

ORIGINAL

LEGAL SERVICES CORPORATION

OPERATIONS AND REGULATIONS COMMITTEE MEETING

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

Members of the Committee: Michael B. Wallace (Chairman)
Robert A. Valois
Lorain Miller
Hortencia Benavidez
Pepe J. Mendez
Leanne Bernstein

Also Present On Pannel:

Paul Eaglin
Mrs. Swafford

TAKEN AT: 255 South West Temple, Sheraton Hotel, Salt Lake City, Utah

DATE: August 1, 1985 2:00 P.M.

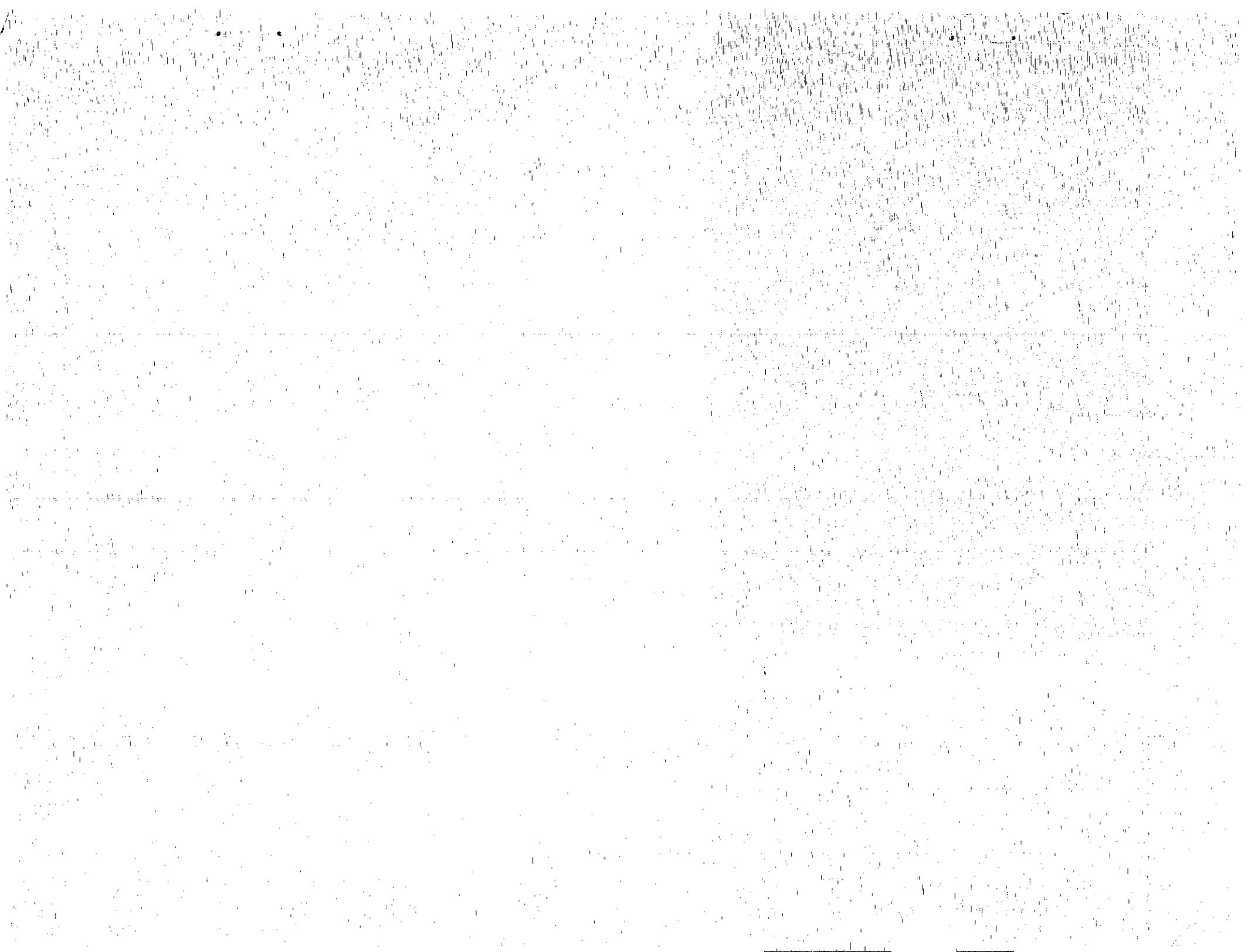
REPORTER: Carolyn Sullivan

From the Reporting Offices of:

