

TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

In the Matter of:)
)
OPERATIONS AND REGULATIONS COMMITTEE)
)
OF THE BOARD OF DIRECTORS MEETING)
)
OF LEGAL SERVICES CORPORATION)

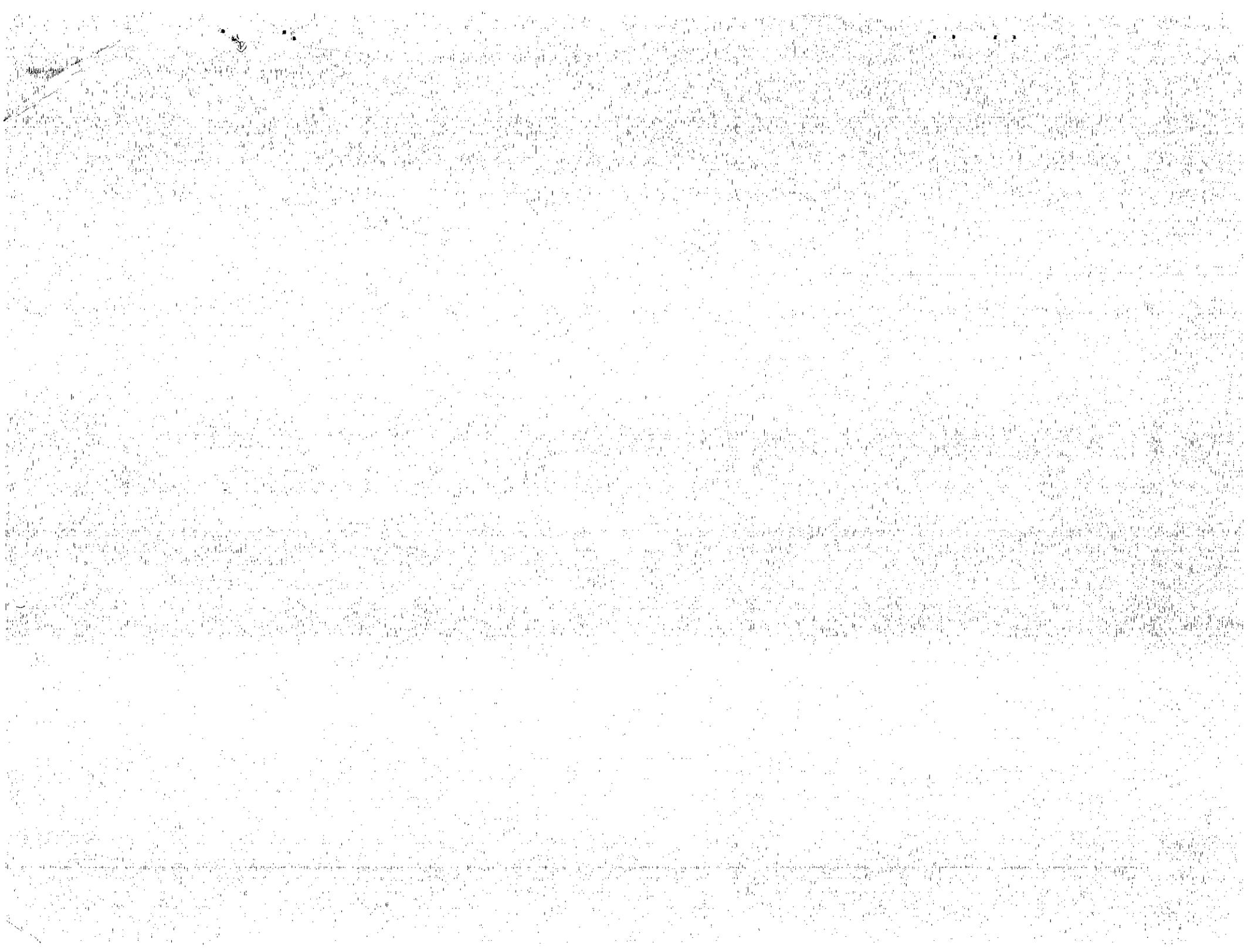
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LEGAL SERVICES CORPORATION

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In the Matter of:)
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OPERATIONS AND REGULATIONS COMMITTEE)
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OF THE BOARD OF DIRECTORS MEETING)
)
OF LEGAL SERVICES CORPORATION)

Thursday,
April 25, 1985

Eighth Floor Conference Room
733 Fifteenth Street, N.W.
Washington, D.C.

The above-entitled matter came on for meeting,
pursuant to notice, at 9:22 a.m.

BEFORE: MICHAEL B. WALLACE
Chairman

APPEARANCES:

BOARD MEMBERS:

- BASILE UDDO
- CLAUDE SWAFFORD
- THOMAS SMEGAL
- LeaANNE BERNSTEIN
- HORTENCIA BENAVIDEZ
- LORAIN MILLER
- PEPE MENDEZ

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OTHER ATTENDEES AND SPEAKERS:

DENNIS DAUGHERTY
Acting Secretary
LSC

TOM BOVARD
LSC

TERRY DUGA
General Counsel's Office
LSC

ALAN HOUSEMAN
Center for Law and Social Policy
Washington, D.C.

ELEANOR EISENBERG
Region VIII Project
Director

FORDON MILLER

YOLANDA BARCO

RUSSELL SCHETROMA

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P R O C E E D I N G S

1
2 CHAIRMAN WALLACE: If everyone could get
3 assembled, I am going to call the meeting to order.
4 This is the meeting of the Operations and Regulations
5 Committee of the Legal Services Corporation Board of
6 Directors.

7 Notice has been duly given for April 25th at
8 9:00. While we were getting wired up and checked out of
9 the hotel, a half-hour has elapsed and we apologize to
10 people who have been waiting for us this morning.

11 Before we get into our business, we are going
12 to welcome, for the purpose of giving our Invocation
13 this morning, the Reverend David Durham from Mount Sinai
14 Baptist Church here in the District of Columbia up at
15 Third and Q Streets.

16 Reverend Durham, we welcome you this morning.
17 If you can come forward and offer our Invocation, we
18 certainly would appreciate it.

19 (Invocation is presented by the Reverend
20 David Durham of Mount Sinai Baptist Church)

21 THE COURT: Reverend Durham, we thank you
22 for that and we appreciate you getting us off to such
23 a fine start this morning.

24 Thank you for your time.

25 We have, now that Mrs. Miller has joined us, all

1 the members of this Committee here except our ex officio
2 member, Chairman Durant. Mrs. Miller and Mrs. Bernstein,
3 Mr. Smegal and myself and members, we are happy to have
4 sitting in with us this morning Mrs. Swafford and
5 Mrs. Benavidez and Pepe Mendez who are members of the
6 Board but not members of this Committee.

7 We are happy that you can be with us today.
8 The first item will be to approve our agenda. Let me
9 just make one notation. I don't think we need to change
10 the agenda.

11 Under Item 4 we will be making recommendations
12 to the full Board on above-cited regulations as far as
13 by-laws and Sunshine Act are concerned. We will hear
14 testimony on private attorney involvement.

15 We had hoped today that Mr. Smith, former
16 President of the ABA, would be with us as a result of
17 the pro bono conference in Charlotte. He had been talking
18 with some of our officers and wanted to come join us
19 this morning.

20 We heard from him yesterday. He has been in
21 the hospital and he is not going to be able to be with us
22 today. He is going to submit a written comment and what
23 I would recommend that the Committee do is wait until
24 we have heard from Mr. Smith before we do any mark-up
25 on these regulations.

1 This should not delay our process. The Board
2 is not going to meet tomorrow so we are not going to be
3 able to send anything to the Board anyway. It would
4 be our intention, I hope, to have a fairly long working
5 session when we come back in May and deal with private
6 attorney involvement and do as much of the lobbying
7 regulation 1612 as we can at that time.

8 So with that explanation of Item 4, the agenda,
9 if there is any member of the Board who has any corrections
10 or additions to make to the agenda?

11 (No response)

12 If not, can we have a motion that the agenda
13 be adopted as printed in the Board book?

14 MR. SMEGAL: So moved.

15 CHAIRMAN WALLACE: Is there a second?

16 MS. BERNSTEIN: Second.

17 CHAIRMAN WALLACE: There is a second. All in
18 favor? Is there a debate?

19 MS. BERNSTEIN: Well, there is no debate. It
20 is just that as printed in the Board book, it says we
21 are going to make recommendations regarding private
22 attorney involvement.

23 I was going to say that I would, given the
24 explanation that you made that we are not going to
25 get involved with that question today--

1 CHAIRMAN WALLACE: We are going to make
2 recommendations on 1601 and 1622.

3 MS. BERNSTEIN: Okay.

4 CHAIRMAN WALLACE: On above-cited regulations
5 except 1614, I guess we should say.

6 MS. BERNSTEIN: If that is the sense that Tom
7 made in his motion, then I don't have any problems with
8 it.

9 CHAIRMAN WALLACE: Was that your sense, Mr.
10 Smegal?

11 MR. SMEGAL: I believe that is the sense.
12 Certainly we are going to make a recommendation and
13 in that sense the recommendation will be put over.

14 (laughter)

15 CHAIRMAN WALLACE: With that understanding,
16 all in favor say aye.

17 (A chorus of ayes)

18 Opposed?

19 (No response)

20 The agenda is adopted. We have two sets of
21 minutes to consider. As members of the Committee will
22 recall, at the last meeting we asked our staff to
23 update the last two or three witnesses from the meeting
24 of February 22nd.

25 We didn't get them in any detail. I have one

1 correction written that I would like to make on page 13.

2 It says the Chairman then commented that the
3 subgrant provisions are unnecessarily burdensome to the
4 Bar and may be burdensome to others. The only
5 thing I would say is what I think I said and what I
6 meant to say: subgrant provisions may be unnecessarily
7 burdensome to the Bar.

8 I don't think I knew enough then or know enough
9 now to make a definite statement on it. I know the
10 thrust of my statement was if the Bar was having problems
11 with this, other people may, too, and we ought to look at
12 it.

13 May I have unanimous consent to change "are"
14 to "may be" in that paragraph on page 13?

15 (A chorus of affirmative responses)

16 Hearing no dissent, we will make that correction
17 then.

18 Do any other members of the Board have any
19 further corrections to make other than the corrections
20 that we discussed at the last Board meeting of these
21 minutes?

22 MS. BERNSTEIN: Are we talking just about the
23 22nd?

24 CHAIRMAN WALLACE: Just talking about the 22nd
25 right now.

1 (No response)

2 If there are no further correction to these
3 minutes, I would entertain a motion that with the
4 correction just made and the corrections made to these
5 minutes at the last meeting, could we have a motion
6 that these minutes be approved as amended?

7 MS. BERNSTEIN: I make that motion.

8 CHAIRMAN WALLACE: There is a motion. Is
9 there a second?

10 MS. MILLER: I second it.

11 CHAIRMAN WALLACE: The motion is seconded.

12 Any further discussion on these minutes?
13 Only on the 22nd.

14 MR. SEMGAL: Yes. We had a discussion at
15 the next meeting of those minutes--

16 CHAIRMAN WALLACE: Right.

17 MR. SMEGAL: --and I thought I had seen it
18 in here. It had to do with a letter that had come
19 in from--a GAO letter. My concern was that it did not
20 refer to the most regulations that had been promulgated,
21 the '83 regulations.

22 And I don't see that that has been set forth
23 here.

24 CHAIRMAN WALLACE: I don't think it has been
25 changed yet. Let me ask the Acting Secretary. I have

1 looked at the minutes of March 7 and 8 and the first
2 two pages of those have to do with corrections to be
3 made to the minutes of February 22nd.

4 I don't think that those corrections have
5 been made yet because we never passed on the full list
6 of corrections. What I took the nature of this motion
7 to be was the correction we just made a minute ago
8 and the corrections that we made March 7th and 8th
9 should now be added and the minutes be adopted.

10 I suppose, Mr. Secretary, you will be going
11 back to incorporate the changes we made last time into
12 these minutes. Those have not been done yet, have
13 they?

14 MR. DAUGHERTY: Yes, Sir, that has been done.

15 CHAIRMAN WALLACE: Oh, it has been done?

16 MR. DAUGHERTY: I think Mr. Smegal is raising
17 a question about the minutes of February 13th that
18 he raised during the February 22nd meeting. I can
19 get you a copy of those minutes if you would like to
20 re-examine them.

21 MR. SMEGAL: You are saying that that actually
22 goes back to the 13th rather than the 22nd?

23 MR. DAUGHERTY: On the 22nd, as you will see
24 noted on page 2 of these minutes--

25 MR. SMEGAL: Yes.

1 MR. DAUGHERTY: --when the minutes of
2 February 13th were discussed, you made a--you raised
3 some questions as to the significance of the GAO letter
4 and whether or not the cover note accompanying it
5 accurately described the contents.

6 MR. SMEGAL: Okay. So the change I was
7 concerned about is already in the February 13th minutes
8 and the colloquy here was with respect to the February
9 22nd with respect to those changes?

10 We didn't have a further discussion on March
11 seventh?

12 MR. DAUGHERTY: You did not have a discussion
13 on March seventh about that. And whether or not the
14 February 13th meeting minutes now reflect your intention,
15 I will just have to get a copy to check, Sir.

16 MR. SMEGAL: Thank you.

17 CHAIRMAN WALLACE: Mr. Secretary, I am a
18 little confused. These are the minutes of March seventh.
19 I am looking at the minutes of March seventh and I see
20 at the bottom of page two of those minutes and at the
21 top of page three: Mr. Smegal requested that the words
22 "regarding the significance of the content of the GAO
23 letter" be added after the words --

24 MS. BERNSTEIN: That is on the 22nd.

25 CHAIRMAN WALLACE: Yes. These are on the minutes

1 of the 22nd and that is what we have a motion on the
2 floor to approve.

3 Now what I want to go back and do is see
4 whether that correction that we adopted--

5 (reads document)

6 --"regarding the significance of the content
7 of the GAO letter". Okay. That correction has been
8 made to the minutes of the 22nd.

9 MS. BERNSTEIN: The only thing I would suggest,
10 Dennis, is on page two of the February 22nd minutes,
11 the beginning of the second paragraph on page two,
12 where it says "Chairman Wallace then asked the members
13 of the Committee to review the draft minutes".

14 Could we insert "of February 22nd" since we
15 don't have anything in there that says which minutes
16 we were reviewing?

17 CHAIRMAN WALLACE: Now wait a minute. Those
18 would be February 13.

19 MS. BERNSTEIN: That is what I mean: February 13th.

20 CHAIRMAN WALLACE: Okay. I think that is a
21 good correction to make since we have two sets before
22 us and we are a little confused.

23 All right.

24 (Pause)

25 Now, with these two corrections of today then,

1 I think the motion before us would be to approve
2 the minutes of February 22nd. Is there any further
3 debate on that?

4 (No response)

5 If not, all in favor say aye.

6 (A chorus of ayes)

7 Opposed?

8 (No response)

9 Hearing no dissent, the minutes of February 22nd
10 are approved as substantially amended. Has everybody
11 had a chance to look at the minutes of March 7th and 8th
12 in preparation to this meeting?

