phenomena, so I think we will be
9 seeing a learning curve in terms of the output curve
10 of cases produced because in the initial years of
11 this regulation and the initial phases of PAI there
12 was probably a lot of time and money searching for
13 the best mix for a given locale. There was probably
14 a higher proportion spent on training, establishment
15 of private attorney programs, and likely we would
16 hope to see on the output side the curve there where
17 output will increase even more. I regret that we
18 have been more than perfect in assigning on a more
19 full-time basis a specific office or individual in
20 the Corporation to coordinate, assist and track, but
21 I want to repeat to you again in that regard there

1 is a position that has been allocated. We are now
2 in the process of recruiting for that and I feel if
3 it is the Corporation's regulation it is our
4 obligation to have such a person to track that
5 regulation.

6 CHAIRMAN WALLACE: It is not just the
7 regulation, but I think as the chairman of our board
8 has stated constantly we need to find creative new
9 ways to leverage the money with private involvement.
10 This may be the most important stuff we have got
11 going on right now. I think the full-time
12 coordinator is worth the investment.

13 Any questions of this witness, members of
14 the committee and members of the board?

15 We thank you, sir. We appreciate your
16 time and work and we look forward to further data
17 coming to us in the next few weeks.

18 We will hear next from Mr. Daniel Nusbaum
19 of the audit division.

20 MR. NUSBAUM: Mr. Chairman.

21 CHAIRMAN WALLACE: Mr. Nusbaum, thank you

1 for being with us this morning.

2 MR. NUSBAUM: Thank you, I am Dan Nusbaum,
3 director of the Audit Department.

4 Since the last committee meeting, I have
5 basically rewritten the section of the PAI
6 regulation which deals with accounting and auditing
7 matters. I understand that some of the comments
8 that have been raised concern the regulation dealing
9 with the amount of paper work and recordkeeping that
10 the Corporation requires. As I note in the written
11 report that I submitted to the committee, any time
12 that the Corporation issues a regulation where we
13 require the expenditure of funds for a specific
14 purpose, it is always going to be necessary for the
15 Corporation to I impose a certain amount of
16 accounting requirements and audit requirements in
17 order for us to demonstrate compliance, for the
18 recipients to be able to demonstrate compliance and
19 to monitor that compliance.

20 In rewriting section 1614 that deals with
21 accounting and auditing matters, one of my

1 objectives was to try to eliminate some of the
2 paperwork but retain those characteristics that I
3 think are needed to provide the minimum accounting
4 and auditing standards required.

5 The major changes which I have
6 incorporated into the regulation are as follows:
7 First, we have changed the timekeeping requirements
8 so that staff attorneys and paralegals only have to
9 account for that portion of their time that deal
10 strictly with PAI activities. As currently written
11 we have been requiring them to account for 100
12 percent of their time. We basically concluded that
13 could be a little burdensome and we feel we can
14 gather the same information required by requiring
15 them to account for PAI time.

16 Another thing we have done is to delete
17 the requirement for programs which use Judicare
18 systems to establish an encumbrance system. That
19 should definitely ease recordkeeping requirements.
20 It will eliminate the need of keeping track on a
21 detailed basis of some of the cases assigned to

1 different attorneys. I still think they should do
2 this to monitor the PAI expenditures.

3 The third thing we have done is to clarify
4 the audit requirement. The way it is currently
5 written programs are required to report their PAI
6 expenditures in basic financial statements or in a
7 separate supplemental schedule. Through our review
8 of the December '84 audits and also some of the
9 problems Pat encountered, there is such a wide
10 disparity in the way PAI expenses are being reported,
11 we can't really get a good handle on what is going
12 on. Some programs will report a one line item
13 expense, PAI expenditures, \$14,000, Legal Aid
14 Society in New York was one of them which is why we
15 were not able to provide a breakdown of the expenses.
16 Some of the programs would explain their PAI
17 activities and expenses in a footnote to the
18 statements. To me that does not have the same
19 weight as a schedule or separated accounting for it
20 so what we are going to require now is that PAI
21 activities, the income and expenses which are

1 allocated to PAI activities must be reported as
2 separate funds in the basic financial statements.
3 This will result in all programs using the same
4 reporting mechanism and it will enable the
5 Corporation to accumulate this data, do comparisons,
6 it should be a lot more accurate. We won't have the
7 problems that we are having now as we try to
8 determine what programs are doing.

9 I think what I have accomplished in
10 rewriting this section is to make it clearer, to
11 make it easier to understand and hopefully to
12 eliminate I guess some of the problems that have
13 been raised as far as what is required, what is not
14 required and what should we do.

15 As usual, I would encourage recipients to
16 contact the audit division if they have any
17 questions. We are always more than willing to try
18 to help before a problem develops. I think if we
19 get more of a dialogue going we can express what we
20 think needs to be done and they will know what we
21 expect.

1 I would also like to note in the staff's
2 version of the recommended regulation we have made
3 provisions for waivers of both the accounting
4 provisions that are set forth in the regulation and
5 for the accounting and auditing requirements of
6 subgrants. Hopefully I believe there should not be
7 need for too many waivers for the accounting
8 provisions. Subgrants, we are always willing to
9 grant waivers and be as flexible as possible in
10 dealing with subgrants, because I know the
11 requirements can be burdensome to some organizations,
12 and we will be willing to give waivers. My main
13 concern is as long as we maintain accountability for
14 LSC funds, we can grant waivers.

15 CHAIRMAN WALLACE: Let me ask one general
16 question and then I will have some specific
17 questions as well, but the last thing you wound up
18 on subgrants is something that has concerned me
19 because I have heard complaints from bar
20 associations that in order to be involved in pro
21 bono or any other form of PAI, they have got to redo

1 their books altogether to comply with our audit
2 requests.

3 I want us to have the information we need
4 to do our work, and I want you to get the
5 information you need to tell us what we need to do,
6 and I hope that what we have got here is going to
7 work out to be the maximum information for the
8 minimum restraints on the field. Are there further
9 steps that we can take internally so we can deal
10 with the audits that are being sent to us as we get
11 them rather than setting out a whole bunch of rules
12 for how the audits have to be made. The question is
13 really are there changes that we can make that will
14 help us deal with the information we are getting
15 without having to tell 200-some-odd programs you all
16 have to make a bunch of changes in order to help us
17 understand what you are doing. If we have to tell
18 them to do it in a particular way because that is
19 the only way we can get the information, let's do it,
20 but if there are changes that we can make that will
21 help us to get that information from the raw

1 material they are sending us without us having to do
2 a one size fits all from everybody in the field.
3 This is a very general question. I hope you
4 understand it. Can we put ourselves out a little
5 bit to keep from having to put them out a whole lot?

6 MR. NUSBAUM: I understand your question.
7 One of the problems is over the past few years I
8 have been asked to provide various people in the
9 Corporation and various board members with reports
10 on recipient activities. One of the problems we
11 always have in gathering that information from
12 audits is that no two audits are ever alike, and in
13 trying to put together information -- this is a good
14 example where we are trying to find out how much
15 money is spent on fees, contracts, in-house
16 personnel costs, in-house other costs, no two
17 programs are going to report it exactly the same and
18 it is hard to put that information together to get
19 national aggregates, and by -- I think by us
20 basically setting out a format, it kind of takes
21 away some of the problems the programs would have

1 themselves in reporting because they know what they
2 have to report. It is just a matter of initially
3 setting up their system to gather that information.
4 If we ever want to use the audit reports to be able
5 to generate national data, we are going to have to
6 come up with a consistency of reporting, and it is
7 one of the things that we have kicked around a lot
8 in the past couple of years. We have always had
9 some flexibility in the audit guides as to how a
10 program can report. Our main concern has been
11 accountability. Are all our funds accounted for,
12 are they spent properly and how much remains. The
13 in between can all be different, and I just think it
14 will help us as a Corporation to manage our program
15 and manage the recipients better if we start getting
16 more consistent data.

17 I don't see that as being real burdensome
18 to the programs.

19 CHAIRMAN WALLACE: Ms. Bernstein.

20 MS. BERNSTEIN: This goes along with
21 something you just mentioned. I know that Pepe is

1 not in here right now and we have got somewhere down
2 the line dealing with the audit and accounting guide,
3 I presume. I wonder how this dovetails with the
4 status of that? Did you cover this while I was out?

5 MR. NUSBAUM: No, we haven't.

6 MS. BERNSTEIN: Okay. I would just like
7 to know from you, just for information while we are
8 dealing with this question, what is the status of
9 the comments on the audit and accounting guide. I
10 presume the 90-day period is either run or pretty
11 close to having run for its publication or
12 availability, and I presume we are going to at some
13 point start addressing that thing as a whole, and I
14 guess my question is is if I presume what we do here
15 is going to impact on that as well, the general
16 audit and accounting guide.

17 MR. NUSBAUM: To answer a few of your
18 questions, the comment period ended on May 20th.
19 There are a few more still trickling in and we will
20 be accepting those and considering those. I am
21 going through all the comments. I have read them

1 all once. I am starting to put together a chart of
2 the various issues. It is something I want to
3 address in the very near future. I am hoping to get
4 the input of various board members, various staff,
5 and there are issues that I think we want to
6 reconsider, and one of them -- you know, this is
7 going to be totally new, is to have standardized
8 reporting, and I think that is something that is
9 going to definitely be helpful to the Corporation.

10 MS. BERNSTEIN: Have you gotten comments
11 from other grant-making entities in the Federal
12 Government regarding the use of standardized
13 reporting or standardized audit procedures and so
14 forth. I mean that is one of the questions, I know
15 that we are independent, but by the same token, we
16 have some similar problems to other grant-making
17 entities. If we have not received comments to this
18 point from other entities, I once again ask that we
19 go out and beg for those comments.

20 MR. NUSBAUM: Okay.

21 MS. BERNSTEIN: Because if we are going to

1 go to the trouble of getting this thing revamped I
2 would like to get as much input as possible into the
3 best way to do it, and I know that is not totally
4 restricted to this PAI question, but since this is a
5 part and it will reflect -- if a program is going to
6 provide standardized information, I think -- if I
7 were a program I would welcome that approach in
8 terms of my information not being subject to
9 misinterpretation by an uninformed or an allegedly
10 uninformed staff who is not there. In other words,
11 if it is a consistent way of reporting it it seems
12 to me that is the fairest approach.

13 MR. NUSBAUM: They do have to prepare an
14 annual budget and refunding application which has
15 standardized formats, and I think adopting something
16 like that for financial reporting gives us various
17 tools. We can put together national information,
18 and I think it is a useful tool. I agree with your
19 observation that it should actually make things
20 easier. You know, everybody then knows what is
21 expected. It is not like will this meet the test or

1 not.

2 CHAIRMAN WALLACE: Let me ask a couple of
3 specific questions with regard to the draft
4 regulation, and I am looking down at sub 2 --

5 MR. NUSBAUM: Is this the new one?

6 CHAIRMAN WALLACE: It says "this can be
7 done by establishing a separate fund to account for
8 the entire PAI allocation."

9 Now, I don't know if that is an auditing
10 term. If somebody told me to establish a separate
11 fund I would establish a separate bank account with
12 separate books for the entire 12-1/2 percent. I'm
13 not sure if that is what you mean and since we had
14 some talk already about whether or not you could
15 allocate property and depreciation and other things
16 to PAI, I don't know how you establish a bank
17 account full of depreciation, so if this does not
18 mean that, tell me what it does mean and what people
19 would be expected to do?

20 MR. NUSBAUM: It does not require the
21 establishment of separate bank accounts. It

1 requires the establishment of a separate -- a fund
2 in this terminology means a set of accounts to
3 account for similar type expenditures, and in this
4 case we are referring to PAI expenditures. A
5 program set up funds to account for LSC funds in
6 total as opposed to United Way support. They might
7 have funds by way of REGGIE grant. It is a way of
8 accounting for like type funds. What we are
9 requiring in this is to segregate those PAI funds
10 apart from the normal LSC funds or if there are
11 migrant funds or Native American or whatever. It
12 highlights those in a separate column in the finance
13 1458 statements so one can look at those statements
14 and see the types of expenditures spent on PAI
15 activities. We could probably play with that
16 language a little bit to take out that possible
17 misconception.

18 CHAIRMAN WALLACE: I mean this is going to
19 be read by program's bookkeepers, accountants and
20 auditors and they may know exactly what this means
21 and this may be the best way to put it to convey it

1 to the people who need to have the information. I
2 am a lawyer and not an auditor and I would not know
3 what you meant by that. If this is the best way to
4 convey it to other accountants and auditors, let's
5 leave it as is, but if there is a better way, let's
6 work on it.

7 MR. NUSBAUM: My objective is to make this
8 as clear as possible, so if it is confusing to some,
9 it may be confusing to many.

10 CHAIRMAN WALLACE: One of the things that
11 we have gotten in our comments is that we require
12 audit compliance of subgrants for pro bono projects
13 and subgrants for bar associations. We don't
14 require audit compliance for direct delivery by
15 private attorneys, private firms, and I don't know
16 which side of that divide Judicare falls on.

17 Now, in the material that Mr. Daugherty
18 presented earlier, I saw Greg Hartley's explanation
19 of why that was. What does this regulation do with
20 that provision? Do private attorneys have to audit
21 the funds sent to them in the same way, is the

1 division that previously existed still here, how do
2 we deal with that division in PAI and the regulation
3 as you have it?

4 MR. NUSBAUM: Well, in general, contracts
5 with individual attorneys are more or less going to
6 be on a case by case basis where you are paying for
7 a service performed for a particular case so it is
8 like a normal billing mechanism. Here is a case,
9 bill me when it is done, I pay you.