Capitol Reporters

P. O. Box 1477, Salt Lake City, Utah 84110

(801) 363-7939



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1 THURSDAY, AUGUST 1, 1985, 2:00 P.M.

2
3 LEGAL SERVICES CORPORATION

4 OPERATIONS AND REGULATIONS COMMITTEE MEETING

5
6 MR. WALLACE: We're going to convene this meeting
7 of the Operation and Regulations Committee of the Board of
8 Directors of Legal Services Corporation. We have a quorum
9 of a committee here. I am Mike Wallace. I'm chairman.

10 Leanne Bernstein and Lorain Miller are here. And we're
11 happy to have Paul Eaglin, who's not a member of the
12 committee, here with us today. And I assume other people
13 will be coming in as their lunches are finished.

14 Let's deal with a few preliminary items before we
15 get into substance. We have the agenda printed in the
16 Board book. I think everybody's had a chance to look at
17 the agenda. The chair will entertain a motion to adopt the
18 agenda as printed in the Board book. Is there such motion?

19 MS. MILLER: I make a motion.

20 MR. WALLACE: Is there a second?

21 MS. BERNSTEIN: Can I ask for a point of
22 clarification. As I see it here, there's nothing on the
23 actual agenda that says -- it talks about instruction 83-8,
24 but it doesn't actually mention that there is a draft to be
25 discussed regarding the set off or the question of cost

1 procedures, whatever it's going to be called. And as I
2 understand it, that draft will be submitted for publication.
3 So I would ask that the agenda be amended to note the
4 proposed regulation, or something to that effect.

5 MR. WALLACE: At the bottom under public comment,
6 I guess it would be determination of whether to propose
7 regulation. I mean, that's what we want to do here. There
8 may be a more artful way to say it. But that gets the
9 point across.

10 If Mrs. Miller would accept that as a friendly
11 amendment to the motion, do we have a second?

12 MS. BERNSTEIN: I second it.

13 MR. WALLACE: Okay. Any further discussion of the
14 agenda?

15 MR. EAGLIN: May I ask a question, Mr. Chairman.
16 With respect to the point you were just making, public
17 comment, and that it means determination whether to propose
18 a regulation. Is this item then on the agenda for purposes
19 of a hearing primarily and recommendation to the Board
20 tomorrow?

21 MR. WALLACE: No. This has not even been
22 published. And when I say determination of regulation I
23 mean they -- we mentioned at the Board meeting in Detroit
24 that we would be considering whether to propose a
25 regulation on this subject. And the staff has a draft

1 we're going to look at. And if we want to pursue this
2 matter, we will decide to publish it in the federal
3 register. We're a long ways.

4 MS. BERNSTEIN: Correct me if I'm wrong, but
5 actually publishing the federal register for comment. I
6 don't believe that that actually takes a Board vote or
7 committee vote in order to do. It's the two other steps of
8 the process, the accepting the proposed regulation and
9 publishing it. And then determining after that.

10 MR. WALLACE: I don't know whether we need a
11 committee vote to put it in the federal register or not.

12 MR. DAUGHERTY: It was our practice last year, and
13 I assume that counsel reviewed the issue carefully, that it
14 could be published without actually a committee.

15 MS. BERNSTEIN: But I just wanted to clarify that
16 we're going to be dealing with the draft.

17 MR. HOUSEMAN: House practice at times at least
18 through Lou _____ when he was the chairman was to come to
19 the committee first and then publish, which is essentially
20 what you're doing here.