13 (No response)

14 Are there any corrections or additions to
15 be made to the minutes of March 7th and 8th?

16 MR. SMEGAL: There is a small typo on page six
17 of those minutes, which is also numbered page 22, in
18 the indented portion, the subsection about six lines
19 down. The word "man" appears where it should be "may".

20 CHAIRMAN WALLACE: Okay. That correction will
21 be made without objection. Are there any other corrections
22 that anyone sees in these minutes that need to be
23 made?

24 (No response)

25 Hearing none, the Chair would entertain a

1 motion to approve these minutes as corrected.

2 MS. MILLER: So moved.

3 MR. MENDEZ: Second.

4 CHAIRMAN WALLACE: There is a motion and a
5 second. Any further discussion?

6 (No response)

7 All in favor, say aye.

8 (A chorus of ayes)

9 Opposed?

10 (No response)

11 Hearing no dissent, the minutes of March 7th
12 and 8th are approved.

13 The next item on our agenda, I believe, if
14 I can flip back through the book, is a report from
15 the Office of General Counsel on 1601 and 1622, the
16 by-laws and the Sunshine Act.

17 I would recognize our representative from
18 the General Counsel's Office, Mr. Duga, to make that
19 report at this time.

20 MR. DUGA: The amendments that were voted
21 on by the Board were published for comment. The
22 comment period ran out last Monday. This was on both
23 parts 1601 and 1622.

24 As of this morning, no comments were received.
25 Therefore, to make matters relatively short, we have no

1 recommendations for further changes. We would
2 recommend that this Committee recommend to the Board
3 the formality of finalizing 1601 and 1622 as they now
4 stand in proposed amended state, if that makes any
5 sense.

6 CHAIRMAN WALLACE: I think that makes some
7 sense. Do any members of the Committee have any
8 comments or questions for the General Counsel's Office?

9 (No response)

10 Any comments or questions on these regulations
11 at all?

12 (No response)

13 Is there anyone with us here this morning who
14 has anything to say about these two sets of regulations
15 at this point?

16 (No response)

17 All right. We will take them one by one
18 then. The Chair would entertain a motion that we
19 recommend to the Board that part 1601--the by-laws--
20 be amended as previously approved by this Committee
21 and as published in the Federal Register.

22 MR. SMEGAL: That's a motion.

23 CHAIRMAN WALLACE: Is there a second?

24 MS. BERNSTEIN: I second it.

25 CHAIRMAN WALLACE: Any further discussion?

1 (No response)

2 All in favor say aye.

3 (A chorus of ayes)

4 Opposed?

5 (No response)

6 That motion carries.

7 The Chair would entertain a similar motion with
8 regard to part 1622, the Sunshine Act, that we recommend
9 to the Board that they approve those regulations as
10 previously recommended by this Committee and as
11 republished in the Federal Register.

12 MR. SMEGAL: I will make the same motion.

13 CHAIRMAN WALLACE: Is there a second?

14 MS. BERNSTEIN: I will second it.

15 CHAIRMAN WALLACE: All right. It has been
16 moved any seconded.

17 Any further discussion?

18 (No response)

19 All in favor say aye.

20 (A chorus of ayes)

21 Opposed?

22 (No response)

23 Hearing no dissent, that motion is adopted.

24 We would go on to part 1614 on private attorney
25 involvement. We have some witnesses who are going to be

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1 with us this morning. I understand that they have
2 reached town, haven't they?

3 MR. BOVARD: Their flight has been delayed.
4 We received word from their Secretary.

5 CHAIRMAN WALLACE: I think what we ought to
6 do--and I apologize to the folks that are with us--
7 I think what we will do then is we do have witnesses
8 coming but we also have folks here that may have some things
9 to say on private attorney involvement regulations as
10 they stand.

11 What I would--as they stand recommended. What
12 I would like to do at this point is to ask members of
13 the public who are with us if they have got any comments
14 on 1614.

15 Then at that point I think we will have to
16 recess until these witnesses get here and we can all
17 go answer our questions from the Senate that were
18 delivered to us last night.

19 Are there any comments from the members of
20 the public on 1614? I know we have heard on this to
21 some extent already.

22 Mr. Houseman?

23 MR. HOUSEMAN: I want to make a couple of
24 maybe process points.

25 CHAIRMAN WALLACE: Okay.

1 MR. HOUSEMAN: And then raise a couple of
2 issues that I would like you to think about when you
3 are reading over the staff version and our proposed
4 version.

5 First, the process points. There is material
6 being handed out that I don't get unless I go out of
7 my way to ask for it.

8 The General Counsel's Office has been very
9 good at this. I would really appreciate, in order to
10 respond to whatever information you are getting, to
11 be able to get the material in time that I can respond
12 and--

13 CHAIRMAN WALLACE: Let me ask what you have
14 missed because I am not sure I have gotten--

15 MR. HOUSEMAN: I am not sure anything is
16 coming out. But for example there are memos that
17 are handed out right at the time of meeting which are
18 available a couple days before.

19 And it would just be useful for me to get
20 my hands on those so that I could have a chance to
21 look them over and think about them.

22 CHAIRMAN WALLACE: Let me just say that the
23 only memos we got today are the background on the
24 witnesses--

25 MR. HOUSEMAN: I don't mean that.

1 CHAIRMAN WALLACE: Okay.

2 MR. HOUSEMAN: I mean, substance stuff that relates
3 to 1614.

4 CHAIRMAN WALLACE: Yeah. I -- you know, I really
5 think --

6 MR. HOUSEMAN: Okay.

7 CHAIRMAN WALLACE: I may not be getting it either,
8 because heaven knows I'm asking for everything I can find
9 out on PAI, and it's a short list.

10 MR. HOUSEMAN: Okay. Maybe I'm wrong, but there
11 have been some memos available on PAI that were cut before
12 the meeting that, if possible, I'd just like to get ahold
13 of them. I can send a messenger over to wherever you want.

14 CHAIRMAN WALLACE: You know, I've certainly asked,
15 and I will ask again, the general counsel's office to be
16 cooperative on this --

17 MR. HOUSEMAN: They have been extremely cooperative.

18 CHAIRMAN WALLACE: Okay. If the memos are coming
19 from some place else, I'm really not sure I'm seeing them
20 either, and that's from time to time a problem.

21 MS. BERNSTEIN: Terry, do you have specific concerns?
22 Are you in a position to think that there are memos that
23 you're not aware of in the general counsel's office?

24 MR. DUGA: Not that I know of.

25 MS. BERNSTEIN: Okay.

1 MR. DAUGHERTY: There were two items handed out --
2 there was a hand-out at your February 22nd meeting from
3 the office of field services. There was a hand-out at your
4 March 8th meeting, that I prepared. So, both of those were
5 made available on the back table. I believe that there's
6 also been done some -- been some work done by Ms. McDermott
7 and she distributed that at the last meeting.

8 I don't think there's been anything else relevant
9 to that.

10 CHAIRMAN WALLACE: Let me make this first explana-
11 tion, and, also, further suggestions of -- I think, as every-
12 body knows, we have had some problems with the staff. We
13 are understaffed, and we have a lot of work to do.

14 I would introduce, if I may, one of -- Tom Bovard,
15 who came on board a week ago. Are you a deputy or assistant
16 or what kind of general counsel are you, Tom?

17 MR. BOVARD: Liaison.

18 CHAIRMAN WALLACE: Okay. I think Tom is working
19 in the general counsel's office, and he -- he's not working
20 in the general counsel's office? Who are you working for,
21 Tom?

22 MR. BOVARD: You.

23 CHAIRMAN WALLACE: Okay. Tom is working for me.
24 I don't know where he's been in the line item, but if --
25 I have asked Tom to try to get -- really, to put his full

1 time on organizing these committee hearings and getting
2 things to me in advance and getting them in the board books.
3 I mean, I don't want the public to be unaware of the things
4 that we're doing here, and in the future, when we've got
5 witnesses coming, when we've got reports we're going to
6 be reviewing, they ought to be in the board book, it seems
7 to me, just like the regs. are.

8 I think Tom is going to try to do that because
9 I want the folks to have access to these things. I want
10 to have access to them, too, and whoever Tom works for in
11 Washington, he's working for me at these hearings, and I
12 think we're going to get these reasonably well organized
13 from here on out.

14 But, criticism is well accepted, and we're going
15 to try to get that straightened out now that we've got help
16 on a regular basis.

17 MR. HOUSEMAN: Fine. Secondly, I think it would
18 be very -- you may have done this already, but I would
19 particularly urge you to read the analysis which Marjorie
20 McDermott did on PAI, and I think she has a number of
21 interesting sets of data in it that relate to the PAI regula-
22 tions, and to some of the alternative proposals that are
23 being considered by the board and the committee.

24 For example, it shows a rise in the number of
25 cases since 1982, and the case closure levels, which always

1 lag behind the amount of funding are now up to about 12.4
2 percent, based on the data at the end of 1983.

3 Secondly, it talks about differences in the types
4 of subject matter between the private, non-staff and legal
5 services staff, showing that problems unique to the board
6 are handled much more by staff. The problems where's the
7 common expertise of the private bar when there's no private
8 economic incentive, the private bar and staff can do equally
9 well.

10 I think it's useful to look at that data as well
11 as the data in the discussion that Marjorie provides on
12 the litigating cases and the court cases, particularly with
13 regard to the differences in percentages on litigated and
14 court cases, and the reasons for those percentages.

15 CHAIRMAN WALLACE: Do you see the difference in
16 case handling as being a disadvantage? I told the Senate
17 yesterday I thought that seemed to be a reasonable division
18 of labor if you're going to have private attorneys involved,
19 for them to concentrate on the kinds of cases that they
20 ordinarily do for paying clients.

21 Do you see --

22 MR. HOUSEMAN: No, no. I agree with that completely.
23 No, I don't think it's -- it only goes to how you look at
24 the mix of private and staff programs, and trying to draw
25 a conclusion about that, and how far we should -- what kind

1 of mandate we should put on. I think you have to look at
2 that kind of data, that's all I'm saying.

3 CHAIRMAN WALLACE: Okay.

4 MR. HOUSEMAN: Finally, as you think about the
5 various options that you are considering, guidelines, ten
6 percent, 12.5 percent requirements, etc., there is a distinction
7 that I just want you to reflect upon as you think about
8 this.

9 When you make something a requirement, you essentially
10 put the program into a compliance -- put the corporation
11 in the program into a compliance perspective. That is,
12 you either comply with 12.5 percent or you don't. If you
13 don't, you're subject to sanctions.

14 As opposed to guidelines where the program gets
15 monitored and recommendations can be made that you're under
16 it, you're over it, you should be doing more. It's a different
17 perspective and programs view it in a different perspective,
18 when you're thinking about it, whether you have to comply
19 with something and need a certain percentage requirement
20 or whether with the guidelines, you can be monitored and
21 if you're doing well, you can, you know, -- it's a much
22 more -- how should I put it? It's a much more cooperative
23 relationship. It's a much more useful relationship, I think,
24 most programs find when this kind of stuff, which is not
25 a requirement of the Act and not a restriction, could be

1 in a monitoring framework as opposed to a compliance frame-
2 work.

3 So, as you think about the various options that
4 we're discussing and the desires, I think, of all of us
5 to build in more flexibility, I think you should think about
6 the consequences on the practical level to programs in the
7 corporation when you're in a compliance framework as opposed
8 to monitoring framework, and that's just a thought that
9 hasn't come out in either the prior testimony or my prior
10 comments.

11 And, as we go into more detail in the next meeting,
12 I think it would be useful to reflect on that.

13 MS. BERNSTEIN: Dan?

14 CHAIRMAN WALLACE: Ms. Bernstein?

15 MS. BERNSTEIN: Can you give me your opinion then,
16 if it were in a voluntary or a guideline mode, would it
17 be your opinion that the programs would comply with the
18 12 and a half percent?

19 MR. HOUSEMAN: If it was 12 and a half percent,
20 I think yes, the data that we have shows that the ten percent
21 guideline was working, the programs were not only complying
22 with it, they were going beyond it, and both Marjorie's
23 paper and the other data presented to you show that and
24 Ken Smith's study certainly shows that.

25 MS. BERNSTEIN: If we move the percentage to twenty

1 percent, would you -- would it be your opinion that the
2 programs would make an effort to voluntarily meet that guide-
3 line?

4 MR. HOUSEMAN: Probably. I mean, but twenty percent
5 raises a whole host of other problems.

6 MS. BERNSTEIN: Okay. In a cooperative effort --

7 MR. HOUSEMAN: There has been very little evidence
8 that the programs do not comply with either the ten percent
9 or the 12.5 percent. What I'm saying, more importantly,
10 is that when it was a ten percent guideline, it was
11 substantial compliance and substantial movement, as this
12 data reflects.

13 MS. BERNSTEIN: Do you disagree with Esther Lardent's
14 characterization that the ten percent was viewed as a require-
15 ment by the programs?

16 MR. HOUSEMAN: Esther didn't say that. That was
17 Joshua Brooks who said that.

18 MS. BERNSTEIN: No. We just approved the minutes,
19 and that was in the transcript from Esther Lardent's comments.

20 CHAIRMAN WALLACE: Let's go back and look at that.

21 MR. HOUSEMAN: I think I had better look at the
22 minutes. Esther, in fact, made the opposite point. She
23 made the point quite strongly that the ten percent was a
24 guideline, not a requirement, and that --

25 MS. BERNSTEIN: She did make that point, but she

1 said the programs viewed it as a requirement. That's what --

2 MR. HOUSEMAN: Viewed it as something that they
3 had to achieve, but not in the sense that if they missed
4 it by 9.9 percent, they are going to be out of compliance.

5 MS. BERNSTEIN: That's no difference from the
6 situation we have now in which if there is a slight deviation,
7 I think it was testified to at that last meeting by our
8 staff that if there was a slight deviation, there's no
9 problem now. It doesn't cause a compliance problem if there's
10 a slight deviation.

11 MR. HOUSEMAN: That's not clear. First of all,
12 because we haven't been in to a situation yet where we've
13 have the 12.5 percent in terms of review program monitoring.

14 MS. BERNSTEIN: But, I'm just going by the testimony
15 we've had at the meeting, Alan, which is -- you know, I'm
16 trying to deal with what evidence we've had before us at
17 these meetings in conjunction with the Marjorie McDermott
18 report and what background information we have on this 12.5
19 percent involvement, and from what I'm hearing you say,
20 is that let's call it something else.

21 MR. HOUSEMAN: No. I'm saying -- quite clearly,
22 I'm saying there's a reason --

23 MS. BERNSTEIN: Because the staff and Esther said
24 minimum -- you know, de minimus of deviations don't -- you
25 know, shouldn't result in any sort of a compliance sanction

1 or anything. We've heard that from the staff. We've heard
2 that from Esther Lardent, and what I hear you saying is
3 we should call it something different.