10 The problems with subgrants, particularly
11 when we originally set up 1627, a lot of times you
12 take \$10,000 and turn it over to an organization and
13 there is no billing process involved. When you do
14 something like that, you tend to lose the
15 accountability for that \$10,000. There is no checks
16 and balances with somebody submitting an invoice
17 which is reviewed to make sure the services were
18 provided and then the bill is paid. So to go into
19 the reason 1627 was developed is to give us some
20 control over where our funds are going and to ensure
21 that whenever those types of transfers are made,

1 that we can be involved in establishing some
2 accounting policies to get that accountability.
3 There are various ways of doing that. One is you
4 can have a subgrant of the bar association that will
5 submit like a monthly invoice and we have done this,
6 please send us 1/12 of the agreed upon amount and if
7 the program is satisfied that has been done they can
8 make the payment, but you need some requirement that
9 once that money is transferred, that there is some
10 accountability for it.

11 CHAIRMAN WALLACE: Okay. I guess the
12 short answer to the question of whether it is a good
13 idea or not, nothing in the regulation that you have
14 got here really changes the status quo on that. If
15 you have a contract with a private attorney to do
16 divorces, that is not a subcontract, and it is not
17 governed by the general accounting guide. If you
18 set up a pro bono program for the local bar that is
19 a subgrant and is subject to whether or not they can
20 get a waiver, you use the audit guide. This
21 regulation does not -- this new draft does not

1 change the preexisting -- okay, I am still, I guess,
2 of an open mind on that question, because I think
3 when you are sending one case out to one lawyer, you
4 are just paying for services, and I don't see why
5 you need all the audit. On some of the projects we
6 are working on we are doing packages deals. We are
7 saying to a law firm you are going to do 50 divorces
8 for us at \$100 a divorce, and that begins to look
9 more like a subgrant than an ordinary lawyer-client,
10 one-case, bill-by-the-hour sort of relationship, and
11 I'm not an auditor, I don't know whether we need
12 information to track what is going on in those
13 package deals or whether we don't, but it is a
14 concern that I have got, and I am certainly open to
15 anything that the staff has to say or anybody else
16 has to say as to where those package deals ought to
17 fall? Are they more like one lawyer, one client,
18 one case, or are they like sending a check to the
19 bar association to set up a pro bono situation.
20 Those things in the middle, I don't know where they
21 ought to be. I'm asking you to think about it so

1 maybe we can make a decision as to where they ought
2 to be.

3 MR. NUSBAUM: On things like that, I feel
4 I can provide programs with good advice when I know
5 about the types of arrangements that are being made.
6 Something like that, just off the head, a program
7 would not want to pay for 100 future cases all at
8 once. They would want to put out a little seed
9 money to get the thing going and as 10 cases are
10 done the lawyer will report. If the program is
11 satisfied these services will be provided, then it
12 is okay to make the payments, but any time you like --
13 even with a private contractor you pay up front, you
14 lose control. The guy can just walk away and say
15 thank you. So we have to kind of use some common
16 sense, but I think --

17 CHAIRMAN WALLACE: Well, maybe that is a
18 problem that can be better handled by common sense
19 than by regulatory definition. It is something we
20 have gotten a lot of comments, why the distinction
21 between pro bono projects and contracts with private

1 lawyers and we ought to have an answer to that.
2 Maybe the answer is we have got to work it out case
3 by case with common sense. If that is the answer,
4 let's be sure it is the best answer.

5 MR. NUSBAUM: I haven't seen all the
6 comments and maybe I should get a hold of them to
7 get a flavor of them.

8 CHAIRMAN WALLACE: You have been through
9 the audit guide and I have been through these
10 comments.

11 MS. BERNSTEIN: I would suggest that if
12 you have not been in contact with other grant-making
13 entities that also have this kind of incentive for
14 getting it done problem and getting it done
15 competently, that you might want to talk with other
16 entities that are providing services, whether it is
17 the Education Department or HHS or -- you know, I
18 just think that we have got to get as much expertise
19 as we can in terms of utilizing our common sense in
20 as clear a way as possible, so that people know what
21 we expect and there is not this kind of

1 misinterpretation of motives just because we are
2 trying to manage the dollars properly.

3 CHAIRMAN WALLACE: I have one other
4 question which may be highly technical, but it needs
5 some clarification, I think, and this is in D-1 sub
6 I where you talk about timekeeping records.
7 Timekeeping requirements does not apply to such
8 employees as receptionist, secretaries, intake
9 personnel or bookkeepers.

10 My question is whether or not that is
11 ambiguous. Does that mean you cannot allocate the
12 time of those people to PAI or does it mean you can,
13 you just don't have to keep records of what time
14 they actually put in on it?

15 MR. NUSBAUM: The second one.

16 CHAIRMAN WALLACE: It means the second one.

17 MR. NUSBAUM: You can allocate, but we are
18 not putting the burden on them of keeping time
19 records. The reason behind that is somebody like an
20 intake person is not going to devote large sums of
21 time to a given activity.

1 CHAIRMAN WALLACE: Okay, that may be
2 something that we need some clarifying language on
3 because looking at that, that is the first thing
4 that came to my mind, does this mean you can't use
5 these people for PAI or does this just mean you
6 don't have to keep records, and these are not highly
7 paid folks and it is probably not something that we
8 need to burden them with a whole lot of records on,
9 but we better make clear that people understand what
10 we are telling them on this point. If by June we
11 could have a little language that says you can
12 allocate these people's time but you don't have to
13 keep records on it, let's put it in here so we
14 understand what we are talking about.

15 Those take care of my detailed questions
16 on the nuts and bolts of regulation.

17 Ms. Bernstein, or anybody else on the
18 committee or board, do you have questions for the
19 witness?

20 MS. BERNSTEIN: This is a followup on that.
21 I guess this goes back to the question that I was

1 talking with some of the other staff about earlier
2 in terms of our breaking down and getting
3 information that we need. Obviously one of the
4 questions in terms of this entire private attorney
5 involvement is whether or not we are getting
6 accurate reflections in terms of what productivity
7 are we getting with our money, and the allegation is
8 made that staff attorneys are doing or staff is
9 doing intake and therefore it is unfair to assume
10 that cases closed should all be attributed to the
11 12-1/2 percent when we have had staff time involved
12 in doing the intake.

13 Now, what I just think I heard you say was
14 that if staff time was involved in doing the intake,
15 that is definitely part of the 12-1/2 percent, right?

16 MR. NUSBAUM: Right.

17 MS. BERNSTEIN: We are giving them credit.

18 MR. NUSBAUM: It is logical if an intake
19 person is receiving calls and screening going both
20 ways to the staff model, to the pro bono model, that
21 part of that time would be allocated to the 12-1/2

1 percent, but we are not requiring strict time
2 records on that. They can be done on percentage of
3 cases going one way versus percentage going the
4 other way.

5 MS. BERNSTEIN: I guess what I'm asking
6 you is, are we setting up a mechanism that is going
7 to give us a defensible analysis of what is
8 happening where so that we aren't constantly in a
9 philosophical battle when we ought to be simply in a
10 numbers question. You see what I'm saying? There
11 is going to be the allegation that you are
12 misinterpreting this if we go one way or the other
13 and I am simply saying can we set this up in such a
14 way when reviewing this allocation that it is
15 defensible?

16 MR. NUSBAUM: One of the things we do when
17 we go out to programs is review their allocation
18 methods and I don't agree with them all and we
19 recommend changes in some of the ways things are
20 being done. For the most part, as long as it is a
21 well documented, reasonable basis of allocation, it

1 would appear to be a reasonable PAI expense.
2 Especially if it is like 100 percent pro bono model
3 where you are not making payments to the outside,
4 all your costs are going to be to the inside.

5 MS. BERNSTEIN: But that is accounting for
6 the 12-1/2. All I am saying is we are giving them
7 credit then for the staff that is devoted to that.

8 MR. NUSBAUM: Right.

9 MS. BERNSTEIN: And the same if it is
10 mixed. If they are making an assessment -- Mike, if
11 you think I'm --

12 CHAIRMAN WALLACE: I understand what you
13 are saying.

14 MS. BERNSTEIN: This is too dumb a point
15 to be dealing with, somebody please say you are --
16 this is really a concern to me because as Mr. Smegal
17 has pointed out at various times, well, you know,
18 the staff is doing the work here so the productivity
19 should be attributed to the staff. What I'm saying
20 is that if we are going to give them credit for the
21 private attorney involvement for the staff work, we

1 need to have that tied down in such a way that it is
2 clearly tied to that.

3 CHAIRMAN WALLACE: I agree with that. I
4 am wondering -- and that's why I am 100 percent for
5 time records on legal personnel -- I'm wondering
6 whether -- I take the sense of this provision to be
7 that time records for nonprofessional personnel may
8 be more trouble than they are worth as long as there
9 is some reasonable method of allocating the nonstaff
10 person's time.

11 Now maybe we need to say, just to make it
12 clear to everybody in this section, that you don't
13 have to keep time records on these people, but you
14 have to have some reasonable way of allocating their
15 time in between PAI and their regular staff duties.
16 Now, one thing you mentioned is you look at the
17 number of cases and if half the cases they did on
18 intake went out and half the cases stayed in-house,
19 you could split their expense down the middle.
20 There may be other reasonable ways to do it and
21 maybe we need to have some language saying we are

1 not telling you to keep minute by minute time sheets
2 on your nonlegal personnel, but if you want to use
3 their time and allocate their time to PAI, you have
4 got to have some reasonable method of doing it, and
5 we will give you some flexibility on it. Maybe we
6 need some language to make that clear.

7 MR. NUSBAUM: I think that would be
8 relatively easy to accomplish by adding a sentence
9 saying, however, a reasonable basis of allocating
10 these employees' time should be developed.

11 CHAIRMAN WALLACE: Obviously we are
12 speculating, but I think you have seen some audit
13 reports and presumably some of those audit records
14 do try to allocate nonprofessional staff time to PAI.
15 For the most part is it being done in a reasonable
16 fashion or have we got real problems; we need to
17 have it spelled out how to allocate nonprofessional
18 staff time to PAI.

19 MR. NUSBAUM: From what I have seen or
20 from the information or feedback I get from the
21 auditors, in the majority of cases it is reasonable.

1 There are cases we recommend changes as to what is
2 being done and I prefer not to spell out step by
3 step because there is always variations on the theme.
4 I find I run into a problem when you try to hit
5 every case because you never will.

6 CHAIRMAN WALLACE: I think you understand
7 Mrs. Bernstein's concern with which I concur. We
8 don't want to overload people with timekeeping
9 burdens they don't ordinarily keep. If you think
10 you can be sure they have some reasonable basis for
11 the allocation, work it out program by program,
12 let's do it that way until problems do arise. If
13 they do arise, we will have to say keep the bloody
14 time sheets, but that is the next step down the road.

15 Any further questions from members of the
16 panel, the committee or the board to Mr. Nusbaum's
17 report on the audit regulations?

18 With that, Mr. Nusbaum, we thank you. We
19 appreciate your effort on it.

20 The final witness will be from the general
21 counsel's office. Terry Duga is going to present

1 the draft regulations we have been working on. I'm
2 going to ask Mr. Bovard, if he is in here, to join
3 Mr. Duga. He has been primarily responsible for
4 drafting these regulations.

5 MR. DUGA: I would like to start this for
6 the benefit of people in the audience, too, we are
7 working from a draft, copies of which are looseleaf
8 over on the table. The reason being that, which got
9 in the book, we learned a new method on the Wang on
10 how to do crossouts and back-crosses. As with
11 anything else that is new, we had some mechanical
12 problems getting it to come out right. I think that
13 we have got it worked out now and we know what we
14 are doing with it, but there were some typos in the
15 draft that found its way into the book.

16 The first changes that we have made in the
17 staff recommendation occurs in 1614.1A. In the
18 first sentence we have rewritten it a little bit
19 dropping out "provide direction to" and "on
20 allocating." The sentence reads, "This is designed
21 to ensure that recipients of Legal Services

1 Corporation funding allocate a substantial amount of
2 their financial support."

3 This is more technical change, and again
4 provides the impetus that we are ensuring that this
5 is done. It is a little bit stronger language, but
6 not really much change in substance.

7 MR. SMEGAL: Is this a result of comments
8 that you received?

9 MR. DUGA: This is actually a result of --
10 you may perhaps have that.

11 MR. BOVARD: Just the fact that is
12 actually what we are doing, attempting to ensure
13 that recipients allocate funds. We are providing
14 direction as well, but the purpose of the reg is to
15 monitor this particular activity and to ensure that
16 people comply.

17 MR. SMEGAL: Isn't that, though,
18 inconsistent with the addition that you have made
19 that appears on the top of the second page. If I
20 understand that correctly --

21 MR. BOVARD: Substantial amount. If they --

1 the purpose of the reg with that addition would be
2 to ensure that the private bar involvement place a
3 substantial role in all of these programs, and that
4 is sort of -- if they have produced a certain case
5 load, that would indicate that they have met the
6 requirement that there be a substantial amount. The
7 12-1/2 figure for fund involvement is not a magic
8 figure, either. We are just trying to ensure that
9 private bar involvement play some role, a
10 substantial role.

11 MR. SMEGAL: My concern is that the
12 private bar involvement doesn't necessarily
13 correlate with the financial numbers. You come back
14 to the situation where, as we have in New Hampshire
15 is one we were talking about earlier, where you have
16 a statewide pro bono program, and to try to
17 correlate that with the expenditure of Legal
18 Services Corporation funding is really apples and
19 oranges.

20 MR. BOVARD: That is why we have added the
21 provision on the next page about the percentage of

1 cases --

2 MR. SMEGAL: The first sentence seems to
3 be inconsistent with subsection B at the top of the
4 next page.

5 MR. BOVARD: We can change that back to
6 the other language, if you prefer.

7 CHAIRMAN WALLACE: I don't know how there
8 is that much difference between the other language
9 and this language. This language is more like
10 English and less like the Federal Register and that
11 is why I would prefer this, but I mean I don't think
12 any of the language says that we are guaranteeing
13 that anybody spends X amount of money, whether -- we
14 are guaranteeing that people allocate a substantial
15 amount of your financial support, I don't see how
16 anybody, even in New Hampshire, could do what is at
17 the top of page 2 without having some sort of
18 substantial financial support. Mr. Smegal's concern
19 is it is not a question of the verbs, it is a
20 question of what comes after allocate. Are we
21 trying to see to it that money is spent or to see to

1 it that service is provided, and maybe -- you know,
2 maybe the redrafting ought to be a little farther
3 down in the sentence -- I'm not trying to draft from
4 here. I think his concern is a reasonable one, and
5 you might see if there is some redrafting that we
6 could do here.

7 MR. BOVARD: We can refer to activity.

8 CHAIRMAN WALLACE: I'm not trying to back
9 off and say that we don't have to spend money and
10 you don't have to close cases, but I think we are
11 trying to say you have got to provide service and we
12 are looking at case closures and we are looking at
13 money to see what you are doing.

14 Ms. Bernstein.

15 MS. BERNSTEIN: Are we taking comments as
16 we go along? I just want to know what our procedure
17 here is.

18 CHAIRMAN WALLACE: I guess if Mr. Duga and
19 Mr. Bovard are going to walk through it section by
20 section, maybe letting the board jump in at any
21 point you have a question is the most efficient way

1 to do it and then when we get through it we will
2 open up to the floor generally.

3 I don't want to get -- I said a few
4 minutes ago I want to get through the whole staff
5 and then open to the floor, but when walking through
6 this, let's let the committee jump in when it has
7 questions on its mind.

8 MS. BERNSTEIN: Mike, you and I talked
9 about this briefly, and as Mike explained, we have
10 not had this for very long, so I am just concerned
11 about this 20 percent figure. I'm not so sure that
12 is the right one. I guess what I would ask for in
13 June is a little more development as to, you know,
14 what our experience has been, all of the programs
15 that are actually expending 12-1/2 percent, what is
16 their actual productivity. Is that a decent measure,
17 should it be higher, lower? What I don't want to do
18 is be like, you know, be like a teacher that says
19 you can get an A in this class if you do just X
20 amount and discourage exemplary efforts by saying
21 don't spend more than this. If you are producing X

1 amount don't spend more than this, and I don't want
2 that to be the message that we are sending out
3 because the bottom line is amplified services for
4 clients, and I don't want anything that we are
5 putting in this to seem to put a cap on the services
6 that we are providing to clients.

7 CHAIRMAN WALLACE: I think when we get the
8 further information that we have asked Ms. Paquette
9 for next month, case closure by program, we will see
10 what people are doing as far as case closures and we
11 will have some basis for whether or not 20 is a good
12 number, too big, too small or whether we ought to do
13 it at all. It may be case closure is all over the
14 board in relation to compliance, and this is an idea
15 that just won't fly. We can make a decision after
16 we have seen the case closure numbers next month.

17 MS. BERNSTEIN: I know our computer is
18 learning all sorts of ways to churn out the
19 information that we keep asking for, and I
20 appreciate the difficulties involved in getting this
21 stuff together, but to the extent that we can see a

1 trend -- in other words, we have got a complete year
2 at 10 percent. We have now -- we have just recently
3 completed a year at 12-1/2 percent. I would like to
4 be able to look at each program and their case
5 closures, because startup problems I think we have
6 to discount to some extent. Any time you start
7 something new, you have got to look at the problems
8 that are involved in getting in the swing of things.
9 Therefore, I would like to see whether or not those
10 programs that did expend 10 percent the first year
11 and then did expend 12-1/2 the next year, what their
12 productivity is, I would like to see that all across
13 the line for each program so we can see whether or
14 not there is a trend that is related to whether or
15 not a good faith effort was given the first year.

16 CHAIRMAN WALLACE: Mr. Osterhage looks
17 like this is impossible.

18 MR. OSTERHAGE: It is possible. As we
19 have reported in the aggregate data, and we are
20 talking in the same wavelength in terms of this
21 curve, it is not until the fourth quarter of 1984

1 where we go over that 12-1/2 percent in terms of
2 output. If we look on our computer which generally
3 represents the data on an aggregate level for the
4 year and look at the total of what was output in
5 1984 and then look at what what input in terms of
6 expenditure we are not going to be anywhere near
7 that 12-1/2 or that 13.39 percent because that curve
8 was proceeding up quarter by quarter, and what we
9 may want to do is if we can make assumptions about
10 equal quarterly distribution of funds, look at the
11 last quarter as being the most relevant or the most
12 recent. Perhaps we should present it both ways, but
13 if you don't you are going to get an average that
14 suggests only 7 or 8 percent.

15 CHAIRMAN WALLACE: I am going to depart
16 from my rule and let Mr. Houseman speak.

17 MR. HOUSEMAN: Just on this minor point.
18 Case closures follow substantially in time from when
19 the money was initially expended so you can't just
20 look at the case closures for '84 and look at the
21 money. The case closures for 12.5 aren't going to

1 show up until '85 and '86 and it is not initially
2 going to track so simply. You have to take that
3 fact into account when you make these kinds of
4 comparisons.

5 MS. BERNSTEIN: I am not disagreeing with
6 you. I'm simply saying I think it behooves this
7 committee and the board to be trying to track what
8 factors go into --

9 MR. HOUSEMAN: We agree. I am going to
10 say some things about that later.

11 CHAIRMAN WALLACE: Let's do the best we
12 can with the data between now and June because I
13 think we are getting on the right track with this
14 stuff. But there are wheels within wheels on it, so
15 having dealt with 1416.1 you may all have some more
16 to say about it. Let's get back to where we were.

17 MR. DUGA: Just minor, really. Halfway
18 through we have changed private bar involvement from
19 the original -- this is still on page 1 right above
20 the slashed out areas. We have changed "bar" to
21 "attorney" just for the consistency of having

1 private attorney involvement and probably to put the
2 letters PAI up early so we can use that instead of
3 private attorney involvement. We dropped out the
4 last sentence in the original reg which dealt with
5 waiver since again we have a new waiver section
6 which covers it.

7 We have then on page 2 added the language
8 we were just talking about, which basically again
9 tries to get to the idea that there are more ways to
10 measure substantial involvement than just spending
11 money. If you are getting the cases and the service
12 out there, then that is fine, you have met the
13 requirement. The 20 percent is not a magic figure.
14 That is subject to further study as you have pointed
15 out.

16 MR. SMEGAL: Terry, is the word "delivers"
17 a term of the art or something? Does everybody
18 understand what that means?

19 CHAIRMAN WALLACE: Maybe it should say "case
20 closures" if that is what we are actually going to
21 look at. Let's talk to our OFS people and whatever

1 statistic they would use to measure compliance with
2 this, let's put that in here. If it is case
3 closures, let's say this.

4 It could be "transfers," it could be "closed,"
5 whatever thing we want to use here, let's probably
6 use that word and talk to OFS about what is the best
7 way to measure.

8 MR. DUGA: The next change occurs on page
9 3. We have deleted the section B, which occurs in
10 the reg as it is written now which required state
11 support and national support to expend on PAI. We
12 have put in a new section B, which attempts to go
13 back to the original Instruction 83-6 which allows
14 in certain instances having a joint venture between
15 programs. At this point we allow it if the service
16 areas of the program are overlapping or coterminous.

17 It has been pointed out, and I don't want
18 to take Mr. Houseman's thunder away, there may be a
19 few other instances where there is a legit joint
20 venture. We have some programs that circle each
21 other, and in my view, if they are dealing with the

1 same bar association it may be very reasonable to
2 have a joint venture between the two.

3 The joint venture plan will have to be
4 approved by the Office of Field Services. There
5 will have to be a 12-1/2 percent expenditure of both
6 grants. Both have to be a bona fide participant in
7 the activities, and the staff requirement also says
8 that the joint venture must involve private
9 attorneys throughout the entire service area. Mr.
10 Houseman and I have a disagreement on that language
11 to some extent. In writing that provision, my
12 intention is that if you are going to have PAI, you
13 want to try to make it available to all the
14 attorneys in the service areas, particularly I
15 believe we have a concern where we have a large
16 number of rural programs where use of PAI may be
17 very beneficial in outlying areas where you have
18 access problems.

19 In C, we have just crossed out the
20 parenthased letters PAI since we have put them in
21 the first section.

1 On page 4 there has been some rewrite on
2 range of activities.

3 MR. SMEGAL: Excuse me, let me go back.
4 If I understand with respect to that subsection 4
5 under B, the concern is there be an availability for
6 private attorneys to be involved in the joint
7 service areas. Wouldn't your subsection 4 be more
8 accurate with respect to the comments if rather than
9 the word "involved" it read "must be available to."

10 CHAIRMAN WALLACE: Or provide opportunity
11 for involvement.

12 MR. HOUSEMAN: That is my concern.

13 MR. DUGA: Okay, I'm not trying to have a
14 set matter, but I do want it to be there so it can
15 be massaged some.

16 CHAIRMAN WALLACE: I think we all concur
17 to the sense of that suggestion.

18 MR. DUGA: Yes.

19 On page 4 the first subsection A has been
20 rewritten where we have dropped out subparagraph 1
21 and combined it into the whole section A. We are

1 indicating here that activities must include direct
2 delivery of legal assistance to eligible clients.

3 CHAIRMAN WALLACE: We are not saying how
4 they do it now. They don't have to do pro bono and
5 reduced fee and Judicare and private attorney, and
6 modified pro bono. All we are saying is you have to
7 do some direct delivery and these are the things you
8 can choose from to do it. This is a menu.

9 MR. DUGA: Indeed, it is not an
10 all-inclusive menu.

11 CHAIRMAN WALLACE: And it is still direct
12 delivery.

13 MR. BOVARD: That is the program such as
14 language to show this is not it in terms of what
15 they can do.

16 CHAIRMAN WALLACE: Okay.

17 MR. DUGA: We are suggesting that where we
18 talk about in the -- well, let's see, the seventh
19 line down where we talk about modified pro bono
20 plans, we further suggest that we remove the words
21 "modified pro bono" and just refer to such plans

1 that provide for the payment of nominal fees to
2 eligible clients. "Pro bono" being a term of art
3 meaning free, it seems to be kind of an anomaly in
4 terms of the way it was originally written. That is
5 just basically a clarification.

6 We have added some language to the
7 revolving litigation fund litigation prohibition --
8 that didn't make any sense -- the prohibition of the
9 uses of revolving litigation fund to clarify that
10 the prohibition is against payment of attorneys'
11 fees and I will get into that when we get to the
12 explanation of the revolving litigation later on.

13 CHAIRMAN WALLACE: Let me clarify what you
14 are proposing to do there in line 4, I guess, of
15 what used to be 1. You want to take out "modified
16 pro bono" and just say "those plans which provide"?

17 MR. DUGA: For the payment, which doesn't,
18 I think, change any sense of the reg itself.

19 CHAIRMAN WALLACE: I don't know whether it
20 does or not, but I understand what you are saying so
21 we will think about it between now and when we vote

1 on it.

2 MR. DUGA: We have added a new subpart B
3 which just clarifies what activities may be included
4 as part of pro bono.

5 CHAIRMAN WALLACE: Part A is mandatory and
6 part B is you can do this stuff, too, if you want.

7 MR. DUGA: Part B is suggestive, it's
8 guidance and direction.

9 On page 5 basically there is just some
10 relettering that is necessitated by the additions
11 that we have and the addition of an "'s" in now
12 newly designated subpart C, the last line right
13 above the l makes it a possessive. It is just an
14 English grammatical change.

15 Page 6 there is a new sub 4 which replaces
16 the old sub 4. This change is trying again I think
17 to get away from Federal Register language and into
18 more clear English. The sense has not changed of
19 what is to be provided, it is just the way we have
20 said it, I think this is a little bit clearer now.

21 CHAIRMAN WALLACE: I think that is useful

1 especially in light of what we heard from the folks
2 in Pennsylvania who had never heard of our support
3 systems and centers and we ought to make it clear
4 they ought to know about those things and ought to
5 be available to them if they need them. I think
6 that is what this language does.

7 MR. DUGA: Old sub D which runs from the
8 bottom of page 6 to page 10 has been completely
9 rewritten. We replaced it with the language that
10 Mr. Nusbaum read.

11 CHAIRMAN WALLACE: I think we have done
12 that already.

13 MR. DUGA: And I am not competent to
14 comment on that.

15 CHAIRMAN WALLACE: Okay.

16 MR. DUGA: Page 12, section 1614.4,
17 procedure, we have made some minor changes which
18 required the recipient to develop a plan and budget,
19 and removed the old language incorporate the plan
20 and budget required by 8-36 and I think this
21 recognizes the fact that 8-36 has been superseded by

1 the regulation. This has not meant to add anything
2 new, if there is a plan already in budget that has
3 already been approved and is working, and we are
4 clarifying that the plan and budget will be
5 incorporated as a part of the refunding application.
6 This I believe is already the case, so again this is
7 not adding any new paperwork.

8 Page 13, section 1614.5 deals with the
9 revolving litigation fund problem, I have attempted
10 to do some reworking on it. Revolving litigation
11 funds were a concern of Greg Hartley's and the use
12 thereof. Mr. Hartley knew that there were
13 legitimate revolving litigation funds, and there
14 were nonlegitimate revolving litigation funds.
15 Basically a program will have a fund from which
16 private attorneys who are serving eligible clients
17 can say I need some money. I don't have the money
18 to front the cost of this representation, can you
19 lend me some. The money is fronted. Somewhere down
20 the line when the case is over and the attorney gets
21 the fees from the lawsuit, he repays that which was

1 paid to him, so it goes back to the pool. There is
2 a concern if we are fronting attorneys' fees out of
3 this.

4 Usually in cases which allow for
5 attorneys' fees this is an incentive, I believe, for
6 the attorney to give that little extra effort. If
7 he is paid up front and doesn't have to pay back the
8 money, if he doesn't get any fees, I feel that takes
9 away the incentive and it is counterproductive.