4 MR. HOUSEMAN: No. What I'm saying is -- first
5 of all, I don't think that's exactly what Esther said, but
6 what I'm saying is that if you look at it as a guideline
7 and you look at it in the frame of monitoring, you're going
8 to build a much more effective and cooperative relationship
9 with the programs than if you look at it in terms of strict
10 compliance. That's all I'm saying.

11 When you talk about a requirement, you move into
12 a compliance framework, and the compliance framework does
13 not -- is not, I think, in this area, the kind of framework
14 you want to be in. That's the only point I'm making.

15 CHAIRMAN WALLACE: Mr. Smegal, did you have some-
16 thing you wanted to add?

17 MR. SMEGAL: Well, I don't have the transcript
18 in front of me, so I can't quote Esther, but it would seem
19 to me from what you two are saying, is that we've got a
20 carrot and a stick situation, and Esther was saying that
21 if it's a carrot context, that the programs would come along.
22 As Alan is pointing out, they did come along. They complied
23 in a sense, and Alan is concerned that if you use the stick
24 approach, they are going to resist it.

25 In the circumstance where there was a more

1 cooperative feeling, Esther was voicing the view that the
2 programs went along and they all were complying with the
3 ten percent in a voluntary sense, and Alan is suggesting
4 that that is what we continue to do here, and I don't --
5 I see a subtle difference and I think Alan is making the
6 difference in that.

7 I don't know where the transcript would be, and
8 I'm sure whatever the transcript says, I suspect that Esther
9 intended what I am suggesting she intended.

10 MS. BERNSTEIN: I don't want to belabor it, but
11 my point is simply that I believe that if the result of
12 either calling it a mandatory requirement or calling it
13 a guideline such that the programs felt that it was something
14 that they should attain, and the corporation felt that it
15 was something that they should attain, that the monitoring
16 would be exactly the same, whether you call it a mandatory
17 requirement or a guideline, and that, therefore, I don't
18 think that there is a distinction in the carrot and the
19 stick, and if you're going to make that distinction, then
20 the evidence that we have at this point is under the present
21 facts that we have in, if we want to call the ten percent
22 guideline a carrot, and the 12 and a half percent requirement
23 a stick, then the programs have complied to both in excess
24 of the requirement on the national average, as I remember
25 the information that we have.

1 And, so, I guess I'm just -- I don't think that
2 there really is a difference, and I don't see the conception
3 in terms of the difference, and if the point you're making,
4 Tom, is that they're going to be more reluctant to comply
5 with something if we say you have to comply with it, then
6 I think there's a problem with that.

7 MR. SMEGAL: No. I think you misstated the facts.
8 We have experience with the guidelines, and the experience
9 has been a good one, and, now, what you're suggesting is
10 that our experience with the guideline is so good, let's
11 make it mandatory. Let's make it a requirement.

12 MS. BERNSTEIN: No. The 12 and a half percent
13 is mandatory, Tom.

14 MR. SMEGAL: I don't think that's the way it's
15 being treated either by the staff or by the programs.

16 MS. BERNSTEIN: Well, but, the point of it is
17 that that's why I'm saying that Alan's characterization
18 that it is -- you know, that we should call it a guideline
19 rather than a requirement or mandatory is a distinction
20 without a difference.

21 CHAIRMAN WALLACE: Mr. Mendez is trying to jump
22 in here and we're happy to have him sitting in with us today.

23 MR. MENDEZ: I was going to ask you a question
24 that I was asked yesterday.

25 Imagine a case where a program refuses to

1 comply. If it's a guideline, what sanctions are there,
2 and if it's mandatory, what sanctions are there?

3 MR. HOUSEMAN: Well, if it's a guideline, the
4 monitoring can require certain steps be taken. We can impose
5 specific conditions, and you can use the normal technique
6 that are available, and obviously you can still use those
7 techniques for compliance.

8 But, part of the difference here is with compliance,
9 you may well immediately subject the program to more harsher
10 sanctions. Secondly, you create -- the problem with the
11 compliance arises less in that context. It arises more
12 in the context of when you are 12.3 percent. I mean, you
13 dump a lot of money to get 12.5 because you've got this
14 notion you have to be at 12.5.

15 That is building in flexibility up front in a
16 guideline sense. Combined with monitoring, I think the
17 evidence indicates it's going to assure you you're going
18 to reach your goal, and it's going to provide the flexibility
19 up front, so that certain things don't happen.

20 The sanctions that are continuing to be available
21 would continue to be available in both cases, but I'm just
22 saying it's -- in essence, you asked us for the compliance
23 framework. It's like either comply or you don't.

24 MR. MENDEZ: All right. Is it fair to say that
25 the requirement, you've got a sledgehammer behind it, and

1 if it's not, you don't?

2 MR. HOUSEMAN: I don't think it's a sledgehammer.
3 I think that in either case, you've got plenty of sanctions
4 to use.

5 MR. MENDEZ: Okay.

6 MR. HOUSEMAN: And, you may not use one or the
7 other, I mean, depending on what you're talking about. The
8 framework by which you look at this, programs are in a frame-
9 work of trying to comply, seeking this as a goal, using
10 the resources most economically and effectively. That's
11 the attitude, the atmosphere you want to create. You don't
12 want to create an atmosphere and attitude of well, we have
13 to reach 12.5 percent or, Jesus, the world's going to end.

14 MR. MENDEZ: Let me ask --

15 MR. HOUSEMAN: The problem with this is, you see,
16 the program audits and stuff are just coming back, from
17 the first year when we had a 12.5 percent requirement on
18 the grant. So, we don't really know exactly what has happened
19 and what programs have done. That information is starting
20 to come in, but it's hard to make any conclusions about
21 this.

22 CHAIRMAN WALLACE: You have one more question,
23 Mr. Mendez?

24 MR. MENDEZ: What happens in the case, on a voluntary
25 type issue? You can't automatically terminate the grant

1 for failure to comply with the guidelines, you have to write
2 the conditions. So, it could possibly exist for a second
3 year or not.

4 MR. HOUSEMAN: Well, that's true. I mean, you
5 can certainly -- it depends on the level. I mean, if a
6 program is one percent, made no effort, I mean, there is
7 a lot of levels --

8 MR. MENDEZ: I mean, I'm not talking about --

9 MR. HOUSEMAN: I mean --

10 MR. MENDEZ: -- the case, my imaginary case. The
11 imaginary case where they make no effort to comply at all.
12 If we have this imaginary case --

13 MR. HOUSEMAN: I think you're in roughly the same
14 position in either case.

15 MR. MENDEZ: But, the requirements you can defund
16 immediately.

17 MR. HOUSEMAN: Yes. The requirement procedures,
18 yes.

19 MR. MENDEZ: I'm sorry?

20 MR. HOUSEMAN: Subject to the determination.

21 MR. MENDEZ: Of course. But, the guidelines --
22 it would be at least the second year before you --

23 MR. HOUSEMAN: Not necessarily. Not necessarily
24 because there is criteria in the Act about economic and
25 effective, and there's criteria about, you know, acting

1 consistent with the instructions, guidelines, etc., and
2 if it was so out of compliance, it wasn't really a closed
3 case, I think you're in much the same position either way.

4 CHAIRMAN WALLACE: Let me ask you a historical
5 question, and anybody that's got any historical recollection,
6 please let me know. But, it would seem to me that there
7 are a lot of requirements in our regulations and in our
8 Act, and not every program has hit every one of those require-
9 ments absolutely on the head.

10 But, they haven't been hit with a sledgehammer
11 and been defunded. The history of this program, I would
12 think, shows the certain amount of tolerance before good
13 faith failure to comply. We're -- heaven knows, with all
14 the programs and all the requirements, if everybody was
15 defunded the minute they failed to meet a requirement, represented
16 an ineligible plan or violated one of the lobbying provisions,
17 there would have been a lot more defundings than they have
18 been.

19 I would think if this is a requirement, we would
20 enforce it with the same sort of common sense, good faith
21 standards that all the other requirements have historically
22 been enforced, and why should this requirement make the
23 field any more nervous than any of the other requirements?

24 You can always follow-up and get yourself in a
25 compliance situation, but if they are good faith, you usually

1 get through it all right. Why is this different?

2 MR. HOUSEMAN: I'm not sure, given the way you're
3 presenting it, that it's any different at all. I'm trying
4 to put a framework that what we want to do is encourage
5 private attorney involvement, but we don't want to create
6 silly tensions over something that we shouldn't be, you
7 know, worrying about with this 12.4 percent or 12.5 percent.

8 We don't want programs in December dumping a lot
9 of money into some silly things so that their audit report
10 looks like it's 12.5 percent. All of those kinds of things
11 are dangerous, that can be eliminated in a lot of ways.
12 Commentary in the regs, but, you know, just saying I hope
13 that we approach this in a framework of trying to move toward
14 a goal that we all seek, and not get locked into concerns
15 about well, -- I mean, I see the other side.

16 Well, if it's not a requirement, the programs
17 will pull back. I don't see -- it's part of the framework
18 whereby you look at this. If we're both trying to meet
19 each other and go in the direction and, remember, this is
20 really fought out on the local level, and it's a cooperative
21 relationship that's just been developed at the local level
22 and we want to do everything in our power to encourage that.

23 CHAIRMAN WALLACE: Let me ask Mr. Duga something
24 here because he works hard and he's been trying to say something.

25 MS. BERNSTEIN: Well, before, let me respond because

1 I don't want to forget the point I was going to make with
2 Alan, though.

3 From the standpoint of just, you know, kind of
4 efficient management, it's much easier -- we are dealing
5 with a lot of different entities out there who are run by
6 boards of directors who come in, and if you've got a checklist
7 of things that you are, you know, supposed to be doing and
8 you're working from that checklist, it seems like -- it's
9 just like -- to bring it home, when you're raising children,
10 if you put -- if you lay down the rules that ,you know,
11 yo will or will not do this, then the children know what
12 to expect.

13 I'm not saying that it's a program of children,
14 but by the same token, if -- as long as the rule is laid
15 out clearly, that doesn't mean that you're going to spank
16 your child if the child doesn't get home from the neighbor's
17 at exactly the right time.

18 You -- but, the rules having been laid out as
19 a rule, I think promotes good feelings because people know
20 what to expect.

21 CHAIRMAN WALLACE: Let me get out of psychology.

22 MR. HOUSEMAN: It's really treating the program
23 in a much different way than it should be treated.

24 CHAIRMAN WALLACE: Mr. Duga?

25 MR. DUGA: I think that these concerns have been

1 addressed in the reg. We did consider the problems of when
2 there's been good faith compliance, but there's been a miss
3 and a minor miss.

4 CHAIRMAN WALLACE: Where do you see that in the
5 regs. as such?

6 MR. DUGA: In several additions that we've made.
7 The first one starts out with the page 89 where we've re-
8 inserted the joint venture aspect.

9 CHAIRMAN WALLACE: That helps joint ventures.

10 MR. DUGA: It helps joint ventures and it still
11 requires good faith. But, it really gets in, in the various
12 waiver provisions that we've written into the Act.

13 CHAIRMAN WALLACE: Yeah.

14 MR. DUGA: Into the reg., I mean. Sorry.

15 CHAIRMAN WALLACE: I don't want to get into the
16 details of the waiver provisions right now because my problem
17 with the waiver provisions is not that -- is not necessarily
18 what they say, it's just all the hoops people have to jump
19 through.

20 Everything in here seems to me is -- if I may
21 borrow from criminal law -- the kind of things that ought
22 to go into prosecutorial discretion.

23 But, if he set up a paper shuffling bureaucracy
24 to enforce his discretion, it'd get awfully bogged down.
25 But, I think good faith is in here, too, and what worries

End T 1 A

Beg T 2 A

1 me, worries me, the impression I get, Mr. Houseman, is that
2 there is a feeling that this board isn't going to give people
3 any credit for good faith, that there's a lot of requirements
4 that are in the Act, that were in the regulations passed
5 by earlier boards, that didn't cause this problem because
6 everybody assumed that we were working together and if you
7 missed by a little bit, nobody was going to come down on
8 your head.

9 If the field trusted us, and I'm not saying they
10 should know us well enough to press this just yet, I don't
11 think we'd be having this discussion because I don't see
12 that this requirement is all that different from other require-
13 ments in the Act that have not had people's heads chopped
14 off.

15 MR. HOUSEMAN: Well, but, Mike, look at the history
16 of this. First, we had, in 1981, a major effort by field
17 programs, corporations, the leadership of the American Bar
18 Association, state and local bars all around the country,
19 to come up with a viable approach to PAI.

20 We came up with a viable approach that everyone
21 bought into, that everyone agreed with, that everyone had
22 a say in the development of, and everybody came out happy
23 with.

24 We put it into practice, and it's working. Then,
25 without any new study, without any new analysis, without

1 even looking at the data, with nothing to suggest there
2 was any basis whatsoever for a change, the next board or
3 subsequent board ups it to 12.5 percent and makes it a require-
4 ment over every comment that came in. There was no comment
5 in favor of it. Objections from the bar associations, testimony
6 in congress, objections from the ABA, saying don't do it,
7 and it's done and, now, we're trying to take it up again.

8 What I'm suggesting to you is that if you really
9 want to return to the kind of relationship which you
10 described, we should go back to where we were, which was
11 working, and we should go back and trust each other and
12 move in that direction, and I think that that is, in fact,
13 that that will lead you to show more good faith in the programs,
14 and the programs will respond a positive way than if you
15 stick with the 12.5 percent requirement.

16 CHAIRMAN WALLACE: Okay. Let me take -- Ms. Bern-
17 stein wants to make some response to that. Our witnesses
18 have arrived, and what I'm going to do is let Ms. Bernstein
19 answer on her view of the historical perspective, and then
20 we'll get our witnesses here, and I appreciate the comments
21 this morning.

22 Ms. Bernstein?

23 MS. BERNSTEIN: I would just ask, I think it would
24 be very helpful for the other members of this committee
25 and the board if the secretary of the corporation would get

1 the excerpts from the transcript from the debate when the
2 ten percent guideline was accepted from the board, because
3 it was not a happy family relationship at that point. The
4 debate was very heated. The field resisted it strongly.

5 CHAIRMAN WALLACE: Was this at the board meeting?

6 MS. BERNSTEIN: This was at the board meeting,
7 and I would just ask the secretary to provide for the committee
8 because, since we're going to be taking this up at another
9 meeting, I think Mr. Houseman's characterization is somewhat
10 more pleasant characterization of the process than actually
11 occurred because there were very heated disagreements about
12 having a ten percent being a substantial private attorney
13 involvement.

14 Let me also say that we -- I would like to have
15 some reminders for this board, this committee and this board,
16 as to the comments that came in of the 12 and a half percent
17 requirements, and we -- I would like us also to look at
18 the testimony and the legislative history of HR-3480. When
19 the House passed a legislative act, which would have
20 required the corporation, had it been passed in the Senate,
21 to have made a substantial private attorney involvement
22 and some of the -- and I would like a summary for this committee
23 and for the board of what input the ABA and particularly
24 the state bars in Wisconsin promoted to the House of
25 Representatives regarding what they considered the proper

1 proportion and whether it would be a requirement or a guide-
2 line regarding private attorney involvement.