10 On the other hand, it is my view that if
11 we have a case that is an eligible client, it is an
12 eligible type case, if we are encouraging the
13 attorney by saying you don't have the money to pay
14 for the cost and the expenses, we will encourage you
15 to take these cases, we will give you some money to
16 help pay for these costs and expenses. If you get
17 money out of it, you return that so we can help
18 other people. This is what the rewriting does. It
19 ensures that attorneys' fees are not funded, but it
20 does allow the legitimate use of funds for costs up
21 front, and it also adds if you are going to use this

1 type of fund, it has to be a case where an eligible
2 client is being represented and a case that would be
3 eligible for the recipient to take.

4 CHAIRMAN WALLACE: Let me ask you about
5 this part B, because I think I almost like the old
6 language better than what you have got here. This
7 reads that you can get costs and expenses incurred
8 where you are representing an eligible client in an
9 appropriate matter whether or not that was referred
10 to you through Judicare or pro bono, whether or not
11 we ever had anything to do with it. Looking just at
12 this language I could walk into Central Mississippi
13 Legal Services and say hi, I have been representing
14 an eligible client, a case you could have taken; I
15 think you should give me my fees and expenses. That
16 language looks to me like it says that you can.

17 MR. DUGA: That is actually exactly what
18 the language says and I believe it is legitimate.
19 If a client comes to you, say, in a Social Security
20 case. You are a small private practitioner. You
21 don't have a large fund. You are taking the case.

1 This is a client that could also get serviced
2 through the local program. The client happens to
3 have come to you. You are looking around, you have
4 some money that is going to have to go out up front.
5 The client obviously does not have the money by
6 definition to be eligible. You are small time, you
7 are needing help. My understanding of revolving
8 litigation funds, at least the legit ones, just for
9 that instance, is to take care of a client that has
10 made it to you and you need some help.

11 CHAIRMAN WALLACE: At the very least I
12 ought to call up Central Mississippi before I do it
13 and say hi, I have somebody that came to me that
14 could have come to you and I don't mind doing it,
15 will you give me the fees and expenses, but I think
16 I ought to do that before I file the suit instead of
17 coming in after it is over. I don't know how you
18 control that because every lawyer in Jackson could
19 go down and say give me my expenses.

20 MR. DUGA: The intention is that it is
21 either before it is over with --

1 CHAIRMAN WALLACE: I think it ought to be
2 before it is filed. I think the local program ought
3 to look at it because I don't think we ought to just
4 encourage the filing of proceedings that don't have
5 any merit and then be in a position for having to
6 reimburse costs and expenses later. We ought to be
7 able to look at it and say yeah, we would take it,
8 but we will come up with the costs and expenses so
9 you can. I don't think you ought to file the
10 lawsuit and be perfectly frivolous and then be able
11 to go back and get your costs and expenses.

12 MR. DUGA: That concern probably leads to
13 some local control, and two, from my understanding
14 of them, it is not just hey, here is the money, the
15 local program would be expected to look at that and
16 not throw it away.

17 CHAIRMAN WALLACE: It ought to say they
18 are expected to look at it.

19 MR. DUGA: It is not a right to get money.

20 CHAIRMAN WALLACE: You probably understand
21 my concerns.

1 MR. DUGA: I understand those concerns.

2 CHAIRMAN WALLACE: Maybe the other members
3 of the committee don't have that concern, but it
4 does seem if we are going to wind up paying money to
5 private attorneys, we ought to have some input into
6 it before they file and not after.

7 MR. SMEGAL: I have two comments. One,
8 the last part of the additional language talks about
9 representation in matters by recipients that would
10 be covered.

11 As I understand this, this only relates to
12 fee-generating cases. We had a decision in the
13 Court of Appeals in California called Yarbrough
14 where some judge is going to point to Terry in the
15 back of the room and say, okay, it is your turn to
16 represent this civil indigent and presently there
17 are no funds in California for expenses, for costs.
18 That is a tremendous concern to the California Bar,
19 and it seems to me there is nothing in here that
20 covers that circumstance. You are talking about
21 fee-generating cases. I think it is going to spread.

1 Lawyers are going to be required to represent
2 indigents in civil matters, bear the costs and
3 expenses for that litigation, and I think we should
4 have some provision or at least be thinking about
5 some provision for that circumstance. That seems to
6 be exclusive.

7 MR. DUGA: I'm not sure that tracks with
8 the concept of revolving litigation funds.

9 MR. SMEGAL: Explain it to me again.

10 MR. DUGA: Revolving litigation fund is
11 almost similar to the concept of a loan receipt in
12 torts where I am lending you the money. If you win
13 you are going to get some money and from that money
14 you get you repay the loan, so the fund is back to
15 its original amount and available for other cases.
16 By definition the loan out there is made with some
17 anticipation that the fund is going to be made whole
18 somewhere down the line. In the instance you are
19 talking about, that would almost be where we are
20 paying fees, costs and everything else up front to
21 the private attorney. That does not figure into

1 this type of matter.

2 CHAIRMAN WALLACE: That deals with section
3 A but not B. A says you should not have this sort
4 of circumstance in fee-generating cases. But B does
5 not talk about that, it says this doesn't prohibit
6 you from coming up with expenses so far as I can
7 tell in any case. Now, it might be a good idea if
8 we are getting mandatory free service out in
9 California to help folks out a little bit with their
10 out-of-pocket expenses, and I am not sure that this
11 ought to prohibit that. Apparently this does not
12 prohibit that, but I have still got my own concern
13 about we ought to have some handle before the fact
14 instead of after the fact about where those expenses
15 are going.

16 MS. BERNSTEIN: I would like to follow up
17 with a concern about whether or not the language
18 would be appropriate under the active regulations.
19 It seems to me that is a little loosely worded and I
20 ask you to look at that and see if you can tighten
21 it up a little bit. I would like it to go toward

1 something that is easier to enforce rather than
2 appropriate, because appropriate is something -- I
3 don't want us to set ourselves up into a situation
4 of arguing with programs constantly about what is or
5 is not appropriate.

6 The other concern that I have is that I am
7 not sure that A makes it strong enough that we ought
8 not to be spending any of our money toward
9 fee-generating cases. In other words, we just
10 simply don't take them, and along this line, I would
11 ask or that we don't -- you know, other than
12 referring them to outside attorneys. Obviously if a
13 case comes in that is a fee-generating case we refer
14 it out and say you ought to be able to get an
15 attorney involved because there is money involved in
16 this if you win. I would just suggest that we look
17 at whether or not this is really strong enough in
18 its interpretation of our prohibition against taking
19 fee-generating cases.

20 MR. SMEGAL: I would like to comment. Let
21 me give you a practical example of that circumstance,

1 although I think I would disagree a little bit.

2 San Francisco Legal Aid Society, which is
3 privately funded, took on a case a few years ago.
4 No private attorney would take it because it
5 involved over the next 10 years about \$300,000 in
6 costs and expenses, and for 10 years my little Legal
7 Aid Society funded that operation until it turned
8 out to be a fee-generating case at the end. For 10
9 years we bankrolled that case to the detriment of
10 every other activity that society might have
11 generated. There was no lawyer around that wanted
12 to put \$300,000 out of pocket to do it.

13 MS. BERNSTEIN: I thought we had
14 regulations in our fee-generating cases which deal
15 with the question of if it has been rejected by --

16 CHAIRMAN WALLACE: Two lawyers, I think.

17 MR. SMEGAL: Fine, but I thought I heard
18 you say something else.

19 MR. DUGA: If I may interject for a moment,
20 I think we can meet your concerns. We can tie it
21 into the eligibility in the active regs and I think

1 that will meet your concern.

2 CHAIRMAN WALLACE: Let me state what I
3 want to do before we get into 6 and 7 because we are
4 not going to resolve 5 today. You have heard our
5 concerns. I want to finish 6 and 7 and then I want
6 to take about a 10-minute break. We have been
7 sitting here a long time. I want to come back and
8 do public comments and some on the bonding
9 regulations after that. Pepe Mendez is scheduled to
10 have his committee meeting at 1:30. I would like to
11 be out a little early so we can catch some lunch,
12 but that is my schedule for right now. If you will
13 go on with 6 and 7, we will take a break and come
14 back and do those things.

15 MR. DUGA: 6 deals with waivers.
16 Basically there is two types of waiver we deal with,
17 a complete waiver and a partial waiver.

18 CHAIRMAN WALLACE: I was going to say the
19 complete waiver --

20 MR. DUGA: It is a statement of policy and
21 it clearly states we expect everybody to be able to

1 expend, but we recognize with the number of programs
2 that we have got and the differences in locale and
3 the difficulties, it may not always happen.

4 CHAIRMAN WALLACE: It looks to me the
5 complete waiver would almost never happen. One of
6 the four programs we have had correspondence with is
7 Micronesia and I can imagine there are not a lot of
8 lawyers there and they might be a complete waiver,
9 but I think subsection B, you need to have it there,
10 but I think that would be an extremely rare
11 circumstance unless somebody can tell me different.

12 MR. DUGA: It is extremely rare but it
13 does exist so we have it.

14 CHAIRMAN WALLACE: Okay.

15 MR. DUGA: And you will notice, I am sure,
16 when we get into partial waivers, that the first two
17 reasons for partial waivers track the reason for
18 complete waivers where you still have a similar
19 problem with the attorney population, but it is not
20 as severe as the Micronesia problem.

21 CHAIRMAN WALLACE: Yes.

1 MR. DUGA: The language of waivers I think
2 we have all seen before. However, subpart C-3, we
3 have added to "despite a recipient's best efforts,"
4 we further clarify that best efforts will include
5 talking to OFS saying we have a problem, can you
6 help us with the problem. It is kind of a good
7 faith --

8 MR. BOVARD: I would like to elaborate on
9 that. Originally this draft said simply despite a
10 recipient's best efforts. We have a dash, basically,
11 and then go on with the word "including." We wanted
12 to define -- we found little correspondence on the
13 part of programs that were having trouble with us,
14 and there is some talk about the fact that there was
15 a reluctance to contact us, maybe due to fear or
16 that sort of thing. We want to put here that if
17 programs are having trouble and they should contact
18 us, they should avail themselves of any suggestions
19 we make or at least try to, and then if they can't --
20 if they put forth their best efforts to try to
21 expend this money or to meet the requirements, then

1 a waiver would be granted, but this definition of
2 what a good faith effort is to comply we thought was
3 an important thing to add and make clear.

4 MR. DUGA: I also just noticed an errata
5 here. We had some original waiver language 5 which
6 dealt with the board's --

7 CHAIRMAN WALLACE: If you are making
8 12-1/2 percent of your cases then your board says
9 you are doing all right. If we are going to have
10 section 1 about the 20 percent standard, you really
11 don't need that extra waiver if we decide not to use
12 the 20 percent standard, we might want to go back to
13 that 12-1/2 -- that has been in earlier drafts. Is
14 it in anything or the present board book?

15 MR. BOVARD: It is in your board book in
16 the old staff draft which you have. You will find
17 it there at the end of this waiver provision. It
18 would be section 5 there which we just struck for
19 the reasons you just enumerated, because of that new
20 20 percent option.

21 CHAIRMAN WALLACE: Okay. I'm looking at

1 the previous board book, and that language is on
2 page 30 of the printed board book over here. That
3 is an earlier draft where it says if you are
4 handling 12-1/2 percent of your cases, you can get a
5 waiver.

6 MR. BOVARD: Whatever figure we determine.

7 MR. DUGA: I would urge you even with the
8 20 percent automatic waiver to put the 5 in there
9 because we are talking a partial waiver, where you
10 are getting the expenditures but you are finding
11 that you don't have to spend a full 12-1/2 percent
12 and it is not economical. This is the local option.
13 I think you can have it both ways, and I would urge
14 you to do it both ways.

15 CHAIRMAN WALLACE: Well, if we decide that,
16 we have got the text here and we can just do it.

17 MR. SMEGAL: Did I understand you to say
18 that 5 is out of here through an error, it should be
19 in?

20 MR. BOVARD: No, it was removed because of
21 the 20 percent language. I felt it was not

1 necessary to have that section 5 if we had that new
2 language up in section 1 of the reg.

3 CHAIRMAN WALLACE: But there is language
4 available if the committee feels differently and we
5 want to have both, all we have to do is state this
6 language on page 30 of the board book and stick it
7 back in. Certainly what the staff has proposed is
8 not the final holy writ on where we are going to go
9 on this.

10 MR. BOVARD: And we will be sure that the
11 next board book has all those options available. We
12 will give that old staff draft as well as whatever
13 we do with the revised version of this.

14 MR. DUGA: The section D on page 15 allows
15 for waivers of accounting and bookkeeping
16 requirements. This is coordinated through audit
17 with concurrence of OFS. I'm not sure how useful
18 this will be. We have tried to knock down the audit
19 requirements to the minimal that the audit
20 department feels comfortable with.

21 MR. BOVARD: I would like to interject at

1 this point, the previous staff draft had it as
2 granted by OFS with the concurrence of the audit
3 division. That didn't make any sense to me. I felt -

4 CHAIRMAN WALLACE: It is really the audit
5 division's problem.

6 MR. BOVARD: Yes, so I reversed the two.

7 CHAIRMAN WALLACE: D-2 is the most
8 important part, it seems to me, because that is
9 where you get the subgrants and that is where we
10 seem to be having the most problem.

11 MR. DUGA: This allows for some
12 flexibility, but still auditing will have to be
13 ensured that there is proper accounting for the
14 funds so it is not just an automatic waiver.

15 Page 16, subsection E just clarifies that
16 waivers may be partial or full, and it sets a time
17 limit on waivers. We can waive for past compliance,
18 present compliance or if it is legit, one year in
19 the future.

20 We also clarify the fact that you can get
21 a waiver and its run-out doesn't mean you can't

1 still reapply if you still have the same problems.
2 We don't want an across the board waiver for years
3 down the line. Situations change. We do not
4 believe that adds a terrible extra burden.

5 Subsection F shows that OFS will process
6 your waivers within 30 days, and we talked with --

7 CHAIRMAN WALLACE: Or you win.

8 MR. DUGA: Or it is automatically deemed
9 you get the waiver.

10 MR. DUGA: I talked with John Meyer and he
11 is convinced there should be no problem, we can do
12 it.

13 CHAIRMAN WALLACE: Okay.

14 MR. BOVARD: I just want to make a comment
15 about the next section in light of what we discussed
16 before. This is sort of a penal provision in some
17 sense. I would suggest that our language, and in
18 the light of Mr. Smegal's suggestions, be changed.
19 If a recipient fails to comply with the requirements
20 of this part, instead of the expenditure thing,
21 because this provision here is meant to deal with

1 people who have acted in bad faith, who have not
2 applied for a waiver, who have not done any of the
3 things, that have just failed completely to spend
4 the money. We suggest that now with this separate
5 fund, they should not be allowed to spend that money
6 on other things. If they have it has been bad faith.
7 They should have to account for that in future years.

8 We also have a second provision that would
9 allow -- and that is on the last page here -- that
10 would allow private attorneys in the service area to
11 gain use of these funds that haven't been spent by
12 the program, so if the program has spent 5 percent
13 and it hasn't applied for a waiver and it hasn't
14 reached whatever percentage requirement there is for
15 cases, then it would have to make this money
16 available to private attorneys who might apply for
17 that money to be used in private attorney
18 involvement.

19 CHAIRMAN WALLACE: That language needs to
20 be tightened up. It is a good idea if we are
21 cutting grants to a local program it should not be

1 sitting in a bank in Washington, it ought to go back
2 to the area to serve the clients. We are not going
3 to just shovel out the money to local practitioners,
4 I guess from OFS, how easy it is going to be to use
5 this, from Washington can we pick out local
6 recipients to take what is going to be a small
7 amount of money. This is not anywhere near what we
8 are giving the regular local grant committees, it is
9 going to be X thousand dollars and can we get the
10 money back to private practitioners and can we get
11 the money back to the right people to do the right
12 job. I endorse the sentiment in section B, and I
13 want to be sure we can do it properly before we put
14 it in concrete.

15 MS. BERNSTEIN: I would agree with Mr.
16 Wallace on this entirely, and although I don't think
17 in a regulation we need to get down to the specifics
18 of how requests for proposals would go out and so
19 forth, but I certainly would want to have something
20 in here which would show that we are under an
21 obligation to get that money out within, you know --

1 and again I hate to give a specific number of days,
2 but within a reasonable period of time so that we
3 are actually doing what we are complaining the
4 program didn't do, i.e. serve clients with that
5 money.

6 CHAIRMAN WALLACE: Assuming we decide to
7 put section 7 in here, I am hoping we never have to
8 use it. If we do have to use it, I want to be sure
9 we can get the money back to the people it was
10 intended to serve quickly and efficiently so that it
11 is done right.

12 Now, if we can't do it that way, we need
13 to rethink this section 7 altogether.

14 MS. BERNSTEIN: Let me join with this. I
15 talked to Michael about another concern that I have
16 got. I just bring this up, in the language it is
17 something you can work with a little bit, but on
18 1614.4 as far as procedures are concerned, what
19 concerns me as having been left out of that section
20 is any sort of documentation that the plan was in
21 fact developed in conjunction with the local bar

1 associations and so forth, and I don't know whether
2 a signature of a bar president or a transcript of a
3 meeting, or I don't know what we can do in terms of
4 developing some documentation that it was developed,
5 but I think that goes to the question then regarding
6 this compliance measure in that if we don't have --
7 you know, if that documentation is not there or
8 there was -- it shows it was made in kind of a
9 half-hearted method in terms of developing with the
10 local bar association, presumably if we are going to
11 funnel the money back out, it is going to be bar
12 members who are going to be taking up the slack, and
13 therefore I think the two of those sections we need
14 to think about together, and you might want to
15 consider in the process what would result then in
16 terms of the compliance results and whether or not
17 then that would provide us with a more direct access.

18 MR. DUGA: In dealing with the question on
19 working with local bar associations in developing
20 the plan, we have discussed whether or not we want
21 to add a signature line or something. We did not

1 add that type of language. We were concerned
2 because part of the concerns of Congress and the
3 commentators was paper requirement, and in this
4 instance whether or not the program actually dealt
5 with the bar association in our belief can be taken
6 care of very easily in a monitoring setting, usually
7 with a phone call to the bar president, did they do
8 this, and it can be checked rather than adding extra
9 paperwork. If the program wants to document it on
10 top of that, I think that is their option, but I
11 think that concern can be taken care of very easily
12 without the need of extra paperwork.

13 CHAIRMAN WALLACE: Somehow it ought to be
14 taken care of because I do think that this -- I
15 don't want to give local bar associations a veto
16 over what is done any more than I want to give
17 anybody a veto over what is done, but I think that
18 somehow we have to make sure that local attorneys
19 are being consulted year-by-year and it is not a
20 situation where you called up the local bar
21 association in 1982 and he says sure and you have

1 been traveling on that phone call ever since. We
2 have to be sure there is more current consultation
3 going on, however we do it.

4 Any further comments on members of the
5 committee and any board members sitting in on this
6 draft?

7 I think we ought to take our break. Mrs.
8 Bernstein suggested to me, we will be sending this
9 draft out to the usual people who get our board book.
10 I think that when we send this out we ought to go
11 ahead and put that other waiver revision in here,
12 that sub 5, that 12-1/2 percent, the one we were
13 talking about, let's go ahead and put it in this
14 draft so we can keep it or put it out, so we will
15 have all the options more or less on the table
16 before us.

17 The other thing that Mrs. Bernstein
18 suggested is this: We might want to go ahead and
19 run this just for informational purposes in the
20 Federal Register, not to start a 30-day notice
21 requirement running again, and I am sure when we

1 finally adopt it, we are going to run it in the
2 Federal Register for 30-day notice and comment
3 purposes the way we have done on previous sections,
4 but this is such a substantial change and we will be
5 considering it again next month in Detroit. It
6 might be a good idea to put this draft in the
7 Register and tell people we are going to be talking
8 about it, people that are not on our usual mailing
9 list. Is that something that is legal, is that a
10 bad precedent or is that something we can do?

11 MR. DUGA: I believe it can be done.

12 MS. BERNSTEIN: It would not be for the
13 purpose of soliciting -- I mean it is not part of
14 the regular solicitation process, it is simply a
15 universal way of distributing the information.

16 CHAIRMAN WALLACE: Let's tell people what
17 we are up to so if they have something we need to
18 hear, we can hear it.

19 MS. BERNSTEIN: Dick, you are standing up.
20 I don't want to get us in the position of setting a
21 precedent that would be difficult for us to work

1 with in future drafts. I don't think it is required.
2 It is not required just because the language is
3 different. I want to be as open as we can about.
4 Richard Bagenstos says: "This will not preclude
5 publication for comment at a later date" and I think
6 that is the sense which it means.

7 CHAIRMAN WALLACE: Okay, with that we are
8 going to take that promised 10-minute break. I
9 wanted to be back here at 12:00. I would like to do
10 about half an hour of public comment on this because
11 we are going to get a lot more comment and a lot
12 better informed public comment after this
13 information has gone out. Then I want to take an
14 hour on lock and then I want to give Pepe his
15 committee at 1:30 as we are scheduled to do. Let's
16 take 10 minutes.

17 (Recess taken.)

18 CHAIRMAN WALLACE: All right, if we can
19 proceed at this point. I am going to recognize Mr.
20 Houseman. Are there other people here from the
21 general public on what has been said this morning,

1 so I can have an idea of what kind of time frame we
2 are talking about? We are talking about PAI. I
3 know there are others that will talk about 1612
4 regulations in a minute.

5 Anybody else on PAI?

6 Mr. Houseman, please proceed.

7 MR. HOUSEMAN: Thank you. First I just
8 want to see if I am clear about our process. I
9 assume that hopefully at the next meeting we will
10 consider the language and of the staff and consider
11 also our proposed language and which we continue to
12 urge that you take up, and I will address shortly.

13 One thing that I have noticed is that in
14 this board book you have incorrectly labeled an
15 earlier version of the staff's as ours, and I would
16 make two requests on this. First, if you are going
17 to send out the latest staff draft which is
18 different than appears in this board book, I would
19 appreciate if you would send out our draft as well.

20 CHAIRMAN WALLACE: I will ask the staff to
21 do that.

1 MR. HOUSEMAN: I have already talked to
2 Dennis and all and that is not a problem.

3 CHAIRMAN WALLACE: It looks like they
4 wanted to put it in this board book, and I think you
5 are right. This looks like a clerical problem.

6 MR. HOUSEMAN: I would like to encourage
7 more thought.

8 Let me explain what I want to do in a very
9 few minutes. I know we will spend more time on this
10 later. First I want to address some concerns or
11 agreements that I have with the latest staff draft.
12 Secondly, I want to give you a little bit of
13 information which we will supplement later on what
14 is going on. Third, I want to comment on the data
15 that has been presented here this morning, and
16 fourth, I will just have a very short summary of our
17 concerns about where we are.

18 First, the latest staff draft. In general,
19 aside from our ultimate views on both the waivers
20 and the requirement, the 12.5 percent requirement,
21 in general we have few problems with this draft

1 except with regard to the last section. In terms of
2 some of the changes that have been made so far, I
3 agree that we ought to carefully examine in 1614.1
4 the 20 percent figure. We of course support this
5 idea. I think this figure was more or less pulled
6 out of the air.

7 CHAIRMAN WALLACE: I pulled it out and
8 that is exactly --

9 MR. HOUSEMAN: Well, I didn't know who did
10 it.

11 CHAIRMAN WALLACE: -- a proper
12 characterization.

13 MR. HOUSEMAN: I think we should examine
14 the percentage of cases that are done by programs
15 with effective PAI and maybe an assessment of this.
16 I will talk about it in a second in the data context.
17 With regard to the joint venture our concerns are
18 really fairly technical and I think they can be
19 worked out with the staff without in any way
20 altering the substance of what you have.

21 In terms of 1614.3 which is the change in --

1 the slight change in requiring that there be direct
2 delivery, and I think it is very minor in terms of
3 the real world, before completely agreeing to this,
4 I would like to understand the impact a little bit
5 more, and we are talking to programs about it.

6 I don't believe this is going to cause any
7 problems. Certainly every program that I am
8 familiar with does direct delivery with PAI. I
9 don't think it is going to have any negative impact.
10 The only concern I have is that there may be some
11 innovative programs where bars or others are
12 involved in direct delivery with the program where
13 there is not an actual expenditure of program funds
14 for direct delivery. I doubt if there are, but
15 there may be where in fact there is direct delivery
16 going on through PAI. And I want to be sure in
17 tightening language or using this language that we
18 are not inadvertently undermining some innovative
19 efforts. I don't think we are, but that is the
20 concern.

21 With regard to the way the thing is

1 drafted, I don't think we have a major problem with
2 that, but I would want to point out that it is very
3 important to continue to encourage, what I will
4 label the support activities, part B of 1614.3,
5 because those activities have been shown over the
6 years to be essential to making PAI effective. We
7 may not need them forever and forever in the future,
8 but we still need them today. I don't want to do
9 anything to discourage programs from taking that
10 support.

11 Finally, the staff change with regard to
12 state and national support presents no problems to
13 the extent that it make state and national support
14 services available. Both state and national want to
15 make their services available. The only concern I
16 have is who has got the burden to make those
17 available. I think we can work that out. I think
18 this is probably fine, but we just want to take a
19 careful look. I didn't really look at this until
20 late Tuesday, Tom and Terry met with me and we had a
21 good discussion of this and I think we can come to

1 an understanding of it without any difficulty
2 whatsoever.

3 With regard to recordkeeping we of course
4 are pleased with the removal of many of the burdens
5 which we thought were unnecessary. We want to again
6 look at the impact of the recordkeeping section. I
7 think that it doesn't do anything that most programs
8 are not already doing. We are a little concerned
9 about the timekeeping, but I think the way it is now
10 worded and the understanding that we have on it will
11 pose no problems, and there was mentioned about the
12 property purchases -- we are talking about personal
13 property purchases -- and accounting for that. I
14 think that can be taken into account with the
15 auditors and some discussions that we have had to
16 clean that up to address any concerns that we have
17 about that. There is one substantive concern which
18 I have talked to Terry and Tom about and with Dan
19 about and I don't think there is any disagreement
20 about that whatsoever. On page 12, 1614.3(e)4, it
21 says "all records." We want to make sure we are not

1 talking here about records that are protected by the
2 attorney-client privilege or the client
3 confidentiality, and I think that issue can be
4 easily resolved. There is no real disagreement
5 about that.

6 CHAIRMAN WALLACE: Excuse us just a second.
7 We are having a technical discussion about lunch at
8 the moment.

9 (Discussion off the record.)

10 CHAIRMAN WALLACE: Sorry. Let's get back
11 to where we were.

12 MR. HOUSEMAN: Fine. With regard to
13 waivers, as you know our ultimate position on this
14 is we have substantial questions about a waiver
15 approach, but looking solely at the language here,
16 there are a couple of things that I want to point
17 out that I have in fact pointed out to Terry, and
18 then one alternative that I think you ought to
19 consider.