3 CHAIRMAN WALLACE: Mr. Bovard, I see you taking
4 notes on all of that. I'm not going to get into any further
5 discussion on this right now, but what I will ask if that
6 you put as much of that stuff together as you can, make
7 it available to the committee. Also, make it available
8 to Mr. Houseman and to anybody else who wants to see it,
9 and let's try to get it in the board book in advance of
10 our next meeting, so we will be working in common historical
11 record on this, when we talk about it next time.

12 I know you haven't got anything else to do, Tom.
13 Let's do try to get that together. Mr. Duga, Mr. Houseman,
14 I thank you.

15 MR. HOUSEMAN: Thank you.

16 CHAIRMAN WALLACE: Ms. Eisenberg, I will certainly
17 hear from you, and then we'll get to our witnesses.

18 MS. EISENBERG: Eleanor Eisenberg, region 8 project
19 directors association.

20 I wanted to make two brief comments. First, I
21 think there's a very critical difference between this regula-
22 tion and others in that this regulation puts programs in
23 a position of having to comply with something over which
24 they generally have less control.

25 In other words, there is more interaction with

1 the external world, the private bar, and it's not something
2 that we can generally guarantee is going to meet this 12
3 and a half percent because it's not entirely within our
4 control. I think that's a very critical difference.

5 In the discussions you've been having and the
6 current revisions that you're looking towards include a
7 complex series of fairly inclusive waivers, it seems to
8 me that those waivers are in perfect recognition of local
9 differences and the difficulty of this question, and that
10 they may tend to eat up the rules, if it's a requirement,
11 and would create an administrative and bureaucratic morass
12 that would be avoided if it was a guideline.

13 CHAIRMAN WALLACE: Thank you, ma'am. We appreciate
14 it. Who knows how to work this P.A. system?

15 (Pause)

16 CHAIRMAN WALLACE: Okay. We do have our witnesses
17 with us this morning. It's -- Mr. Bovard, are you going
18 to introduce the witnesses? Are you prepared to introduce
19 these folks to us? Can you all come on forward and have
20 a seat at the table, and we'll ask our staff to introduce
21 you to the committee.

22 MR. BOVARD: This morning, we have three witnesses
23 from the Crawford County Bar Association in Meadville,
24 Pennsylvania, who are going to describe a private attorney
25 involvement program in their area.

1 The first is Gordon R. Miller. He's president
2 of the Crawford County Bar Association. The second is Yolando
3 Barco, who is familiar with the history of legal aid in
4 Crawford County, the history that goes back to the fifties,
5 before legal services corporation came into existence, and
6 then Russell L. Schetroma, who's treasurer of the Crawford
7 County Bar Association, and is familiar with the financial
8 aspects of the program.

9 CHAIRMAN WALLACE: Thank you, Mr. Bovard.

10 We thank you all for being with us this morning.
11 Let me say before we get started that we've -- our staff
12 has talked with our local program up there in your part
13 of the woods, and we are going to give them a chance to
14 comment on what you've had to say to us, and we'll let them
15 see your testimony, and we will look forward to seeing both
16 sides of the story.

17 This is not a compliance committee. We're not
18 trying to enforce anything, but I think as you heard from
19 the tail-end of the discussion, as you got in, we are trying
20 to figure out in exactly what kind of spirit this program
21 is being conducted out in the field, and thoughts from groups
22 such as yours that has had legal aid going longer than we've
23 had the legal services corporation would be especially useful
24 to us.

25 With that, we welcome you and whichever one of

1 you would like to begin with your story, we'd like to hear
2 it.

3 STATEMENT OF GORDON R. MILLER, PRESIDENT,
4 CRAWFORD COUNTY BAR ASSOCIATION, MEADVILLE, PA

5 MR. MILLER: I'm Gordon Miller. I'm past president
6 of the Crawford County Bar Association. We appreciate this
7 rare invitation and opportunity of a small bar to meet with
8 you and tell you our experiences.

9 We get here, I guess, by initially writing to
10 you and asking for funding or some sort of help to a program
11 that had been defunded, that we feel very strongly about.
12 We're not here to be critical of Northwest. We have no
13 axe to grind because we were defunded. We're really talking
14 about providing services free, and who can best provide
15 those services at the best level of cost.

16 We would make some brief remarks and answer any
17 questions you have.

18 Mr. Schetroma has put together a brochure hurriedly.
19 We started this up late last week, and which we would hand
20 you at some appropriate point.

21 CHAIRMAN WALLACE: Okay.

22 MR. MILLER: I'm the past president of the Bar,
23 been president -- was president for two years, been practicing
24 law for eighteen years, and have a general law practice.

25 Ms. Barco has practiced longer than I have. I

1 would not ask her how much longer, and she is a distinguished
2 lawyer in our community, comes from a law family. She happens
3 to be a member of the Pennsylvania Supreme Court Board of
4 Law Examiners. She was one of the early directors of the
5 Pennsylvania Bar Institute, which is the legal education,
6 continuing legal education arm of our state bar. So, she
7 has statewide influence and respect.

8 Mr. Schetroma is the treasurer of our bar for,
9 I guess, as long as I can remember. He's been practicing
10 law ten or twelve years, knows all the figures, and has
11 been heavily involved in this, and is also a member of the
12 board of Northwest, the public funding grantee in our area.

13 Let me give you some history, and I'll try not
14 to bore you. Our bar has about eighty or ninety members.
15 It's virtually a rural community, although we have PPG
16 Industries, we have some significant industries that have
17 plants and operations in our community.

18 There is a college there, quite -- it's probably
19 a small New York City. We've got the rich and intelligent,
20 we've got the poor and the unfortunate. It's a total community.
21 It's not a bedroom community.

22 Our bar association has been very active. We
23 have monthly meetings, most of which are of an educational
24 nature. Seminars, outside speakers, active committees,
25 a fairly large budget. We are very community-minded.

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1 We have brought Westlaw in, individual firms in
2 our community cannot afford Westlaw as such, so the bar
3 provides it to the bar as a group. We have donated money
4 to various courses, various entities over the years, and
5 are fairly community-minded.

6 We have a long tradition of pro bono work. Ms.
7 Barco, who was involved in the early days of that, will
8 tell you that.

9 I guess what I want to tell you starts in about
10 1971. Up till that time, our service to the public committee
11 was providing free services to the poor in civil cases,
12 pro bono flat out. In 1971, and I may be off a year or
13 two, apparently there was a move on to create legal services
14 corporation or publicly fund legal services to the poor.

15 Our bar opposed that. We felt that we were providing
16 it free, we didn't need taxpayers' dollars to do that. The
17 profession would do it as a responsibility. We had many
18 meetings with groups of citizens who were interested in
19 the public funding. They were critical of what our bar
20 was doing, such comments as we didn't relate to the poor,
21 other comments that I thought maybe had a little more merit
22 than that we are not poverty lawyers.

23 There are peculiarities to the law, areas of the
24 law that are peculiar to the poor, and we were not involved
25 in that on a regular basis. There may have been some merit

1 to that.

2 Northwest Legal Services became your grantee.
3 They have --

4 CHAIRMAN WALLACE: In 1971?

5 MR. MILLER: I don't know, Mr. Wallace, exactly
6 when.

7 They received Pennsylvania Title 20 funds, and
8 there's no private attorney involvement requirement in
9 Pennsylvania that I know of, and they receive your funds.

10 They came to Crawford County, set up an office,
11 hired three to five attorneys. Those attorneys stayed for
12 some time. There was stability in the office. They went
13 on full service. The bar did very little after that.

14 Ultimately, the attorneys started moving on, the
15 turn-over became more rapid. They reached the point, and
16 it might have been about the time the requirements, the
17 private attorney requirements came into being, they reached
18 the point where they were only on emergency intake, and there
19 was a year in there, they were on emergency intake for some-
20 thing like seven months, had so many cases, can't take anymore,
21 where are the clients going to go.

22 They are down to maybe one or two attorneys, and
23 the bar gets back into it because the bar wants to assist
24 them in picking up this load of people who aren't being
25 serviced.

1 We took the overflow pro bono, sort of on a loose
2 arrangement with our service to the public committee.
3 The state legislature in Pennsylvania has funds, and our
4 county really felt that our programs through the bar made
5 more sense. So, our county commissioners, and you'll see
6 a letter in our packet, that our county commissioners sent
7 to Governor Thornburg and various appropriate officials
8 in Pennsylvania, that really the state money ought to come
9 to the bar. It should not go to Northwest.

10 At that point, I was not president of the bar
11 then, but at that point, we opened a different kind of dialogue
12 with Northwest. I don't remember if they initiated it or
13 if we initiated it or it was sort of a mutual thing. At
14 that time, you had your requirement of private attorney
15 involvement.

16 We negotiated a contract with them, after a long
17 time. I have a copy of the contract here. It's not in
18 our pamphlet. We'd be glad to supply it. The contract
19 was for a one year period from April 1st of '83 to March
20 1st of '84, and it basically provided that we would be a
21 back-up. It enumerated the kinds of cases we would take.
22 It enumerated the relationship, the logistics of how cases
23 would flow through their program and flow through our program
24 or in and out of both.

25 We set up a separate corporation. We are tax-

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1 exempt by the IRS under 501(C)(3), I believe it is, rented
2 space from county dirt cheap, outfitted the office, had
3 a committee of the bar search and find an attorney. The
4 structure of the program was this: we would have an attorney
5 who would administer our program. That attorney, and we
6 didn't know at that point, hadn't ever tried it before,
7 she would basically replace our committee. She would be
8 the administrator, and she would -- we didn't know how much
9 time she would spend administering or how much time she
10 could spend practicing.

11 Initially, she administered the program, interviewed
12 all of the clients, determined eligibility based upon the
13 appropriate state and federal guidelines, determined what
14 lawyers in our bar of eighty or ninety, some with forty
15 and fifty years experience, some brand new, some trial lawyers,
16 we have all the talent you might need within our bar, and
17 she would determine who would be the appropriate lawyer
18 to represent these people.

19 If she happened to be busy and it was an emergency
20 matter, she could pick somebody else because she had a whole
21 staff of eighty or ninety lawyers that she could call on.

22 One of our senior attorneys, Paul Shaffer, practiced
23 law about twenty years, broad experience in all areas of
24 the law, was sort of the supervisor. She reported to him.
25 Northwest required that we have someone, a senior attorney,

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1 oversee what she was doing, and we felt that made sense.
2 We only paid \$12,500 to start. We got pretty much a brand
3 new attorney. We needed somebody to oversee her. We also
4 have a committee that met regularly to deal with, you know,
5 month to month problems.

6 We think the program ran well. We have the
7 statistics in our brochure. I'm not going to get into those
8 unless you want to in the questions.

9 In the winter and spring of '84, when we were
10 about to end our contract, we knew it was a one year contract,
11 we put a lot of effort into it. We knew it could have been
12 defunded. We had no sour grapes. We began negotiations
13 with the executive director to continue the program. By
14 the way, we were receiving \$38,500. Some went for things
15 and our material will tell you what.

16 We began negotiations, and we didn't come to terms.
17 But, the contract was extended three months at a time, and
18 it ultimately got extended three months at a time until
19 October 1st -- excuse me, October 31st. We were afraid
20 we'd lose our staff. They didn't know if they only had
21 a three month job or no job or a longer term job. We kept
22 it together on sort of a patching it up.

23 Interestingly enough, in the spring of '84, North-
24 west had some funds, and at the time when we didn't have
25 a contract and were on a three month extension, they gave us

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1 some funds to buy some law books, because we didn't have
2 many law books. Our office was right across from the county
3 courthouse, and in Pennsylvania, the county is required
4 to keep a certain minimum law library. Ours was fairly
5 decent for a small county, and she walked across the street
6 in two minutes and has the book.

7 So, we didn't have much of a library, but they
8 gave us some funds to buy some books that she could use,
9 and also to send members of our bar to a seminar in bank-
10 ruptcy because, at that time, we were getting a number of
11 bankruptcy cases through this program.

12 Then, we began to hear some negative things like
13 we don't think we can continue your program the way it has
14 been, and there are reasons for that, and I'll get to them
15 later. We disagreed with them, but we respected them.

16 Finally, it was defunded in October of '84. At
17 the end of October of '84. We negotiated another month.
18 It was then finally defunded effective December 1st of '84.
19 The reason: first of all, the executive director believed
20 in Judicare. We don't think Judicare is appropriate in
21 our county because we've got a bar that's willing to do
22 it for free. You don't need to pay any lawyers.

23 Secondly, we're in a ten county area for Northwest,
24 and we have in Crawford County, fourteen percent of the
25 eligible clients system-wide. Northwest system-wide.

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1 Their budget, I'm going to be loose not on purpose, their
2 budget was roughly around a million dollars, and they were
3 trying to spend about 12 and a half percent or \$900,000,
4 they were trying to spend 12 and a half percent in private
5 bar involvement, which is around a \$100,000. If we're entitled
6 to fourteen percent based upon our ratio of clients, we'd
7 only get about \$14,000, and we're asking for \$40 to \$45,000
8 and the theory was you're getting more than your share.

9 Our argument was that the Northwest office in
10 Meadville that was supposed to service fourteen percent
11 of the client mix was only getting nine percent of Northwest's
12 money, and, so, Northwest should -- every community is different.
13 You want to use your money appropriately and, maybe, in
14 some counties, you'd have private bar involvement to a hundred
15 percent, you might have a mix of Northwest and us. The
16 question is how much money is going in and what are you
17 getting out for it. They were putting less money into their
18 own program, that justified more money into ours.

19 A third reason was he said if you guys are really
20 pro bono, then that would be pro bono. You should not have
21 this staff attorney. What's she doing practicing law? Our
22 answer is she's, one, administering the program because
23 we're living up to your guidelines now, pre-1971, we had
24 our own guidelines on eligibility, and, secondly, there are
25 areas of law, we understand, that are peculiar to the poor,

1 that our private bar may not be totally up on, and she could
2 handle those. She could handle emergencies. She might
3 be able to answer a question off the top of her head and
4 you wouldn't even need to send that case out to a lawyer.
5 So, we felt there might be a need for the staff attorney.

6 He also indicated that it might be unfair to the
7 rest of the system because, truly, we had a more organized
8 operation in our county than they did in the other nine
9 counties within the Northwest system, and we are not the
10 largest county within the system. Erie County would be larger,
11 and so would Mercer County be larger.

12 We kind of said well, why close us down after
13 a year. What's come up that's all of a sudden made this
14 program not worth it? We put a lot of effort into this
15 thing. We realized it was a one year contract, but, after
16 all, you know, what's bad about it? It's cost effective.
17 It was working. We weren't getting any complaints. Why
18 not continue it?