20 With regard to the requirement under C-3
21 on page 14 which is a slight change from the last

1 waiver, we have no requirement, no problems with the
2 requirement, but I want to point out, because here --
3 and I will probably point it out in one other
4 context, that there has not been technical
5 assistance and training available on PAI since the
6 12.5 went into effect. There previously was a grant
7 with the volunteer lawyers project and the ABA to
8 provide technical assistance. Those grants ran out
9 in early '83. There has not been any formal effort
10 since then, and I think if you are going to have
11 this requirement besides hiring the pro bono person
12 which was mentioned earlier which I think was
13 excellent, I think you need to make sure you have
14 the training and technical assistance capacity
15 available and the programs know it is available to
16 help them if there are serious problems with that.
17 There is expertise available on that, but you can't
18 impose a requirement unless you have to back it up
19 the resources --

20 CHAIRMAN WALLACE: Let me interject right
21 there. I agree with you. If we are going to have a

1 PAI program we ought to have the facilities to help
2 people set one up. As I read section 3, there is no
3 reason in the world the program cannot communicate
4 with OFS and say we are having a problem, can you
5 help us, and I hope OFS can say we can help you. If
6 the answer is no, we are not geared up to do it, at
7 that point people ought to get a waiver without any
8 particular problem.

9 But what I am looking for is not whether
10 working together they can meet the 12-1/2 percent
11 requirement. They ought to be able to do it. But
12 what I am really looking for is are programs in the
13 field just not doing it. Are they calling up and
14 saying we can't do it, can you help us. If you are
15 doing that I think you are proceeding in good faith
16 and I am willing to work with that.

17 The biggest concern from all this data, as
18 I said previously, is we have apparently had very
19 few people call us up and say we are having problems,
20 can you help us. Even if we are going to say no, we
21 can't, we will give you a waiver, that is where we

1 should have been all along.

2 MR. HOUSEMAN: I haven't seen the memo.

3 CHAIRMAN WALLACE: That is why I asked it
4 be made available.

5 MR. HOUSEMAN: That is no problem. I know
6 from experience a number of programs called the
7 regional office. I know, and Esther is also
8 familiar with this and knows certainly more than I
9 know about it, that programs have talked to regional
10 offices about some help in this area. Maybe that is
11 reflected in the memo. I haven't seen it so I don't
12 know whether it is. If we are only looking at
13 programs that have a waiver --

14 CHAIRMAN WALLACE: It is not broad enough
15 to cover phone calls to regional offices.

16 MR. HOUSEMAN: For example, Esther is in
17 Detroit right now. I'm just saying -- I don't know
18 if that is reflected there or not. That was
19 stimulated both by their contacting the regional
20 office and some direct contact with Esther.

21 Finally the provision in the waivers on

1 page 16F, the only concern that I have about this in
2 terms of just this language, now, is that there may
3 be situations where the waiver request does not
4 provide the information. The information is
5 insufficient, and in those contexts it would seem we
6 ought to be able to respond quicker and tell
7 programs very quickly if on its face the information
8 submitted is insufficient, they ought to know that
9 so they can get it back and start the process again.
10 I don't know if this has to be written in here, but
11 I think a little bit of effort to make sure that if
12 the information is insufficient, that gets
13 communicated quickly.

14 CHAIRMAN WALLACE: At the risk of putting
15 my foot in my mouth on past legislative concerns of
16 mine, the biggest problem in section 5, the voting
17 rights section always waits to the 60th day and says
18 you didn't send us enough information and the clock
19 starts over again. I think we ought to be able to
20 tell before the 30th day whether we have got what we
21 need to do the job and if we need to write that into

1 the regulation and say for crying out loud, if you
2 don't have enough information, write us and let us
3 do that. I couldn't agree with your concern more.

4 MR. HOUSEMAN: We have some serious
5 concerns in general and specifically with the
6 language in 1614.7. In general, this new compliance
7 section, I'm not sure you really want to do this. I
8 want to urge you to seriously think about whether
9 you want to do it. Again we get back to the notion
10 that we are trying to set up a compliance system as
11 opposed to a system that pushes people to do more
12 PAI and to increase services if that is what results
13 through PAI and not to comply with some arbitrary
14 percentage requirement. I think to the degree you
15 try to set up a system like this, you move
16 completely to the compliance side of the picture.

17 First of all, the evidence that you have
18 before you -- and we have already pointed out some
19 problems with it, I'm going to point out a few more
20 -- the evidence that you have before you shows that
21 except for a few programs, there is not a serious

1 compliance problem at the moment, and for those
2 programs, I suggest you have available remedies.
3 I'm not sure you need another remedy in order to
4 assure compliance and to move against programs that
5 are serious risks systematically and substantially
6 not complying.

7 Secondly, I think the statistics are
8 remarkable. The 12.5 increase came when there was a
9 large increase in funds, much more than a 25 percent
10 increase in PAI. A number of programs had increased
11 their PAI 50 percent over what they were previously
12 doing. The reason for that is the 12.5 increase
13 came at a time when there was the first increase in
14 several years of the basic funding level. If you
15 look at what is done, so you are not talking about
16 just a move of 2.5 percent, in many cases programs
17 had to double the amount of effort they were putting
18 into PAI beginning with the 1984 grants. I think if
19 you look in that light and the fact there has been
20 no training and technical assistance for them, I
21 think the statistics are remarkable. If you are

1 going to make policy on the basis of the need to
2 show compliance, that you ought to rethink that in
3 terms of A, the tools that are available, and the
4 record that you have before you.

5 Finally -- there are two other points to
6 make about this and one of course is a point to be
7 made about all of this current staff proposals, but
8 first, there is going to be cost of administration
9 in this. It is certainly going to lead to disputes
10 over compliance in many respects which will be
11 unnecessary. It is going to divert some attention
12 away from increasing service. If you think about a
13 compliance section like this you have to take those
14 facts into account.

15 Finally, the B remedy that you have here,
16 I think raises some questions. In fact, it may be
17 counterproductive to what we are trying to
18 accomplish. If a program has problems with PAI, if
19 it is not doing it, it has made some efforts to do
20 it, it isn't a program that is just ignoring it, you
21 want to help that program to develop an effective

1 PAI effort. To give money directly to private
2 attorneys may undermine that program's ability to
3 have a good PAI program, may undermine its ability
4 to work closely with the private bar that is the
5 problem, may undermine its ability to effectively
6 leverage other resources, so I am not sure the
7 ultimate remedy in B is one you want to adopt
8 because you may be creating a worse situation with
9 it than without it.

10 Now, having said all that, I think I have
11 covered at least some of the concerns that we have.

12 CHAIRMAN WALLACE: Let me ask you a couple
13 of questions.

14 MR. HOUSEMAN: If, in fact, what you mean
15 here is that a program -- and that is what Terry and
16 Tom said -- here is what we said privately, what we
17 are talking about is a program that is really out of
18 compliance, has not made an effort, if you mean that,
19 I think the reg ought to say it. If you are talking
20 about systematic and substantial incompliance, say
21 it. Do not lead people to the conclusion or the

1 staff to the conclusion or a staff later down the
2 road, if you are at 12.4 percent one year and two
3 years from now or when they have left five months
4 later you are at 12.6, that somehow you are going to
5 lose money and that is the final problem with the
6 way this is written that you should be aware of.
7 There is a time lag between the time the year is
8 done, the time the audit reports come in, so what
9 you are talking about is April or May at the
10 earliest, and once you get through with all the
11 bickering it will be May, June or July before you
12 are going to take program monies away.

13 There could be if there was a technical
14 problem one year, say you got the 12.1 percent, that
15 by that next time you may be doing more, you may be
16 making it up and that reg has to take that into
17 account. It is triggered by an audit review that is
18 going to come substantially after the period of time
19 when your audit period was. I think those are some
20 technical problems, if you are going to go this
21 route, which I urge you not to, that you are going

1 to have to deal with.

2 CHAIRMAN WALLACE: What other remedies
3 have we got because I agree there are problems in
4 going this particular route and I'm not sure I want
5 to go this particular route either. But if you've
6 got somebody and they have a problem with PAI and
7 they don't want to do it -- and if that is what we
8 mean and that is what I mean I agree with you, and
9 he ought to say it here -- we are not talking 12.4
10 or 9.9. We have some of these programs that are
11 down at the 2 or 3 percent level. They may have
12 some problems that they can explain to us, but that
13 big a magnitude, it looks like the big problem is
14 they don't want to do it. What can we do with those
15 folks other than defund them?

16 MR. HOUSEMAN: First of all, you can
17 reduce their grants. You can currently reduce their
18 grants up to 10 percent. Second of all, you can
19 start a termination or denial of refunding
20 proceeding. If, in fact, they have been out of
21 compliance in the way you are talking about, I don't

1 think that proceeding is going to be very costly or
2 very long to run, if that is what you are talking
3 about. I don't want to get into the whole defunding
4 issue. It is loaded with myths on both sides of the
5 issue, but I think if you look at it carefully where
6 there has been a systemic lack of compliance, that
7 you have those tools. Obviously from the first
8 instance you can use special grant conditions, which
9 you can enforce, and finally you ought to seriously
10 take a look at your ability to directly sue and
11 enforce this stuff. There are a number of remedies
12 that are available that you ought to consider using
13 before trying this effort. Again, it returns to my
14 basic concern, my basic framework, that in PAI we
15 ought to attempt to work with programs to increase
16 the services, to use the most economic and effective
17 program available --

18 CHAIRMAN WALLACE: I don't argue with that
19 at all, but I look at these numbers and I am ready
20 to be educated on the numbers, but the first thing
21 that I see is that there are a lot of programs that

1 haven't gotten near 12.5 and a lot not at 10 either,
2 and if they are in a cooperative mode, if they are
3 calling us up and asking for help and we are either
4 not giving it to them or not giving it to them
5 effectively, I hadn't got a record that shows me
6 that. Right now, I just see a lot of the programs
7 that are not making the expenditure, and from the
8 information before me they are not making the effort
9 to get in touch with us to say why.

10 I want to have a cooperative mode here,
11 but if we are not getting any cooperation from the
12 field we may need to be in a compliance mode. That
13 is the thing I am most interested in knowing about
14 between now and Detroit, is have these people that
15 are under the line, are they really under the line
16 and have they in fact been in touch with us to try
17 to get help. If they have been, then we ought to be
18 in a cooperative mode. If they have not been, maybe
19 we ought to be in a compliance mode, and those are
20 the facts that most interest me is are they getting
21 in touch with us to ask for help.

1 MR. HOUSEMAN: First of all, Mike, there
2 were corrections made on these figures today, right.
3 Now, some of these corrections I pointed out
4 yesterday to the staff -- which may be one reason
5 why they were corrected, maybe not the only -- but
6 if you take out all of the corrections that the
7 staff gave and a few more that I know about, I think
8 you are going to find you are down to, instead of 26
9 or 27 you are down to 15. I have not talked to all
10 these programs. Tuesday afternoon I made 10 phone
11 calls to 10 programs that are below 12.5 percent.
12 Every one of those programs had an explanation or
13 the figures were wrong. I selected the programs
14 that I couldn't believe that would be out of
15 compliance and people I knew very readily, but 10
16 out of 10 is a pretty high batting average.

17 In fact, for example, one of these still
18 shown in compliance, the Legal Aid Society of
19 Central Texas, is absolutely in compliance. Their
20 audit says they are in compliance. It is priced out.
21 It shows she spent \$116,170 last year.

1 MR. SMEGAL: What line are you on?

2 CHAIRMAN WALLACE: 12 or 15 on page 5.

3 MR. HOUSEMAN: In fact they spent 116,730.
4 That is just to give you another one. That is in
5 the audit, it is sitting in the audit, it is quite
6 clear. The reason that this figure was used is that
7 the auditor thought he could not include staff time
8 in the calculation of the summary of income and
9 expenses. It may have been an auditor's mistake,
10 but the fact is on the face of that page it explains
11 it and the figures are actually set out and there is
12 no question about their being in compliance, and so
13 I think you have got to be fairly cautious about
14 this data in drawing conclusions from this data
15 before we both check it out and see what reasons
16 there are for some of the things.

17 CHAIRMAN WALLACE: I couldn't agree with
18 you more.

19 MR. HOUSEMAN: I suspect in most programs
20 you are going to find out of compliance you are
21 going to find a number of other problems as well.

1 Now, let me turn to to the -- well, I
2 think I have maybe dealt with past presentation in
3 some sense, and the concerns that I have about it.
4 I would like to make a couple of points about the
5 memo from Broccoletti and from Osterhage -- I'm not
6 sure I am pronouncing the name right -- I think very
7 important points about it.

8 First, there was a discussion this morning
9 that the information because of case closures
10 suggests that there is a higher percentage of
11 complex cases being handled by PAI. I am not sure
12 how that assumption was reached. I heard that it
13 was reached on the basis of logic. I don't
14 understand the logic, but I think that assumption is
15 -- not only is it an assumption, but one that anyone
16 working with PAI at all knows it is an incorrect
17 assumption to start with. It is highly unlikely
18 that the PAI cases that are currently being handled
19 are more complex cases. Marjorie McDiarmid's data,
20 for example, and I think it would be very useful
21 since she prepared the data that you hear from her

1 hearings, hours of preparation. Rulemaking matters
2 on a local level or state level I participated over
3 long periods of time where I was representing
4 eligible clients. That data would not necessarily
5 appear in terms of the time and the amount of effort
6 that went into it.

7 Furthermore, one concern about PAI from
8 another point of view, which is why this information
9 is misleading, very misleading, one concern about
10 PAI, that the proponents of pro bono and others have,
11 is that programs are in fact giving the easiest
12 cases, once they have been screened, to PAI. It is
13 the opposite concern, if you wish, and that one
14 jacks up the numbers quickly which in the game we
15 are in now seems to be a game that programs are
16 forced into playing, I think unfortunately, you may
17 have the opposite effect going on, so I'm having --
18 I want you to be very cautious about drawing
19 conclusions and getting a fairly honest view of this
20 about the conclusions that you draw.

21 CHAIRMAN WALLACE: We have a better

1 on her data and not hear others talk about her data
2 because she can explain it better than anyone else.
3 There are many divorce cases where court decisions
4 are necessary to reach results. Even if you skew
5 that out and you look at case closure versus
6 administrative decisions and other efforts, I think
7 when you examine the data carefully you cannot draw
8 the conclusion that was attempted to be drawn that
9 there is a higher proportion of complex cases.

10 Moreover and maybe even more important, if
11 you are just going to look at case closure, you are
12 not going to be able to necessarily draw any
13 conclusions from it. That is you are not going to
14 be able to say that case closures show more
15 complexity as opposed to administrative decisions as
16 opposed to negotiation, et cetera.

17 For example, in my experience, and I
18 practiced poverty law for eight years in Detroit at
19 all levels of the system in Detroit, many of the
20 complex matters I handled were matters before the
21 administrative agency, where there were days of

1 measure than case closures. When I was working on
2 the Hill and people would come up and say 98 percent
3 of our cases are domestic and consumer credit and
4 only 2 percent are impact, I would make the same
5 argument that you did, the number of cases isn't
6 necessarily the best measure of the amount of effort
7 and the amount of result that you are getting. Is
8 there a better number than case closures or is there
9 just no way to quantify what we are getting?

10 MR. HOUSEMAN: I doubt it, frankly, if
11 there is a way to quantify. I think there is a way,
12 if you talk with -- and you can do this in some ways --
13 experienced people in this to give you a sense what
14 is going on that will give you just as accurate
15 information as case closure data. I am not
16 suggesting that you don't look at this data. I am
17 not suggesting that you don't look at it to the
18 extent you have the data available.

19 Mr. Broccoletti's memo suggested that you
20 look at time information. We may not have it. I'm
21 not sure what aggregate data the Corporation has

1 anymore. I think you need to look far beyond case
2 closure data to get some answer as to what is
3 actually going on and I'm not sure you are going to
4 get data that is going to do it. I suggest you be
5 very cautious about drawing conclusions. You also
6 have to not draw conclusions whether court decisions
7 with or without negotiated settlement are less
8 complex or more complex. It may or may not be. The
9 case types may not tell you anything either. Within
10 divorce you can have a serious contested problem or
11 an uncontested problem and that is the concern that
12 I have about looking at this data and trying to
13 extrapolate from it large generalizations that may
14 or may not be true.

15 I think one way besides looking at the
16 data is to have -- and I would be glad to have
17 available at the next meeting -- a panel of people
18 who are experienced with both compensated and pro
19 bono programs who are advocates of this who talk
20 about how they perceive this data and how they
21 review it. I think that would be useful to it. We

1 can easily do it.

2 Now, with regard to -- that may take care
3 of most of the concerns that I have about the data.
4 I urge you again, and I know you have read it and I
5 hope other board members will read Marjorie's paper
6 because I think it has very interesting information
7 in it and I think it does much more than the other
8 papers, by the way, to try to highlight the kind of
9 problems that exist, what is going on out there. I
10 would like to bring to your attention some other
11 information about what is going on. Maybe it was
12 Mrs. Bernstein, maybe it was you, Mike, I'm not sure,
13 asked some questions about compensated programs.

14 First of all, we do have some information
15 about compensated programs, that is how many
16 compensated components exist within Legal Services
17 programs. I know you have part of this information
18 available to you because I sent you Ken Smith's
19 study which I urge you again to take the time to
20 read, but there is also a study by the American Bar
21 Association and there is a preliminary version of

1 that study that I provided to staff -- and I see it
2 has not been mentioned so far -- but I think the
3 final version will be out shortly. I think all of
4 you should see that preliminary version and that
5 study done by the Standing Committee on Legal Aid
6 and Indigent Defendants has a lot of information
7 that is very useful in understanding what is going
8 on in programs and how they perceive the problems
9 and the experiences with PAI.

10 Just with regard to compensated, the ABA
11 SCLAID study found that 17 percent of the programs
12 in the survey used staff attorney and privately
13 compensated models. 51.7 used staff, compensated
14 and pro bono models. So 70.2 percent of the legal
15 services programs used compensated models in their
16 mixed delivery system.

17 If you look at page 8 of Ken Smith's study
18 it points out that 117 programs use contract only --
19 used a contract attorney compensated and 62 used a
20 Judicare. His data was done in January of -- the
21 data was based on '82 and '83 statistics. The

1 SCLAID study is based on '84 statistics. I think it
2 is important to know that many programs have
3 compensated components to their delivery system.
4 The only reason I brought this up, if you are going
5 to act on this, we should act with an understanding
6 of what is going on and not based on people's
7 misassumptions of what is going on out there. In
8 light of all of this, I want to make two other
9 points about presentations that were made earlier to
10 the board.

11 First of all, if we are talking about
12 background materials, and God knows you have got
13 enough background materials, but if you are talking
14 about background materials, I frankly think the most
15 useful one piece of background material that exists
16 which you haven't got and you now have a number of
17 other things, is a Clearing House Review special
18 issue from the summer of 1983 which I am sure the
19 staff can get for you, I only have one copy of it,
20 which is a discussion of private attorney
21 involvement in legal services. There are several

1 reasons I think you ought to read this. One, it
2 shows you the efforts that are being made to
3 implement PAI and the kind of thinking that was
4 going on within Legal Services and elsewhere. It
5 also has some data in it you will find useful,
6 albeit out of date, and some articles that will be
7 useful in making decisions on this issue.

8 Secondly, when Dennis was talking this
9 morning about the various pieces of the book, he
10 referred to the ABA analysis of their proposed
11 amendment, and I just want to point out that on page
12 4 and 5 of that analysis which is in tab III.A, I
13 think, in his summary of that, he failed to read
14 what I think is the ABA's position, consistent
15 position, completely consistent with its current
16 comment on this reg, and I just wanted to briefly
17 refer you to that at the bottom of the page and the
18 next page where it says -- this is the ABA analysis
19 -- the proposed amendment provides a clear mandate
20 to the Corporation to undertake programs involving
21 the use of the private bar on a compensated basis.

1 But it also provides an extraordinary degree of
2 flexibility to the Corporation. There is no
3 requirement that a specific percentage of funds be
4 spent on such programs, either nationally or on a
5 state by state basis. There is no requirement that
6 every grant recipient undertake such activities, but
7 rather that a substantial portion of total
8 Corporation-funded efforts be in this area.

9 "The language 'to the extent feasible'
10 recognizes that the Corporation cannot mandate
11 private bar members to participate in such programs,
12 and that in some areas there may be minimal private
13 bar interest. The cross-reference to Section
14 1007(A)(3) makes it clear that the objective is the
15 provision of effective and economical delivery of
16 legal services, and that a program which does not
17 meet this standard need not be funded.

18 "The amendment also leaves it to the
19 Corporation to determine how to best reallocate its
20 budget so as to make the 'substantial amounts of
21 funding' required by this amendment available.

1 "But the intention is clear. The
2 Corporation must use its best efforts to expand as
3 rapidly as possible the use of private members of
4 the bar on a compensated basis in providing legal
5 services to the poor. Congress, in adopting this
6 amendment, would leave a standard by which it could
7 judge the Corporation's performance in this regard
8 and determine whether more specific requirements
9 need to be imposed."

10 The only reason I read this, since Dennis
11 didn't mention this particular part of the ABA
12 analysis, I mention it to show you that long-term
13 consistency of the American Bar Association with
14 regard to the need for flexibility and consistent
15 with the positions that we are going to present and
16 we have presented in our language and the ABA
17 comment.

18 CHAIRMAN WALLACE: Ms. Bernstein had
19 something she wanted to say about that.

20 MS. BERNSTEIN: I am glad you brought up
21 that particular section because I was going to talk

1 about it this morning but didn't want us to divert
2 more time on this voluminous amount of material, but
3 one of the aspects that you just left out and is in
4 that very paragraph is the fact that the ABA in
5 their concerns was concerned with compensated models,
6 and in fact many of the documents were very specific
7 in saying that they did not believe any of the
8 Corporation funds should be used to provide the
9 staffing or the supplementation of pro bono
10 activities, and that paragraph, in fact, says "the
11 proposed amendment provides a clear mandate to the
12 Corporation to undertake programs involving the use
13 of the private bar on a compensated basis, but it
14 also provides an extraordinary degree of flexibility
15 to the Corporation." And this is why I reiterate I
16 would like the board, rather than taking summaries
17 and representations of what is said, to actually
18 read all of the documents that are involved and get
19 a complete sense of what the issues were at the time.

20 I am not uncomfortable with our supporting
21 pro bono efforts. I think it makes sense. However,

1 in looking at this, the mandated segment of this was
2 indeed directed toward compensated models. Whether
3 you agree or disagree with it, I think it is very
4 important to the entire board to look at this as a
5 whole so that would clarify --

6 CHAIRMAN WALLACE: Clarify the
7 clarification.

8 MR. HOUSEMAN: Well, as I pointed out a
9 second ago, I think if you look at the statistics,
10 many programs, 72 percent are using compensated
11 models in one way or the other, so if we are going
12 to -- you have to look at this in light of what is
13 going on. I just want to end by summarizing briefly
14 where we are and some concerns. Our proposal,
15 similar to the 1981 instruction, is a simple
16 proposal. It is easy to administer. It talks in
17 terms of a 10 percent guideline. Our concern I
18 think is less with the percentage and more with the
19 guideline. I think the evidence shows that you have
20 in front of you and the evidence that has been
21 presented in all of these studies that this proposal

1 was working with effective results.

2 In fact, when we look at this entire
3 picture, I think we should be clear that the move to
4 12.5 percent was unjustified, it had no basis in the
5 administrative record that was made in 1984 and '83.
6 In fact, if you look at some of the charts that
7 exist I think you will find, although we don't have
8 complete data on this, it has not had a significant
9 impact on the number of cases that are being closed
10 or brought, and as many of the comments in the
11 record before you show and argue and point out, that
12 in some sense -- and by the way the ABA study says
13 this -- that the 12.5 percent may have been
14 counterproductive in some communities.

15 Next, we all agree on one then. We all
16 agree we need more flexibility. There are two ways
17 of going about it. The way of going about it that
18 we favor and I urge you to continue to consider and
19 to give some careful thought to, is to do it up
20 front through a guideline approach. What we have
21 got now, I think we are creating a bureaucratic

1 monster. Clearly they are going to be difficult to
2 administer, there are going to be squabbles over
3 them. Secondly, now we have new audit requirements.
4 They are better now and they become necessary. The
5 more you move into a compliance mode, the more you
6 move into a concern about whether you are getting
7 12.5 percent or not, and those requirements are
8 bureaucratic on the local level. They are costly to
9 administer.

10 Finally, we have a new section on
11 compliance. I have raised some concerns about that.
12 It is difficult to administer and it may be
13 counterproductive to our goal. In light of that, I
14 urge you to return to the approach that we suggested,
15 the approach that was working well in the past,
16 which is some kind of a percentage requirement based
17 on a guideline approach, and to get rid of all these
18 other extraneous matters that are in here and to
19 make the reg simple and easy to administer that
20 everybody can understand and I suggest to you that
21 the language we proposed does precisely that. I

1 urge you to take it up with us at the next meeting.

2 CHAIRMAN WALLACE: I thank you. Let me
3 say two more things about PAI and then we are going
4 to take a few minutes on section 1612. At our last
5 meeting we hoped to hear from Ray Smith. He was
6 unable to be with us. He sent me a letter that
7 summarizes his comments. It has been distributed to
8 members of the board.

9 I don't know if there is any reason why it
10 shouldn't be available to the general public on the
11 same basis as other comments that we have received.
12 I will ask Tom Bovard and the general counsel -- Mr.
13 Daugherty, are you --

14 MR. DAUGHERTY: We are in the process of
15 copying it. We made a few copies for board members
16 at 25 cents here at the hotel. We will make more
17 copies later.

18 CHAIRMAN WALLACE: We heard some testimony
19 last time from the folks in Pennsylvania and we said
20 we would make that transcript available to their
21 local legal provider for their comments. That has

1 been done and we do not have the comments back. We
2 look forward to hearing from them between now and
3 the next meeting.

4 The next thing is to take some testimony
5 on lock, part 1612. This is really only a first
6 crack but because this committee is going to the
7 next meeting in Detroit and next in Salt Lake City,
8 and there are people in Washington who asked to talk
9 on 1612 going back to February, I wanted to give
10 those people a chance to say a few things today. If
11 it is not foreclosed much more extensive discussion
12 at future committee meetings.

13 Is Mr. Kazman here?

14 MR. KAZMAN: Yes, I am.

15 CHAIRMAN WALLACE: Please come forward.

16 Washington Legal asked to speak and Greg Smith who
17 followed this subject for them is in the hospital
18 and could not be here.

19 Mr. Kazman, we are glad you could join us
20 and we would appreciate the benefit of your thoughts
21 on part 1612.

1 MR. KAZMAN: Good afternoon, my name is
2 Sam Kazman, I am speaking on behalf of Lucinda
3 Schwartz who prepared the several submissions which
4 we have sent to you, the latest of which is our
5 comments of March 1st, 1985 and which contain as an
6 appendix the wording of the regulations which we
7 ourselves are proposing. My comments now will be
8 quite brief.

9 First of all, in our opinion the rules on
10 lock have been proposed and repropoed in a
11 semivacuum. Unless the reader has been closely
12 following this issue he or she will have no idea of
13 what is going on simply from reading the Federal
14 Register notices. The original February 1984
15 request for public comment spends all of two
16 sentences to inform the reader that violations of
17 the proscriptions on lock may have even occurred in
18 the past. The January 1985 reproposal has more
19 detail, but not much more in the way of information.

20 GAE reports are referred to, but
21 conclusions are stated only in the most abstract

1 terms. There is no summary of actual episodes and
2 no indication of the scope of the activities
3 involved. Similarly the January '85 notice contains
4 a neat statistical breakdown of how many comments
5 were received on this issue and from whom, but there
6 is no indication of what those comments said or of
7 why their contents led the board to issue its
8 reproposal. Most conspicuous of all by its absence
9 from the Federal Register notices is any real
10 indication of where the Corporation stands on this
11 issue. Is Legal Services only responding to the
12 criticisms of others or does it have an opinion of
13 its own on this activity? If it does have an
14 opinion it should explicitly state it. If not, it
15 should develop one. There is no reason for these
16 Federal Register notices to read as if they have
17 been issued by a sphynx.