19 We saw we weren't getting anywhere. We offered
20 to take over all of the services for the pocr in the county
21 for \$70,000, hire a second attorney, and -- but, it would
22 still be primarily a pro bono program. Northwest wouldn't
23 have to have an office in Meadville. Now, we're not trying
24 to run them out, but the \$70,000 our bar, and we have a
25 budget that's realistic, \$70,000 our bar could have done it

1 cheaper than they were doing it for about \$87,000, not counting
2 the money they would have been giving to us, which would
3 have maybe put it over a \$100,000.

4 But, we're out of money, and we met, and we're
5 faced with these alternatives. Fund it ourselves. There
6 is some sentiment that the public is funding these services,
7 why should we fund it ourselves? We're willing to give
8 our time, but why do we put money in it. But, that was
9 one of our alternatives. Fund it ourselves.

10 The second alternative was to find public funds,
11 and we sort of innocently wrote to you saying can you help
12 us, not to complain about Northwest, but do you have any
13 money for an operation like ours that we think is all right.
14 We also wrote to the state. We dealt with the ABA. We
15 have tried to deal with foundations, tried to get some grants,
16 United Way. We have been through it. Pennsylvania Bar
17 Association would give us some seed money, but that's all.
18 Or, we could completely close.

19 I, as president of the bar, said why fight it,
20 let's close. That was my recommendation. Our bar is feisty.
21 Our bar said we'll fund it for two months ourselves, and
22 we had two private attorneys in our bar cough up \$6,000
23 voluntarily to fund it for two more months. So, we funded
24 it on our own to, I think, the end of March.

25 Our bar met again because we were running out

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1 of time, and we weren't getting anywhere with a good solution,
2 and there was still this desire to continue it. So, we
3 now have funded it out of our own pockets to July 1st, and
4 that's probably going to be it.

5 For us, the choices are as I indicated. We believe
6 probably, and we don't think this is probably Alice in Wonder-
7 land, we believe the best thing our county is pro bono the
8 whole way. We don't need any public funds. We realize
9 that public funds may be here to stay, and we're not here
10 to fight that out.

11 Our second choice is that the public funds be
12 used in a mixture of Northwest legal services offering services
13 in our bar. Our bar will handle the cases for free. We
14 don't need a big library. We don't have a lot of
15 administrative overhead. We rent from the county dirt cheap.
16 It just makes sense, you know. Your nine year old would
17 understand that this just has to be the cheapest.

18 If you handle one case free, it has to be cheaper.
19 Besides that, we never go on emergency intake. We will take
20 all they give us. The client doesn't have to wait until
21 the backlog goes away.

22 For you, I don't know. I think the over-riding
23 question for you is how are you going to provide legal services
24 for the poor in an efficient, meaningful way, and I guess
25 our story is that we have a good program that makes sense,

1 and there ought to be some way to assist it or help it out
2 through a mixture of public funds and the private donations
3 of the lawyers and their time.

4 Ms. Barco knows about the history of it, and might
5 give you a little bit of an idea about how committed we
6 are to providing our services as a profession.

7 CHAIRMAN WALLACE: All right. Thank you, Mr.
8 Miller.

9 We'll hear from Ms. Barco, and then Mr. Schetroma,
10 and then we'll get questions from the panel.

11 STATEMENT OF YOLANDO BARCO, CRAWFORD COUNTY
12 BAR ASSOCIATION

13 MS. BARCO: Ladies and gentlemen, I want to say,
14 first of all, that I am not up to date on what the thinking
15 is today in the way in which services of this kind are to
16 be handled. We are not talking about what should be done
17 in other places. All we are telling you about, all we know
18 about is our history and what it is like in Pennsylvania.

19 The relevancy of this to your overall issues is
20 something that are outside the area of our expertise. So,
21 we're just telling you about our own background in our own
22 community.

23 And, it is a long history that we come from. When
24 I first became a member of the bar, and I will not tell
25 you when that was, I was immediately placed by the Pennsylvania

1 Bar Association on a service to the public committee since
2 they had established a relatively recent time. When I was
3 on that committee, we had a very forceful person who was
4 working statewide to develop, among all of the bar associations,
5 organized programs.

6 I reacted to his leadership, came back to our
7 bar, and suggested to them that we establish a definite
8 committee to do this work. Our bar members all were very
9 much involved in doing work for individuals on a voluntary
10 random basis. The only problem was they thought that it
11 wasn't necessary.

12 So, I asked for permission to have an ad hoc committee
13 formed so that we would review the entire situation, keep
14 records, find out what actually was done, what wasn't done,
15 and that ad hoc committee was formed in 1955. I was the
16 chairman of it. We continued until 1960, when I made, with
17 our committee, a full report and suggested that we organize
18 a standing committee with guidelines and with a great deal
19 of detail, much of which has been directed by the Pennsylvania
20 Bar leadership.

21 That entity has been a strong force for taking
22 care of the problems through all these years. The committee
23 got stronger. I myself continued as chairman for nine years.
24 After that, other people came along and the work of the
25 committee continually grew. They decided, again long before

1 the corporation came into being, to have paid assistance,
2 to bring cases in. We had a promotional program designed
3 to have people know about the service.

4 Now, I continued to be involved in the committee,
5 and with the committee's work, and I want to emphasize to
6 supplement Mr. Miller's remarks that the committee continues
7 as a standing committee today, and when he says fold up,
8 I think the committee will continue regardless of what happens.

9 But, what I want to -- the message I would like
10 to leave with this group, that I think is very important,
11 is the resource that we have in our organization, not simply
12 in the generic terms, private attorney involvement, but
13 as organized bar commitment.

14 It is a resource that involves accountability.
15 It involves handling in short-run some of the problems that
16 we had here. It involves having the top members of the
17 bar participate, and I would like you to know that Paul
18 Shaffer, who is the chairman of the committee today, and
19 who has the oversight responsibility, is among our finest
20 lawyers, and it's true of all the other people that are
21 involved in our group.

22 I would like to say that when in 1982, we decided
23 to form the corporation, and I was -- have indicated to
24 you that this was something that was a very controversial
25 matter because, for the first time, the bar was going to

1 use money to do part of its work, and this was very
2 controversial because a large segment of our bar still believes
3 pro bono is a completely voluntary undertaking.

4 We -- and I think there's still some idea among
5 some of our people that it would be better if everything
6 in our county could be handled on that basis. I personally
7 do not agree with that point of view. I think that the mix
8 that we have of having some funds to do the kinds of on-
9 going things that have been described to you strengthens
10 our program, and I think that what -- the message I would
11 leave is that the organized bar and individual practitioners
12 in many counties are a great resource that have to be taken
13 to account and that have to be encouraged and that in the
14 present situation, I think that a mistake is being made
15 in not utilizing this resource, and it not only is more
16 expensive, but I would like to say that I believe it does
17 not help the administration of justice.

18 Now, I have some further comments to make, but
19 I think I should yield for the moment because I think you
20 should hear some of the statistics about what the program
21 has done since the coprcration -- the county corporation
22 was organized in 1982.

23 CHAIRMAN WALLACE: Thank you, ma'am.

24 Mr. Schetroma?

25

1 STATEMENT OF RUSSELL L. SCHETROMA, TREASURER,
2 CRAWFORD COUNTY BAR ASSOCIATION

3 MR. SCHETROMA: Yes. Let me just address, first,
4 what I'm sure sounds like a contradiction. We're talking
5 about a bar that since the 1950s has wanted to do pro bono
6 work and we're talking about our difficulties in surviving
7 a program that last year cost \$38,000. How can pro bono
8 cost \$38,000?

9 Our bar is, frankly, torn about taking a dollar
10 of money. One of my partners, as a matter of fact, the
11 senior partner in my firm, who I asked, would you please
12 review this draft when we were working on it, give me your
13 thoughts, sent it back to me and said if you're talking
14 about that tainted money, I'm not going to comment. He
15 said pro bono is pro bono is pro bono.

16 And, I share that view. I'm a bit of a realist
17 is one aspect of this. We had a service to the public
18 committee that serviced those clients who responded to our
19 promotional activities. Northwest and its predecessor were
20 much more aggressive in promotion, and that coupled with
21 the change in the law that happened through the seventies
22 really did create a substantial increase in awareness of
23 the availability of service, and in the kinds of services
24 that are needed.

25 When the publicly funded program, by necessity,

1 lost -- went from a five man staff to a one person staff,
2 they had to curtail their services, and when they went on
3 an emergency intake, we perceived that there was created
4 a fairly substantial backlog of civil problems that were
5 not processed, either by them or by us, because those cases
6 were, for some reason, not funneled into our continuing
7 pro bono program.

8 Unfortunately, what we have seen, and, as you
9 will see, I have current statistics on the number of cases,
10 it appears that there is an abnormal, we hope abnormal,
11 concentration of those cases in the area of domestic relations.
12 Frankly, to say that I would be absolutely sure that my
13 bar could absorb all of three or four years pent up domestic
14 relations cases on a keep coming, we're not going to shut
15 down intake basis, I don't think I could assure it. Others
16 do.

17 One of the nice things, however, about the format
18 that we have was we could select areas, such as that. We
19 could create the systems and the procedures that let you
20 handle a confined area of the law in a very systematized
21 manner, concentrate them with the lawyer employed by the
22 bar, and, frankly, for a lot of those cases, I didn't need
23 F. Lee Bailey.

24 And, I'm not going to need F. Lee Bailey, I'm
25 going to have a quality lawyer supervising the procedures,

1 and I'm going to have a good lawyer in place, but I'm going
2 to be able, when that lawyer gets better and needs to advance,
3 professionally, to replace that lawyer, and I'm going to
4 continue to deliver the same quality of service at a much
5 lower cost than if I were trying to create a system where
6 I needed to keep the expertise in house, because our lawyer
7 has three or four members of the bar who do nothing but
8 domestic relations law available to her on call, on case
9 review, and the like.

10 You wouldn't have this in the other side. The
11 only caution I want to make to you about the statistics,
12 as I think we all know how difficult it is to find a meaningful
13 statistic, what do you measure the effectiveness by? Closed
14 cases? Open cases? I have given you both in the brochure.

15 We have tried contrasting our cases with the cases
16 run by the public program. We think that when you do the
17 straight arithmetic on it, you find that you are substantially
18 less in costs. That program answers, where's the administrative
19 costs? Well, if it's costing you to administer it, it's
20 costing you to handle the case.

21 Case load appears to be holding consistent. The
22 case loads of the two programs appear to be parallel.
23 What is unfortunate is it costs as much to equip, locate,
24 lease and staff an office, whether you're going to handle
25 one case or the maximum cases one lawyer can handle competently,

1 to have the parallelism that's happening through this system
2 is unfortunate.

3 We're a small bar. We have a hundred members.
4 Our normal budget is around \$30,000 a year. I can't fund
5 a \$38,000 program in one area of bar activity for that,
6 on any long-term basis. We've done it for a year. We'll
7 probably see a reversion in Crawford County to our operated
8 pro bono program. I don't know whether, in the long-term,
9 we'll be able to have any kind of relationship with the
10 publicly funded program after this experience. It certainly
11 wasn't an encouragement to deal with them.

12 CHAIRMAN WALLACE: Let me ask you this point.
13 I know you've got some of those brochures. Why don't you
14 go ahead and can we get those -- Tom, can you get them and
15 distribute them to the members of the committee and the
16 other board members here, and if we've got some extras,
17 maybe we can get one of the staff to make a few copies,
18 because I know we have interested participants here who'd
19 like to see, if not now, before they go home, what we're
20 talking about.

21 MR. MILLER: Mr. Wallace, could i give you one
22 figure?

23 CHAIRMAN WALLACE: Please go ahead, Mr. Miller?

24 MR. MILLER: In my letter of January 15th, when
25 I wrote to legal services in Washington, telling you what

1 we were into and could we get any ideas of how we can get
2 some help, I gave some statistics on page 2. Statistics
3 are hard to correlate. Northwest figures sometimes are
4 hard to know.

5 MR. SMEGAL: Yeah. We got it in your witness
6 list here.

7 MR. MILLER: In my letter of January --

8 CHAIRMAN WALLACE: There is a copy of that letter
9 in your packet. We've got it.

10 MR. MILLER: It's sometimes hard to figure out
11 Northwest's figures. We may not have access to all of them,
12 but, basically, based upon what -- we have back up material.
13 Based upon their executive director's memo, 9/17/84, the
14 direct cost of the Meadville operation, not counting
15 administration, administration is in Erie, this direct cost,
16 how he figured that out, I don't know, but direct cost was
17 \$68,853.

18 Assuming it handled 376 cases, which is also in
19 the letter from the executive director, March 28th of '84,
20 and the time periods aren't the same. It would have cost
21 them a \$183.12 per case, not including administrative expenses.
22 Our program, based upon the number of cases we handled and
23 there's back-up material to support that, showed a \$113.48
24 a case. So, we're down some \$60 or \$70 from them, and we
25 haven't added their administrative costs on top of it.

1 So, they're probably over \$200 a case.

2 CHAIRMAN WALLACE: Let me ask you a question.
3 So much of this is going to be each individual lawyer's
4 own experience because of the difficulty getting meaningful
5 statistics of how we all understand it. Our state bar in
6 Mississippi has a pro bono plan, and we refer cases out
7 to local lawyers. Most of the administration is done by
8 the legal services grantee. Our grantee will do the case
9 intake, our grantee will do the function that your staff
10 attorney is paid to do in your office, and distribute those
11 cases out to members of the bar.

12 Have you -- there is a staff lawyer for Northwest
13 in your community. Is there any way to make that kind of
14 a cooperative program work? Use Northwest staff people
15 to do the intake and distribute the clients? Has that been
16 considered? Is that impossible?

17 MR. MILLER: That's not -- yes, it's been considered,
18 and it's not impossible. Vendango County, which is in the
19 Northwest program, does it that way. Their bar association
20 is pro bono and they get their cases directly from Northwest
21 without this intermediate level of the private attorney,
22 our staff attorney.

23 It seems to me that if Northwest has one lawyer
24 in Meadville, that -- and they are on the emergency intake
25 from time to time, if they have to take time to be doing

1 that, then there's going to be more help. So, apparently,
2 the bar is going to have to do more. My view is that I
3 don't know how the bar would react to that. I suppose it
4 would work. I suppose we would be willing to try it. I
5 think the Northwest lawyer, obviously, isn't going to have
6 time to do what else they are doing with this added burden.

7 The -- I suppose it could work.

8 CHAIRMAN WALLACE: Okay. They've just had one
9 lawyer in your community?

10 MR. MILLER: Yes. They are bringing in a second
11 one.

12 CHAIRMAN WALLACE: They have just hired a second?

13 MS. BERNSTEIN: Is there any way to know whether
14 or not the hiring of the second lawyer had anything to do
15 with their wanting -- with their not wanting to continue
16 funding?

17 MR. MILLER: I have no idea.

18 MR. SCHETROMA: I think it's been more -- the
19 office has always, I think, been authorized for two. They've
20 had difficulty in obtaining applicants and keeping people
21 in all of their positions. I think that's more of a problem.

22 MS. BERNSTEIN: The \$12,500, if that's what you're
23 paying your person to run it and they've been doing a good
24 job, I --

25 MR. MILLER: It's up to \$15,000 now. The initial

1 was \$12,500.