18 The second comment is on the general rules
19 of lock restrictions; they can go further and they
20 should. At a minimum they can incorporate all of
21 the detailed restrictions of those whose application

1 is currently limited to the 1983 and '84
2 appropriation bills and the monies incurred
3 thereunder. It is that type of incorporation we
4 have attempted to set forth in our comments of March
5 of 1985. The existence currently in the proposed
6 and repropsoed regulations of two parallel sets of
7 regulations is both confusing and unnecessary. The
8 very fact that you have more extensive restrictions
9 in one portion of these regulations suggest they
10 could well prove useful in other areas as well.
11 This is not a minor point. It is important that
12 these regulations work because the objectives of
13 Congress' own restrictions on lock are fundamental
14 ones.

15 When the government spends money and then
16 locks it in turn, that becomes a perpetual expansion
17 machine. Preventing this is the Corporation's
18 responsibility. If this requires regulations that
19 are broader than the statutory prohibitions
20 themselves, it is the Corporation's responsibility
21 to implement such regulations.

1 In short, the regulations proposed and
2 issued by this Corporation on lock activities should
3 be as broad as necessary to accomplish the
4 Congressional objectives. It is true, of course,
5 the Corporation is faced with the decision of Judge
6 Parker in the Western Center case, especially the
7 rule of August of 1984 in which he took an extremely
8 narrow reading of the lock prohibition. I assume
9 that decision either is or will be appealed. More
10 importantly, that decision has very little relevance
11 to what this Corporation can do in the way of
12 issuing regulations; that is in the rulemaking
13 context. In fact, Judge Parker explicitly based his
14 rule in part on the very absence of regulations.
15 Given an adequate rulemaking record and the
16 Corporation's right to construe its enabling
17 legislation, Legal Services has considerable
18 latitude as to just what sort of regulations it
19 chooses to issue on this question and that latitude
20 is not really constrained by whatever Judge Parker
21 might have said.

1 As one example of that I would note that
2 the statutory prohibitions on lock, of course, have
3 that exception in that they do not cover the
4 provision of legal representation and advice, and it
5 is because Judge Parker took a very broad reading of
6 that exception to the prohibition that he was able
7 to come away with a very narrow reading of the
8 prohibition itself. It is entirely conceivable by
9 rulemaking this Corporation could come up with a
10 very narrow reading of what constitutes those
11 allowable instances of providing legal
12 representation and advice. It might be worth
13 considering as an extreme example that anything that
14 a layman can do without ever being charged with the
15 unauthorized practice of law does not constitute the
16 prohibition of legal representation and advice.
17 That of course would be a very narrow reading of the
18 exception to the prohibition. It would give a very
19 broad --

20 CHAIRMAN WALLACE: Let me ask you
21 something on that. What you are saying is if you

1 don't have to have a lawyer to do it as a matter of
2 law, it is not the provision of legal services.
3 Just because a lawyer could do it doesn't make it
4 legal services. Your rule is if a lawyer has to do
5 it, it is legal services, otherwise it is not.

6 MR. KAZMAN: Exactly. I think in
7 protecting the Congressional objective in
8 prohibiting lock that is worth considering. In fact,
9 Judge Parker himself spoke of "the full range and
10 kind of professional services provided by attorneys
11 as attorneys." Now, attorneys do lots of things
12 they don't have to be doing as attorneys. They can
13 pick up the dry cleaning for their clients, but it
14 is what they do as attorneys that counts as far as
15 coming within the exception to the proscription on
16 lock.

17 CHAIRMAN WALLACE: Let me ask you about
18 broadening beyond the explicit word "statute"
19 because, frankly, I think our authority to do that
20 is something that is in dispute. I haven't read
21 every word of the reauthorization bill that came out

1 of committee, but I have certainly read the mail I
2 have gotten from members of Congress and several of
3 them have told me that I have no authority to go
4 beyond what Congress has said, and in the
5 reauthorization bill, the subcommittee has said that
6 in no uncertain terms, if we had the authority, we
7 are going to take it away from us.

8 Now, what is your view or the view of
9 Pacific Legal of where our authority comes from to
10 put restrictions on funds that are not explicitly
11 provided for by statute?

12 MR. KAZMAN: I think the Corporation can
13 do whatever it feels it has to do in order to carry
14 out the proscriptions on lock, and that comes from
15 the fact that the agencies in general have a right
16 to do in incidental matter what in their view has to
17 be done to carry out their objectives. If Congress
18 does not want you to do certain things by way of
19 either elaborating or restricting what they have
20 said about the nonuse of funds in lock, they can
21 tell you that in those terms. The fact that one

1 subcommittee has threatened to do that might be all
2 the more reason to take them up on that offer.

3 CHAIRMAN WALLACE: I want you to
4 understand that I will take input from where our
5 authority comes from. I think I have reasonably
6 satisfied myself on the subject, but I don't regard
7 it as an open and shut case by any stretch of the
8 imagination, and I am going to have to explain to
9 some members of Congress if we adopt regulations
10 that we are not ordered to do. It is not an easy
11 issue and we would certainly appreciate the legal
12 input of Pacific Legal on this question, as we would
13 any side of it.

14 MR. KAZMAN: We have provided the wording
15 of what we regard as acceptable.

16 CHAIRMAN WALLACE: My question is on our
17 power to adopt that wording.

18 MR. KAZMAN: I hope you will not view it
19 as a closed issue because of the decision issued by
20 Judge Parker.

21 CHAIRMAN WALLACE: I'm not interested in

1 Judge Parker. Unless I am in contempt of his court
2 order what he says doesn't interest me much, but
3 what Congress says does.

4 MR. KAZMAN: The proscriptions are very,
5 very basic. They involve not statutory issues, but
6 conceivably constitutional issues as well, and for
7 that reason you must take additional steps to
8 protect them. If that means you take a different
9 definition for the terms in the context of lock
10 proscriptions than you do elsewhere, that is
11 something that you can do. The fact that you have
12 the same words appearing in several parts of the
13 statute under accepted rules of construction does
14 not necessarily mean that it has to have the same
15 meaning all the time.

16 Those boasically are my comments.

17 CHAIRMAN WALLACE: I have certainly
18 usurped my right to ask questions. I will ask other
19 members of the committee if they have questions or
20 comments.

21 I appreciate your presentation and I am

1 glad you could get over here on short notice because
2 we were not going to be able to get to this, but I
3 did want to give you the opportunity to speak before
4 we put this show on the road.

5 Questions from members of the committee?

6 Mr. Kazman, we appreciate it, and any
7 further input you have to make in writing or
8 otherwise. We have got your comments in writing and
9 any supplementation you have to make, we look
10 forward to hearing from you.

11 MR. KAZMAN: Thank you for this
12 opportunity and thank you for that invitation.

13 CHAIRMAN WALLACE: Thank you very much.
14 We have got Mr. Houseman who is next on the list and
15 we also have Mr. Dorsey who is a new member of the
16 Standing Committee on Legal Aid and Indigent
17 Defendants. Both of these folks will have further
18 chances to talk about this issue in future meetings,
19 but we wanted to hear several sides of this issue
20 today.

21 Mr. Houseman, Mr. Dorsey, you can both

1 come up forward at once or singly, whatever you want
2 to do it.

3 MR. HOUSEMAN: Obviously, we will spend
4 much more time on this. I want to respond to three
5 things. First, I think, one, but not the only issue
6 is whether the current reg imposes requirements
7 which go beyond the LSC Act and regulations in areas
8 where Congress has left these activities free from
9 regulation, and I think you and I have discussed
10 privately and publicly the issue that surrounds your
11 authority to act. There are, of course, not only
12 letters from several members of Congress, but from a
13 number of members of Congress on this, and as you
14 know it is not just one subcommittee, but both the
15 Appropriations Subcommittee's chairmen and the
16 Judiciary Subcommittee as well as other members of
17 the Congress --

18 CHAIRMAN WALLACE: For the sake of the
19 record, let me point out I also got letters from
20 members of Congress who want me to do exactly what
21 Mr. Kazman has suggested, so dealing with Congress

1 on the basis of correspondence is a dangerous thing
2 to do.

3 MR. HOUSEMAN: I agree with that. What
4 I'm saying is if you look first at the record, and
5 from what you have said it is not quite as simple as
6 it was made out to be. Secondly, I urge you to read
7 carefully our section by section analysis which has
8 a long legal brief on precisely this question, and
9 nothing which has been said in any way addresses the
10 legislative history or the issues analysis we have
11 done in that brief, and our conclusions, by the way,
12 are consistent with conclusions that have been drawn
13 by Congress and consistent with conclusions that
14 have been drawn by prior LSC staff, not just the
15 prior '82 staff, but '82 and '83 staff.

16 Secondly, I do, however, agree with one
17 thing that was said, and I'm not sure processwise
18 how to deal with it, but I think it would be very
19 important that when there is, if there is, a staff
20 draft that is different from the current regs, that
21 we have an opportunity to comment upon that. I know

1 I will, but I think it would be useful without again
2 going through the whole comment period necessarily
3 to have an opportunity to comment and to see it and
4 to get some comments on it, assuming it is different
5 from the current staff draft.

6 One of the problems in the past has been
7 that the the proposals in the Federal Register did
8 not contain supplementary information which
9 explained the basis and purpose of the original
10 rulemaking in 1984. Also, at least in some
11 respects, a number of respects, it didn't. When it
12 was originally published in 1984, many of the
13 proposed changes were not explained so you could not
14 really understand what the basis of the
15 Corporation's rationale was.

16 Finally, with regard to the major issue
17 that he proposed, which is that you not separate the
18 LSC Act from appropriation riders, I frankly think
19 you could not possibly act on that recommendation.
20 There is no question that there is a difference in
21 requirements between section 1075 of the LSC Act and

1 the appropriation riders. Moreover, if you are
2 going to talk about appropriation riders, my
3 questions are which ones? The ones in 1981, the
4 ones in 1982, the ones in 1983 or the ones in 1984
5 and '85, because in each of those years there were
6 separate appropriation riders which gave separate
7 instructions as to how the funds were to be used, so
8 you have to separate out the requirements of the
9 appropriation riders from the act. There is a
10 practical reason to do that, and that is that the
11 appropriation riders do not affect private funds
12 whereas the provisions in section 1075 may affect
13 those. So, in order to give programs guidance, you
14 have to separate those two things out.

15 Now, I want to say finally one thing about
16 our proposal. This may be a straw man, but I want
17 it very clear. Our proposal meets every concern
18 expressed by GAO. I had gone through it with some
19 care. I have looked at all the GAO opinions and
20 nothing in our proposal except maybe one word is
21 inconsistent with what GAO has stated on this issue

1 and in several places our proposals are more
2 consistent with the GAO positions than the current
3 reg or the proposal submitted by the Pacific Legal
4 Foundation. Our proposal would bring this in line
5 with the rider and we address the question of grass
6 roots lock which has been the biggest issue, and we
7 prohibit across the board without any doubt, so when
8 we are talking about what we are suggesting, we are
9 not talking about the big issues, we are talking
10 about a range of issues where in our view, in view
11 of some members of Congress, the Corporation has
12 gone beyond the restrictions of the Act. We are
13 proposing that you move back in conformity with what
14 we think is quite clear with what Congress has
15 restricted.

16 Thank you.

17 CHAIRMAN WALLACE: Any questions from
18 members of the committee?

19 We appreciate it.

20 Mr. Dorsey, as you are coming forward, I
21 want to thank you for being here on short notice.

1 The ABA will have plenty of time to talk about this.
2 But since we were going to broach the subject today
3 I wanted to give you the chance to present your
4 thoughts on the matter.

5 MR. DORSEY: Thank you, Mr. Wallace.

6 I have been appointed to take office after
7 the annual meeting of the American Bar Association,
8 so I am getting a running start on service on the
9 SCLAID committee.

10 I want to submit comments made by the
11 American Bar Association previously which sets out
12 specifics as to the position of the American Bar
13 Association on the regulation. But I would like to
14 speak for just a few minutes about the overriding
15 concern of the ABA, and that is according to the
16 Legal Services Corporation Act, the lawyers
17 representing poor people in legal services should
18 have the freedom to protect the clients' best
19 interest consistent with theoretical standards,
20 obligation and the high standards of the profession,
21 and it is the concern of SCLAID in particular that

1 several provisions of the rules infringe upon the
2 professional judgment of attorneys and their ability
3 to provide that zealous representation.

4 We are of the opinion that certain of the
5 rules do exceed statutory authority, and to the
6 extent they do that, they should be cut back so that
7 this overreaching concern that Legal Services
8 lawyers be free to represent their clients be
9 maintained.

10 We look forward, and perhaps you will ask
11 me to appear once again before your committee to
12 talk about 1612. I would like to leave the written
13 comments.

14 CHAIRMAN WALLACE: Okay, the secretary,
15 Mr. Daugherty, is right behind you and I will ask
16 him to take it and make copies and distribute it.
17 We thank you for being here on short notice and we
18 certainly look forward to the input of the ABA on
19 this process. Any questions from members of the
20 committee?

21 Thank you, very much, Mr. Dorsey. As

1 promised we will get out of here to let Pepe Mendez
2 start his committee meeting on time.

3 Do any members of the committee have any
4 further business to bring before us?

5 If not, we'll entertain a motion to
6 adjourn.

7 MR. SMEGAL: So moved.

8 CHAIRMAN WALLACE: Is there a second?

9 MS. MILLER: Second.

10 CHAIRMAN WALLACE: All those in favor, say
11 aye.

12 Opposed?

13 Motion is carried. We will adjourn.

14 (Thereupon, at 1:15 p.m., the meeting was
15 adjourned.)

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