2 MR. SCHETROMA: They could leave today and start
3 with Northwest with no experience at more than we're paying
4 after years of experience.

5 MR. MILLER: And, we don't pay fringe benefits.
6 We're not happy about that. We tried to make the \$38,500
7 and we got go as far as we could, and --

8 MS. BERNSTEIN: I don't think there can be any
9 allegation that you're wasting money on your help.

10 MR. SCHETROMA: I think the sad truth that you
11 have with the thing is that if, indeed, you can process
12 the case load at that kind of a disparity, take the two
13 offices, one running at \$38,000 and one running at \$67,000,
14 there are other figures that can make it look like that's
15 480,000, but we'll use \$67,000, and they are handling statis-
16 tically parallel case loads.

17 There's got to be a way to get some efficiency
18 back into that system.

19 MS. BERNSTEIN: Would there be the allegation
20 made that the cases that you're getting are somehow easier
21 cases or somehow assisted cases in some way?

22 MR. SCHETROMA: there may well be the allegation,
23 but we are not getting our cases from them; we are getting
24 our cases from our listings in the phone book, from our
25 promotional activity with the social service agencies, from

1 our sign on our office, and we have, in our data for you,
2 a breakdown of those cases statistically by type, and I
3 think you'd find they are fairly parallel.

4 MR. MILLER: There is a different kind of case.
5 We are sort of a back-up to them. So, they may be getting
6 more welfare shutouts and food stamp shutouts or those kinds
7 of things that are more emergency. We are sort of a back-
8 up to them under our contract. We have some logistics.

9 If we get emergency cases, our girl tries to handle
10 them. If it's in a peculiar area, but there could be a different
11 kind of case, yes.

12 CHAIRMAN WALLACE: They do not send clients to
13 you?

14 MR. SCHETROMA: They do. That's not our base
15 source of clients, is what I'm saying.

16 CHAIRMAN WALLACE: You get a lot of people that
17 come straight to you?

18 MR. SCHETROMA: Direct.

19 CHAIRMAN WALLACE: Mr. Mendez, you had a question.

20 MR. MENDEZ: I've got several questions.

21 The clients that you accept, are they within the
22 poverty guidelines?

23 MR. SCHETROMA: Yes. We have been using your
24 guidelines.

25 MR. MILLER: Yes, and, Mr. Mendez, this is one

1 of the advantages to having our paid staff attorney because
2 she does all of the intake, and, so, you've got one person
3 with a common standard, knowing your guidelines and the
4 state guidelines, doing the cases out.

5 When we had our service to the public committee,
6 the cases were referred to the particular lawyer, she made
7 the decision based upon what he thought the guidelines were.
8 So, we had some uniformity here.

9 MR. MENDEZ: I've got several questions here,
10 if I might.

11 CHAIRMAN WALLACE: Go ahead, please.

12 MR. MENDEZ: When you started your program, and
13 since you've been working, has Northwest told you about
14 state support services and national support services, and
15 are you acquainted with those items, the availability of
16 information from various centers on all types of consumer,
17 housing, family law? Has that been made available to your
18 bar?

19 MR. MILLER: Are you talking about support services
20 of a legal nature or from --

21 MR. MENDEZ: Legal nature.

22 MR. MILLER: -- a medical or -- from a legal nature?
23 I don't remember anything.

24 MR. SCHETROMA: It may -- if this is material
25 for delivery to the clients, that may have been --

1 MR. MENDEZ: No. This is material to help you
2 get to these cases faster and easier.

3 MR. SCHETROMA: No, sir. We have not had that.

4 MR. MILLER: Our staff attorney may have, but
5 I've been in the forefront of this since it's been going,
6 and that's never been given to me.

7 MR. MENDEZ: Well, it's never been told to you
8 and the state support unit has not contacted you at all?

9 MR. MILLER: No.

10 MR. MENDEZ: All right. Do you give questions
11 to your clients and ask them about what they think are the
12 most important things to do or have you entered that portion?
13 Let me sort of explain. One of the things about multiple
14 programs, a lot of times, if you're one of our grantees,
15 one of your duties is to determine what the clients want.

16 Now, some of us, as lawyers, think that if a client
17 walks in your door, that's what they want. But, you're
18 supposed to set up some sort of system as to determine what
19 clients want with a questionnaire.

20 Have you done that or would you, in fact, do that
21 if we would consider funding you?

22 MR. MILLER: We have not done it, and, obviously,
23 we would if we were required to.

24 MR. MENDEZ: Okay.

25 CHAIRMAN WALLACE: You basically take people as

1 they come in. That's your priority.

2 MR. MILLER: We're backing Northwest up.

3 MR. MENDEZ: Now, the last thing, when Northwest
4 applied for or had vacancies with regard to the attorneys,
5 did they come to your bar and ask your bar if there were
6 any attorneys available to come in and fill these slots?

7 MR. SCHETROMA: I don't know that they asked the
8 bar association.

9 MR. MILLER: If they did, I'm not aware of it.
10 They didn't ask the bar.

11 MR. SCHETROMA: They advertised locally.

12 MR. MILLER: They advertised locally.

13 MR. MENDEZ: But, they didn't contact the bar
14 association?

15 MR. SCHETROMA: No.

16 MR. MENDEZ: Okay. Now, have you talked to lawyers
17 in other counties that are serviced by Northwest?

18 MR. MILLER: Yes.

19 MR. MENDEZ: Are they having somewhat similar
20 problems?

21 MR. MILLER: Well, a lot of them disagree with
22 what we're doing. We're sort of alone.

23 MR. MENDEZ: Why?

24 MR. MILLER: Well, Mercer County, which is down
25 the road from us, they are not getting anywhere near the

1 money we got, and they -- but, they believe in Judicare.
2 Their county is a little different. They have a lot of
3 little towns and maybe Judicare is better in an area like
4 that.

5 Meadville tends to be the county seat; our program
6 may be better. I think they were somewhat maybe upset about
7 us getting so much more money than they were. I tend to
8 think, and I'm talking loosely now, I don't know all the
9 statistics, but I tend to think the Northwest office in
10 Mercer County is better staffed than the one in Crawford
11 County.

12 There may not be the need for private bar to get
13 involved as much, and, really, I shouldn't be probably answering
14 this. Maybe Russ knows more about the other counties and
15 how they feel about it.

16 I know in Potter County, which is a very rural
17 county, where you get your bear and your deer if you want
18 to hunt, in northwestern Pennsylvania, that is -- they have
19 a contract, I believe, with the public defender, and he
20 handles the cases there. They don't even have a staff attorney
21 out that way, which probably makes sense in that county.

22 Russ, do you know how the other counties feel
23 about it?

24 MR. SCHETROMA: It really is split. Erie County
25 has a private bar involvement program, that they have worked

1 with Northwest. Crawford bar had one. The other bars had
2 not actively organized an approach to the problem that addressed
3 Northwest.

4 Now, Northwest appears to be dealing with private
5 lawyers within those bars, and their bar associations are
6 beginning to help organize activities. So, it may be a
7 function of it being a year or two down the road until they
8 get their machinery in place to get a view on the issues.

9 MR. MILLER: See, our bar's really been organized
10 as a group, and they may, in these other counties, be dealing
11 with private attorneys. It may be interesting -- you may
12 be interested to know how -- what they are doing in Erie.

13 Erie is the largest county in our service area,
14 and they have about 4 or 500 lawyers in their bar. They
15 are the largest city in the state.

16 Northwest pays them to have --

17 MS. BARCO: Let's just correct that. They are
18 the largest city in the region, but not in the state.

19 (Laughter)

20 MR. MILLER: I don't even know why I said it,
21 but, anyway, basically, Northwest gives them some money,
22 and what they do with it is this, they have a part-time --
23 they have a lawyer who is part-time, spends half a day admini-
24 stering Erie's pro bono program, and, so, she would interview
25 the clients, dole them out to lawyers who she thinks can

1 handle them, does the statistical follow-up and the reporting,
2 etc.

3 She does not practice, she is different than our
4 girl. Our girl administers the program and practices, too.
5 In Erie, it's simply an administrator, and, but in Erie,
6 I believe the Erie County bar has a limit on the number
7 of cases they'll take.

8 Their private bar will take, I think it is, 200
9 cases. We'll take all we can get. I mean, all they'll
10 give us. So, it is different county by county in our area,
11 which probably is the bottom line of this whole thing. Your
12 program nationwide has got to be a little bit flexible to
13 allow for different situations, obviously.

14 Like the judge says, we'll take it on a case by
15 case basis, you know.

16 MR. MENDEZ: That's what Mr. Wallace and I and
17 Mr. Durant told the Senate yesterday. We wanted it to be
18 flexible.

19 CHAIRMAN WALLACE: We'll see what the Senate thinks
20 today.

21 Mr. Smegal?

22 MR. SMEGAL: Yeah. Mr. Miller, I want to compliment
23 you all in Crawford County. I was -- I am from San Francisco
24 and back in the mid-seventies, the legal services corporation
25 gave my bar, I think it started out \$50,000, to set up a

1 program like this. What happened when I was president in
2 '79, there was a circumstance where the legal services
3 corporation was withdrawing their money, and we had to match
4 it. The obligation was still 50, but I think, in '79, I
5 think we were down to 25/25.

6 I am fully supportive of your kind of program.
7 I think pro bono lawyers are the way to go. I don't think
8 Judicare is a way to extend leverage on federal funds.

9 The concern I have about your program is that,
10 in the context of my experience in San Francisco, is we
11 had one administrator for 600 lawyers when I was there.
12 You've got one administrator for roughly ninety.

13 The problem I have with your statistics is not
14 that they are not accurate, and I'm sure they are, you're
15 looking at administrative costs of a \$110 per case, and
16 I think I heard you say --

17 CHAIRMAN WALLACE: Total cost, wasn't it?

18 MR. SMEGAL: All the lawyers are pro bono. So,
19 you're talking about your administrative costs of \$110.

20 MR. MILLER: Not totally. She does do some
21 practicing.

22 MR. SMEGAL: I'm going to get to that. Accepting
23 that for the moment, and, then, I guess I heard you say
24 that the legal service program is a 163 plus the administrative
25 costs somewhere else, which was something like \$20.

1 So, I can look at those numbers and see your admini-
2 strative costs being a \$110 and hers being \$20, and there's
3 a lot of difference between them.

4 How many cases of these 330 is she handling?

5 MS. BARCO: She's handling fifty percent. Would
6 that be correct?

7 MR. SCHETROMA: Since April 1, '83, to April 23,
8 '85. We've accepted 629 cases, of which 420 were processed
9 through her office.

10 MR. SMEGAL: How many did she act as a lawyer
11 in?

12 MR. SCHETROMA: 420.

13 MR. SMEGAL: So, she handled 420 cases, and your
14 pro bono bar is handling what?

15 MR. SCHETROMA: 201.

16 MR. SMEGAL: 201. Okay.

17 MR. MILLER: And, this is one of Northwest's arguments.
18 You guys really aren't pro bono if she's handling those
19 cases. When we started out, we didn't know how much
20 administrative work she would have to do, and this has turned
21 out this way.

22 MR. SMEGAL: What do you do to your numbers if
23 you apportion -- I see here in one of your letters, Gordon,
24 that half of her time is spent, at least it says here in
25 the legal aid offices, handling certain cases. Is that

1 where she handles the 420 cases?

2 MR. MILLER: Yes.

3 MR. SMEGAL: In their office?

4 MR. SCHETROMA: In our office.

5 That's our office.

6 MR. SMEGAL: Okay. The legal aid office is your
7 legal aid office?

8 MR. SCHETROMA: That's our office. They don't --
9 that's not a popular word with the funded program.

10 MR. MILLER: We do nothing else in that office.
11 We don't have a bar headquarters. That's where the president's
12 office is. So, that's her office. THAT's where she operates
13 out of.

14 MR. SMEGAL: Well, I am just thinking, it appears
15 you have got apples and oranges together in your numbers.
16 A \$110 comes from cases she handles and cases that you handle
17 pro bono.

18 MR. SCHETROMA: Total cost of handling cases.

19 MR. SMEGAL: Yeah. So, what would happen if you
20 took the numbers and put her cases in one stack, put the
21 pro bono cases, the cases that don't involve a lawyer salary
22 as the cases she handles do involve -- I guess your numbers
23 would come out differently. The pro bono cases probably --

24 MR. SCHETROMA: Her administrative overhead is
25 \$20 or \$25 maybe, and the cases she handles are maybe 200

1 bucks a case. She estimates that it takes her one half
2 hour to complete the interview and referral data to transfer
3 the case to a private attorney. So, if we give her a preliminary
4 interview of a half hour, and a half hour to do the referral
5 data so that when the case gets to the private attorney,
6 it's in the proper format, you would be looking at a maximum,
7 I think I'm doubling it, but I'll say a maximum of one hour
8 staff time to do that referral.

9 And, then, the private attorney will feed back
10 to her the time sheets and the data records and the like,
11 with the secretary doing follow-up. Administration, frankly,
12 is an over-blown farce.

13 MR. SMEGAL: Well, please understand where I'm
14 coming from. I want to encourage your lawyers to do
15 pro bono, as I encouraged the San Francisco lawyers to do
16 pro bono, but I think your numbers come out a lot better
17 if you put her in her activities at least one half time
18 doing staff lawyer work where there is a factor in those
19 cases of her salary.

20 MR. MILLER: That's right.

21 MR. SMEGAL: Clearly, if one of my lawyers in
22 San Francisco takes a case free, it's got to be cheaper
23 than whatever you're paying a staff lawyer, no matter how
24 much he or she is underpaid. The fact that this person
25 is working for \$12,500 is outrageous, and I'm surprised

1 that she doesn't go over to the legal service program and
2 get a job with fringe benefits. But, the fact is she's
3 there, she's dedicated, as your pro bono lawyers are dedicated,
4 and she's obviously doing pro bono work in a sense, and
5 that she's not getting a full salary.

6 But, I think if you divide the numbers up, you'd
7 even look better. I think if take her cases out that she's
8 actually handling on her salary, you're probably up to \$180,
9 and the cases you guys are handling pro bono are probably
10 down to 20, and that's where it should be, and I'm sure
11 in San Francisco, our costs on the pro bono cases were \$10
12 to \$15 in administration.

13 I think we have a little more than one lawyer
14 now. I think Tanya Neiman now is a staff person there,
15 too, who is doing some other things, but I think what you're
16 doing there is even more impressive than what your statistics
17 show. It is not costing you a \$110 a case to do pro bono
18 work.

19 MR. SCHETROMA: Not the pro bono work.

20 MR. SMEGAL: Absolutely not.

21 MR. SCHETROMA: It's costing us a \$110 over the
22 whole average cases going in there.

23 MR. SMEGAL: But, I think my point is a good one,
24 though, and the point I'm making with San Francisco is that
25 we have one person, we had one person in '79, that was handling

1 5 or 600 pro bono lawyers. She's got an awful lot of other
2 time, if the intake is a couple of cases a day. She clearly
3 has other time, and maybe Mr. Wallace's proposal is one that
4 we should consider. Let the administration be handled by
5 your local program and get the cases out to the pro bono lawyers
6 through a staff person over there.

7 MR. SCHETROMA: If we revert to our private program,
8 we don't -- we will take any case they send us. One of
9 the luxuries we have if we do that, of course, is we don't
10 care about statistics because we're back doing our own
11 private program, and if they want to refer us cases, we
12 will process them for them.

13 MR. SMEGAL: Well, okay. I guess there's a middle
14 ground, too, and that's to divide up what you're getting
15 from them and make a pitch for it in two directions.

16 One, for your pro bono program, where I think
17 your numbers will be \$15 or \$20 a case, and the other is,
18 hey, we've got a half year lawyer over here. We've got
19 one of your legal service lawyers over in our program half
20 time. She happens to work two halves. Half of the time
21 she's administrating our program, the other half of the
22 time, she's working in the legal service corporation funded
23 and let's separate it out, and let's give us \$15,000 for
24 our pro bono program and pick up the other \$23,000 as part
25 of your half staff lawyer that happens to be sitting in our

1 Office.

2 CHAIRMAN WALLACE: Ms. Bernstein?

3 MS. BERNSTEIN: Yeah. I just wondered, have you
4 talked to the Northwest program regarding the definition
5 of "case" and is your definition of case the same as their
6 definition of case?

7 MR. SCHETROMA: I hope our definition of case
8 is more conservative than their definition.

9 MR. MILLER: We have not.

10 MS. BERNSTEIN: Okay. Would you please explain
11 the differences, or as you understand the differences to
12 be?

13 MR. MILLER: As I understand the differences to
14 be, and Northwest may scream when they read this because
15 I could be wrong, but as I understand the differences to
16 be, we count a case a body, somebody comes to our program
17 with a custody problem, we handle it. If she comes back
18 two weeks later with a support problem, we handle it and
19 call that one case.

20 They may, I hear, that they count if she walks
21 through the door twice, she's two cases on two different
22 legal problems. One on support and one on custody. We
23 call it a client, we call it a case.

24 MS. BERNSTEIN: Okay. Is there --

25 MR. MILLER: So, there may be a difference in

1 the definition of case;

2 MS. BERNSTEIN: So, in other words, they -- their
3 statistical average of cost per case may be even higher
4 in comparison to yours because they define cases as being
5 a little bit less effort or less extreme --

6 MR. MILLER: They count them differently.

7 MS. BERNSTEIN: YES. But, what about the concept
8 when somebody comes in and your person that's on staff there
9 is able to answer the question or resolve the problem with
10 a letter or with a piece of information right there on the
11 spot, advise-only kind of thing, is that counted as a case?

12 MR. SCHETROMA: At the suggestion of Northwest,
13 that was included in the definition, and we put a separate
14 category so that we wouldn't delude ourselves when we called
15 this advisory, and I think there were ten of those --

16 MS. BERNSTEIN: But, you have only ten advisory
17 cases. Do you have any -- do we have Dennis or Pete, do
18 we have any -- do we have a way in our present case service
19 reporting in order to know whether -- how much of Northwest's
20 300 plus cases that they handle were advice only?

21 CHAIRMAN WALLACE: We don't need to get it this
22 morning. It could be interesting to see.

23 MS. BERNSTEIN: Could we see that as well? Because,
24 I think that part of the problem, and I think that this
25 is -- I think Tom is absolutely accurate because part of

1 our problem in administering this program across the country
2 is that many times, we are not dealing with apples and oranges.
3 We don't have any way of completely figuring out who is
4 doing a good job and who is maybe in need of some more technical
5 assistance in terms of doing the best job that they possibly
6 can do because we don't have the proper information.

7 Dallas' program and, for whatever reason, has
8 an approximate \$770 average cost per case, including advice
9 only cases. If you compare that with your program or even
10 a similar size program, million dollar program out in
11 California, that has a \$117 cost per case, there's got to
12 be a reason.

13 Now, maybe there's a very valid reason for it
14 but, right now, these apples and oranges simply are not
15 making a very good fruit salad.

16 MS. BARCO: I do want to say one thing about Mr.
17 Wallace's comment, and I think this ties up perhaps with
18 what Mr. Smegal said. I don't think I can read that far,
19 but on your suggestion that we get referrals directly, I
20 think, as I would have to say in fairness to your idea,
21 you're coming into a situation where perhaps it's a disadvan-
22 tage, but we have in place an entity that has a tradition,
23 a background, and so forth, of working with lawyers.

24 Now, you talk about cases and that sort of thing,
25 but I'm going to have to say that my judgment, my idea would

1 be that the job she does is not simply administrative. It
2 goes beyond that. She keeps informed of what lawyers are
3 good at what. She has a lawyerly way of looking at the
4 whole business, and she is working very closely with this
5 other lawyer, who is the chairman of the committee and a
6 very capable man.

7 Now, the process of just zipping something in,
8 first of all, I don't think the lawyers will respond as
9 well. They don't have the degree of accountability, and
10 I don't think the progress in the end, in the way that you
11 can't measure at all, will be as good.

12 I think our way of doing it is superior and has
13 some professionalism to it, which is often lacking in the
14 way it works, and I'm not saying that you can do a lot better
15 in other situations, but we have the accountability of the
16 profession there at all times, which means a great deal,
17 I think.

18 CHAIRMAN WALLACE: Are there any other questions
19 from members of the committee? Board members that are sitting
20 in with us this morning?

21 MR. SMEGAL: I just want to say that it is not
22 inconsistent with anything I said. The point I would make
23 is I think you really should classify her time to the extent
24 she's a lawyer in handling --

25 MS. BARCO: I agree.

1 MR. SMEGAL: -- these cases. They have a different
2 costs than the ones that Gordon is doing out of his office,
3 and once you recognize that, you look a lot better. You're
4 not a \$110 a case, you're \$20 a case for those you're handling,
5 and the ones she's handling have some other number that
6 is more than a \$110, and I think that's only right.

7 I think if you've got a salary in there, the cost
8 of the case is going to be more, and I think what you should
9 do is look to Northwest and get them to understand that
10 they've got a half a lawyer out there working the circuit,
11 who happens to be in your office and we should account for
12 her differently for the part of her time that she's actually
13 handling intake cases, doing the cases herself.

14 MS. BARCO: I think the problem is a little different
15 than that. I'm not sure enough to comment on it, but I
16 don't think it's a matter of our cost per case. I think
17 it's more a question of the organizational mesh that's the
18 problem here. I think their perception is, if I gather
19 it correctly is, if there's lawyer staff, it has to be their
20 staff.

21 I think that's the problem.

22 MR. SCHETROMA: Northwest did not discuss the
23 cost per csae.

24 MS. BARCO: Newver.

25 MR. SCHETROMA: To the extent that we tried to

1 calculate it to get a feel for whether we were doing right.
2 We were assured that we were doing their numbers wrong,
3 and we have -- I can't even conceive of what your problem
4 is like because I know the problems in getting the same
5 number on the same thing within one program. I could not
6 even conceive of what you poor people put up with.

7 CHAIRMAN WALLACE: We haven't figured it out yet.
8 We have been here very long. We make no promises.

9 MR. MILLER: We gave them the same type of figures.
10 We asked the question over and over again. What came up
11 in our program in the year's experience that now causes
12 you to change your mind to say we're not going to do it
13 this way. The answer, basically, I think, is a philosophical
14 one. They believed more in Judicare. I gave it to you
15 before, that we're getting more than our 14 percent on the
16 PAI money and, therefore, that can't go, that if you're
17 pro bono, you've got to be pro bono.

18 Mr. Wallace's question, you don't need that middle
19 layer of administrator, those kinds of things were the kinds
20 of things we faced. Cost was not, in our view, ever discussed.

21 CHAIRMAN WALLACE: We thank you for being -- I'm
22 sorry.

23 MR. MENDEZ: I'm curious. Northwest did have
24 a positive sense of -- 14 percent of the population base.
25 What about the poverty population base?

1 MR. MILLER: That is 14 percent. Crawford County
2 represents 14 percent of the eligible clients in their system,
3 their ten county system.

4 MR. MENDEZ: Now, with regard to the Northwest
5 legal, how many attorneys and how many clients from your
6 county sit on their board of directors?

7 MR. SCHETROMA: WE have three attorneys.

8 MR. MENDEZ: Sitting on their board of directors?

9 MR. SCHETROMA: Yes.

10 MR. MENDEZ: From your county?

11 MR. SCHETROMA: Yes.

12 MR. MENDEZ: Are they participating in your program?

13 MR. SCHETROMA: Oh, yes.

14 CHAIRMAN WALLACE: How big is their board of directors?
15 They've got --

16 MR. SCHETROMA: It's an ever-changing number.
17 It has to be over, I would guess over, thirty. There's
18 a core group of about twenty that get together. It's very
19 difficult to estimate.

20 MR. MILLER: Yes, and there are client constituents
21 on -- who are active. They don't agree with our bar. I
22 shouldn't have said that, but I'm going to tell you, be
23 honest with you. They somehow feel that -- are we talking
24 about the attorneys --

25 CHAIRMAN WALLACE: No, no. The clients.

1 MR. MILLER: The clients. I think that the money
2 has to come through Northwest programs. You don't want
3 to give or begin at the bar.

4 MR. SCHETROMA: I found out at our last board
5 meeting last week that someone --

6 MR. MILLER: People in our community.

7 MR. SCHETROMA: -- told one of the pac members
8 that the NWLS office couldn't adequately service the client
9 because we had taken their furniture, when we opened our
10 office, you know. It's unfortunate. It's the kind of thing
11 that we're sensitive to, and we do not want to be in a funding
12 fight with an entity that will do that in our community.
13 We can do our charity, we can do our professional
14 responsibility on our own.

15 MR. MENDEZ: Just out of curiosity, would you
16 be willing to bid against Northwest?

17 MR. SCHETROMA: We'd have to consider that at
18 that length because of the potential. They will lobby with
19 their groups, and I'm not sure that's good for the community.

20 MR. MENDEZ: Well, now, I have a statute that
21 says they're not supposed to do that.

22 MR. SCHETROMA: Well, that's --

23 MS. BARCO: We don't want a lot of hard feelings
24 in the community. I would say I think this is something
25 that would have to be -- my answer would be yes.

1 MR. MILLER: Mr. Mendez, my answer would be yes.

2 MR. MENDEZ: Subject, obviously, to bar approval
3 and --

4 MS. BARCO: But, we don't want a lot of people
5 coming from our own community, and, you know, we want to
6 a kind of separation that would be with bad feelings and
7 that kind of thing, with people who have other problems
8 because, you know, there are two levels here working.

9 MR. MILLER: Could I add to something Mr. --
10 a follow-up on what Mr. Mendez said?

11 I would be wholeheartedly in favor of it because
12 I believe that if you can deliver high quality legal services
13 cheaper, we ought to do it, and you've got a bar here who
14 is willing to throw their services in free, you ought to
15 take advantage of it.

16 I would point out one thing, though, and that
17 is that if we bid against Northwest and prevail, you're
18 cutting into Northwest's ability to serve those other counties.
19 I know I'm arguing against myself, but there's that --

20 MR. SCHETROMA: That difference between the 14
21 that our county gives them of their budget and the 9 they
22 spend in their system, to the extent it doesn't go to waste,
23 goes somewhere. I can't tell you where that line is between
24 waste and somewhere, but it is going somewhere.

25 MS. BERNSTEIN: I want to back-up because I under-

1 stood what you had said when you were presenting this, one
2 of the reasons that they gave you was that they needed the
3 money in order to fund Judicare programs in other parts --
4 that you were getting more than your percentage, you know,
5 and so forth.

6 As I understand our requirement, I'm willing to
7 be told that my reading of our 12 and a half percent require-
8 ment is not what I read it to be, which is that each grantee
9 should allocate 12 and a half percent and it doesn't have
10 to be made per county within their -- I mean, it doesn't --

11 MR. SCHETROMA: Our executive director took the
12 position that the maximum amount that would be allocated
13 is 12 and a half percent of the LSC money, not of the total
14 program money, and then there would be a further subdivision
15 of that money based on the county's participation in the
16 entire program, so that --

17 MS. BERNSTEIN: Maybe we should have some -- we
18 should ask for some clarification between field services
19 in that county as to whether or not their understanding
20 of the requirement is accurate and whether they're going
21 under a misconception.

22 So, that's one thing, but the other thing is that
23 it sounds like you're telling us that they have -- that
24 they really feel, if they're going to look at your productivity
25 and so forth, that they would really be able to show

1 that they could use more than 12 and a half percent overall
2 in private attorney involvement and use it to good advantage.
3 I mean, the reason that they don't feel that they can fund
4 you is because they've got other programs that they want
5 to use the 12 and a half percent on, and that they really
6 could use more than 12 and a half percent --

7 MR. SCHETROMA: Oh, yes.

8 MS. BERNSTEIN: -- in private attorney involvement.

9 MR. SCHETROMA: Except that's not their policy
10 to do that.

11 MR. MILLER: I'm not sure they're saying that.

12 MS. BARCO: I'm not sure they're saying that either,
13 Ms. Bernstein.

14 MR. MENDEZ: Mr. Chairman, I understand that we
15 have Randy Chapman, who is the state support coordinator
16 for Pennsylvania in the audience, for many years, and I
17 would like to have him come up and answer some questions
18 with these gentlemen here.

19 CHAIRMAN WALLACE: I think Mr. Durant has a question
20 first, and then we'll get Mr. -- we will get to you second,
21 Mr. Chapman.

22 Mr. Durant?

23 MR. DURANT: Mr. Wallace, I just want to know
24 whether or not Northwest will have the opportunity to respond
25 to any of the particular points that have been raised, the

1 numbers and whatever.

2 CHAIRMAN WALLACE: Just to clarify, because we
3 made this point before you came in this morning, we talked
4 to Northwest on the phone, we're going to get a transcript
5 of all of this, we're going to give them a chance to tell
6 us their side of the store.

7 MR. DURANT: I say it, not that I'm in any way --

8 MS. BARCO: No. I think that's a perfectly appropriate
9 way to go.

10 MR. DURANT: I'm impressed with what you say,
11 but I also think that --

12 MS. BERNSTEIN: Let me add to that that we are
13 not here to resolve Northwest's individual problems, but
14 the policy questions regarding what we're doing on a nationwide
15 basis, we get a lot of input, you know, from field persons
16 who have obviously a vested interest in continuing funding.
17 It's very important for us to know how the bar feels about
18 pro bono efforts and whether or not it is being encouraged
19 or supported by local program activities.

20 I have just one other -- I just want to ask, what
21 was the reaction from -- who did you contact at the ABA?
22 We have an ABA representative here, and I'm going to put
23 in a plug for maybe giving another stab at that approach,
24 who did you contact at the ABA and what was their reaction
25 to your proposal?

1 MR. MILLER: I can't tell you the name of the
2 person. I think it was a lady, and I think they contacted
3 us because Erie was having a problem with Northwest, and
4 the ABA apparently has a very -- has a committee or a staff
5 of people whose experts are in the field, and they offered
6 their services in a sort of a mediation role.

7 They would come to Meadville and sit down with
8 us and the ABA people and Northwest and try to resolve this,
9 and we felt it was probably not resolveable because there's
10 a basic difference in philosophy, and we have no animosity
11 towards Northwest; we're talking about them here. They
12 should have an opportunity to respond. There's no animosity.

13 If our program is done, we're going to have --
14 we're lawyers, we're professionals, and we're going to help
15 the poor. We'll have to work with them, if they're going
16 to be in the community with us.

17 MS. BERNSTEIN: I just noticed the ABA has a certain
18 amount of money that is available for pro bono projects,
19 and I just wondered if you had approached them, you know,
20 on a grant.

21 MR. MILLER: I talked to somebody about a grant,
22 and they suggested, as I recall, state funds, LSC funds.
23 I'm going to call them back. It just appeared --

24 MR. DURANT: You don't remember who it was?

25 MR. MILLER: I don't know.

1 MR. MENDEZ: Could I ask some questions of Mr.
2 Chapman?

3 CHAIRMAN WALLACE: Please.

4 MR. MENDEZ: Mr. Chapman, we're pleased to have
5 you with us, and I'm glad you could be here.

6 Mr. Chapman, how long were you the director for
7 Pennsylvania?

8 MR. CHAPMAN: I was director, actually this ties
9 in real well, because I was director of the state support
10 program from 1981 until January 1985.

11 MR. MENDEZ: What are you presently doing?

12 MR. CHAPMAN: I'm currently executive director
13 of the Texas legal services center in Austin.

14 CHAIRMAN WALLACE: Is that the state support center
15 there?

16 MR. CHAPMAN: That's correct.

17 MR. MENDEZ: Why did you change?

18 CHAIRMAN WALLACE: No snow in Austin.

19 MR. CHAPMAN: Return to the armadillo, I guess.
20 I went to college in Houston and my parents are Texans,
21 and I wanted to get back to the warm weather.

22 MR. MENDEZ: With regard to the state support
23 center in Pennsylvania, what are the regulations concerning
24 the dissemination of information to the private bar?

25 MR. CHAPMAN: Well, I wanted to address this and

1 address the question that you --

2 MR. MENDEZ: Well, if you would answer my questions
3 first, and then we'll let you --

4 MR. CHAPMAN: Well, I served until I left Pennsylvania
5 as the vice-chairman of the committee on public service
6 to the indigent headed by the state bar, and we established
7 a policy that information to pro bono or to county bar
8 associations would be handled through local programs.

9 In Meadville, for example, let's take the area
10 of training, there is -- was an attorney in the office when
11 I was there, named Edith Benson. She was our training
12 responsible person. We negotiated with the PBI, the
13 Pennsylvania Bar Institute, that the CLE coordinator of
14 the state bar, to reduce the admissions so that all the
15 pro bono attorneys, for example, in Meadville, should have
16 been notified of training opportunities with respect to
17 PBI programs which had an interest in poverty law.

18 Obviously, the PBI, the state bar, did not allow
19 anyone to go at a reduced fee for all programs, but simply
20 those dealing with poverty law. We held bankruptcy training
21 and, again, I assumed this was one of the programs that
22 was -- that you were referring to.

23 We held bankruptcy training in Pittsburgh, and
24 we asked all the programs to encourage private bar participation.
25 Also, I would add that we -- that there was an ABA pro bono

1 conference, I believe it was your staff person that you're
2 referring to, was in touch with me about that. I did a
3 state-wide survey, Mr. Mendez, on pro bono and Judicare
4 participation, and the Meadville program, Crawford County
5 program, was one of the best, was one of the better programs
6 in the state.

7 So, it comes as news to me that maybe they don't
8 think of the law coordination center as the state support
9 program because we aren't called state support.

10 MR. MENDEZ: Did you send out information to private
11 attorneys that are on the pro bono list?

12 MR. CHAPMAN: That are on our mailing list. The
13 mailing lists are provided by the local program.

14 MR. MENDEZ: Are you -- ladies and gentlemen,
15 are you on the mailing lists?

16 MR. SCHETROMA: I am not that I know of.

17 MR. MILLER: I don't believe I am.

18 MS. BARCO: I am not.

19 MR. MENDEZ: You aren't on it either.

20 Now, did you mail out information concerning national
21 support centers to attorneys that are on pro bono lists?

22 MR. CHAPMAN: Not as concerning national support
23 centers, no. That's -- my understanding is the national
24 support centers worked directly with the local programs
25 and we set up the pro bono panels.

1 This is, I would say unique situation, but, an
2 unusual situation in Pennsylvania, where you have a separately
3 operated pro bono program. My office was in Lancaster,
4 and it was a much more cooperative type of arrangement.
5 There was a pro bono coordinator, half time, working for
6 about the same salary, that would physically come down to
7 the legal aid office, do intake, accept referrals, and make
8 whatever referrals, handle a number of cases on his own,
9 and refer them out.

10 There were ninety percent of the lawyers in Lan-
11 caster County involved in that program, when I left, and
12 it was immensely successful. The problems that you hear
13 today in Crawford County, it's not a PAI problem, as I see
14 it. Rather, in stead, what happened in 1981, 1981 was following
15 the election, was in Northwest, there were -- was a large
16 exit, large turnover, because the project director during
17 that -- the new president was projecting zero funding for
18 LSC.

19 The Senate had passed a resolution for \$75 million.
20 Large numbers of people were laid off. Libraries were closed.
21 Offices were closed, and the result was that at the end
22 of 1981, when the worst scenario didn't happen, they had
23 accumulated a huge funding balance, and then the question
24 was how do we -- what do we do with the fund balance.

25 Joe Burt, the director up there, as I understand,

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1 correct me if I'm wrong, said well, what can we do with
2 the fund balance real quick without making a permanent increase
3 in staffing.

4 After a lot of negotiations, approximately a year
5 with LSC, they talked about computers, they talked about
6 pay, all kinds of stuff, the result was to establish these
7 Judicare panels in the outlying offices. They funded the
8 Judicare panels, and it left, I think, an unfortunate situation
9 with the pro bono program, and this is where the focus --
10 I agree with the members. This is where the focus should
11 have been initially, and what you're hearing is not a FAI
12 problem, it's a fund balance situation where the program,
13 where the program had to --

14 MR. MENDEZ: Well, I beg to differ with you. To
15 me, we have a communication problem because these people
16 that are doing the private attorney that are involved as
17 private attorneys are not receiving information from your
18 group. All three of them are obviously active. They are
19 not receiving any of the information from the national support
20 cents and don't even know what those are, and that, to me,
21 is a communication problem that we should set about to address,
22 and it seems to me -- I have one other question for you.

23 How do we get this list of private attorneys that
24 are on this pro bono panel to receive all of the materials
25 that your group should be sending out?

1 MR. CHAPMAN: We -- obviously, we don't send materials
2 to every -- even our own staff attorneys that are working
3 a hundred percent of the time. We don't send materials
4 to everybody. We send them to the project director and
5 to each of the local offices. It's the responsibility of
6 our local offices to disseminate, to disseminate the information.

7 For example, if, on their pro bono panel, they
8 have ten attorneys that handle bankruptcy cases, those ten
9 people, not everyone in the bar association needs to be
10 papered to death, those ten people should have been alerted
11 to the bankruptcy training that we coordinated.

12 I think I agree with you, the communication --
13 there may be a communication problem. I think the responsibility,
14 though, of involving the private bar, lies with the local
15 program, and of identifying resources. We simply can't
16 afford to send note -- notices of everything we do to every
17 single attorney in the state.

18 MR. MENDEZ: I would just ask the panel if they
19 have any comments?

20 MR. MILLER: Mr. Mendez, it could be a fund balance
21 problem. I've often wondered, in my spare time, why we
22 were funded for \$38,500 for one year. There may be better
23 ways of involving our bar, but --

24 CHAIRMAN WALLACE: This was the way they'd be.
25 We thank you very much.

1 MR. SMEGAL: I do have a question. Isn't this
2 sort of representative of PAI problems? Here, you've got
3 a circumstance where you've got a pro bono bar who wants
4 to participate and we're not going to give a local program
5 credit for the total loan program, are we, under our PAI,
6 under our MBAI --

7 MS. BERNSTEIN: Yes.

8 MR. CHAPMAN: I think we would. I think we would.

9 MR. SMEGAL: 385 would go into the Judicare program?

10 MS. BERNSTEIN: YES.

11 MR. CHAPMAN: It certainly should. I think --

12 MR. SMEGAL: It isn't a PAI program then.

13 MR. CHAPMAN: Part of the reluctance may be
14 having establishes these Judicare panels in the other counties
15 and the fact that you have a representative board up there
16 from other counties, is that -- as I understand the testimony
17 today is that it would be putting -- it would be viewed
18 by some as putting disproportionate resources.

19 Now, with respect to one other question that was
20 raised, again, drawing from my experience in the central
21 Pennsylvania area, the -- was that even in times of emergency
22 intake, the type of cases that are handled by the local
23 program are very different than are referred to the -- at
24 least in this area, to the pro bono attorneys, although
25 we had ninety percent participating, they generally could

1 not handle the emergency lockout, the spouse abuse where
2 something needs to be done yesterday, in essence.

3 The emergency.

4 Also, our former bar president, state bar president,
5 Charles Keller, pointed out is you all might be the expert
6 on food stamps and AFDC and other state programs and I want
7 to volunteer my services where they can do the best good
8 or I'm familiar with the types of cases. When you go on
9 emergency intake, that generally means the type of thing
10 where there needs to be an overnight writ or the type of
11 case -- or the type of basic government benefit where somebody
12 is completely cut off SSI. Somebody is -- or, for example,
13 in a utility stoppage, most private attorneys rarely, if
14 ever, would see a utility termination case, yet in Pennsylvania
15 the PUC has a whole host of regulations governing that,
16 and governing the appeals process.

17 So, I would say in terms of even a cost per case
18 basis, you're going to see a lot of differences between
19 what the cases are that would normally be served by any
20 PAI program and by the local program.

21 MS. BERNSTEIN: Would you all agree with that
22 in terms of the -- because this is not what I heard
23 earlier in terms of the differences in the costs in the
24 kinds of cases?

25 MR. SCHETROMA: I don't think that -- I think

1 it's true that if they are on emergency intake, they are
2 taking a consistent load of short-term cases. I think we
3 might have a case here of the publicly funded bars view
4 the private bar as something more relaxed and passive because
5 I know my private clients have no problem in the world in
6 expecting something done yesterday, and I can tell him that
7 although public utility law is a true arcane law, I happen
8 to represent one, a public utility lawyer has no more fun
9 in the world than when he gets referred a shut-off case
10 for another public utility because we never have the luxury
11 of being on that side of the law, to use the law that we
12 know.

13 I mean, we have this expertise out there. Food
14 stamps, I know nothing. I don't believe that I am sufficiently
15 dull that if I had an emergency problem that I cannot go
16 to the law library and find the law and be in business.

17 MR. MILLER: I think we could handle emergencies
18 with eighty or ninety lawyers better than somebody can handle
19 one. However, I do agree that there are areas of the law
20 that are peculiar to the poor, that their staff attorneys
21 may be much more affluent in than we are.

22 MS. BERNSTEIN: More efficient. Yes.

23 MR. MILLER: I'm willing to admit that.

24 MS. BERNSTEIN: Okay. There's one other thing
25 I wanted to bring up with you, and this is just a suggestion,

1 and you may have already pursued it. But, you may or may
2 not know that by the legal services corporation act and
3 regulations, sixty percent of the membership of the board
4 of directors of any grantee is to be made up of attorneys
5 representing the majority bar in the locality.

6 Therefore, I would suggest that you get in touch
7 with the bar associations in your neighboring counties
8 and get some increased understanding about what you, your
9 purposes are, what their purposes are, how they feel about
10 Judicare, how they feel about pro bono, and just increase
11 the communication out there with these bar associations
12 because yours is obviously extremely active, and maybe we
13 can get some more leverage in some other counties as well.

14 I know you're concerned in your county, but --

15 MR. MILLER: We have met with Erie, and if we
16 were to make a bid, it might be Erie and Crawford bidding
17 for those two counties.

18 Erie has got some fundamental concerns about the
19 area, too. So, we have communicated.

20 MS. BERNSTEIN: Okay.

21 MR. MILLER: But, your point is well taken. We
22 probably ought to do more of it.

23 CHAIRMAN WALLACE: Do we have any more questions?

24 MR. MENDEZ: I would only like them to speak with
25 Mr. Broccoletti after they are off, who is sitting over

1 here in the tan suit by the pillar.

2 CHAIRMAN WALLACE: We thank you for being with
3 us. You all can stay with us, join us in the audience.
4 We'll be finished in just a minute. Ms. Eisenberg, apparently
5 you've got a comment?

6 MS. EISENBERG: I believe Ms. Bernstein has focused
7 on the regulation on the governing board requires that sixty
8 percent of the board be lawyers, and of those sixty percent,
9 fifty percent must be bar association.

10 MS. BERNSTEIN: You're absolutely right. Thank
11 you.

12 CHAIRMAN WALLACE: Thank you, ma'am.

13 MS. EISENBERG: You're welcome.

14 CHAIRMAN WALLACE: We are down to agenda item
15 number 5 at this point, and we're also close to lunch.

16 (Discussion off the record.)

17 CHAIRMAN WALLACE: The acting general counsel
18 has suggested that in dealing with other regulations adopted
19 as of April 27th, we ought to get a memo on that, and we
20 would like that, if not in our board book, by the next meeting,
21 if you all can put a memorandum together, so we can start
22 to look at it.

23 We'd appreciate it. Before we close, is there
24 anyone who has got any further comments on things we've
25 heard this morning?

1 (No response)

2 CHAIRMAN WALLACE: Thank you for being here with
3 us. We apologize for not having one of our witnesses here.
4 We will take written comments from Mr. Smith. We hope --
5 and we hope to take some action on this next month.

6 Thank you all, and we will enter a motion to adjourn.

7 MS. MILLER: I so move.

8 CHAIRMAN WALLACE: Is there a second?

9 MR. MENDEZ: Second.

10 CHAIRMAN WALLACE: All in favor, say aye.

11 (Chorus of ayes.)

12 CHAIRMAN WALLACE: Opposed?

13 (No response)

14 CHAIRMAN WALLACE: The motion carries. The meeting
15 is adjourned. We thank you.

16 (Whereupon, at 11:35 a.m., the hearing was
17 concluded.)

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REPORTER'S CERTIFICATE

DOCKET NUMBER:

CASE TITLE: BOARD OF DIRECTORS MEETING, LEGAL SERVICES CORPORATION

HEARING DATE: APRIL 25, 1985

LOCATION: WASHINGTON, D.C.

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before and that this is a true and correct transcript of the same.

Date: APRIL 25, 1985

Harvey L. Cook

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