21 MR. WALLACE: That's the way we're trying to do it
22 here. That's our intention here today. Any further
23 comments on the agenda?

24 If not, all in favor of the agenda as amended say
25 aye. Opposed? Hearing no objections, the agenda is

1 adopted.

2 We are now ready to consider the minutes of June
3 27th. Mr. Bovard, when he prepared these, had a great deal
4 of trouble with the tape. And I think he has struggled
5 manfully and done a pretty good job of what went on. I
6 found a couple of things in here, and I thought I'd written
7 them down.

8 Okay. Page 5, line 4 says the comparison of six
9 programs in Central Mississippi. This should be
10 Mississippi. There's only one program in Central
11 Mississippi, but they covered statewide. And if there is
12 no dissent, we'll strike Central.

13 About the bottom of page 7. I'm trying -- my
14 recollection of the last sentence is what Mr. Brakel
15 testified to. And this was the one where I think we may
16 have gotten the sentence a little garbled. I thought what
17 Mr. Brakel was doing was responding to the argument that if
18 you got compensated delivery system, it's going to drive
19 people out of pro bono. I don't know exactly what he said.
20 I don't know what the tape reflects.

21 MR. DAUGHERTY: He was making reference, I believe,
22 to the intent of the American Bar Association in passing
23 its resolution on the subject in 1980.

24 MR. WALLACE: No. The sentence beginning, "It had
25 contemplated," is fine. I understand that. It says Mr.

1 Brakel "concluded that the idea that pro bono delivery of
2 services decreases efficiency is not credible..." I don't
3 know that anybody's ever suggested that pro bono delivery
4 is somehow inefficient or decreases efficiency. What
5 people have suggested is that if you have compensated
6 system, participation in pro bono will decrease. I think
7 that's the point he was trying to make there.

8 MS. BERNSTEIN: I agree with you, and that's born
9 out by the copy of his printed testimony. And I would just
10 ask that whoever did the minutes go back and check and see
11 if they can use something out of the testimony. I looked
12 at the transcript, and I compliment Mr. Bovard. There was
13 a great deal of creativity in whoever transcribed it.

14 MR. WALLACE: Let me go ahead and propose an
15 amendment. Mr. Bovard, if you check the tape and this
16 turns out to be wrong, tell us next month and we'll
17 retroactively line it up. But I would say that Mr. Brakel
18 concluded that the idea that compensated systems decrease
19 pro bono -- decrease participation in pro bono delivery of
20 services is not credible. Now, that's the point I think he
21 was trying to get across. And Mr. Bovard, if you go back
22 to the record and if you tell us we're wrong in September,
23 we'll correct it. But if there's no dissent from the
24 committee, I would put that change in starting with Mr.
25 Brakel -- bottom of 7. Mr. Brakel concluded that the idea

1 that compensated systems decreased participation in pro
2 bono delivery of services is not credible. And then all
3 through the rest of the sentence.

4 If there is no dissent, we will amend those
5 minutes accordingly. Now, has anybody else found any
6 problems with these minutes that we need to address at this
7 point?

8 Mr. Bovard, did any other changes come to your
9 attention since you prepared these?

10 MR. BOVARD: No.

11 MR. WALLACE: In that case, the Chair will
12 entertain a motion to approve the minutes as corrected. Is
13 there such a motion?

14 MS. MILLER: I make the motion.

15 MR. WALLACE: Is there a second?

16 MS. BERNSTEIN: I second.

17 MR. WALLACE: All in favor say aye. Opposed?

18 Hearing no dissent, the minutes are adopted as corrected.

19 The next item on the agenda is the part 1612 of
20 our regulations having to do with lobbying, also called
21 legislative and administrative advocacy, depending on which
22 side of the fence you're on. We had originally intended to
23 hear from the general counsel to give us a viewpoint on the
24 history of this. I think our staff has cooperated, and Mr.
25 Daugherty is going to be presenting the staff overview of

1 this item, and then we'll take public testimony on it.

2 Let me state the Chair's intention on the two
3 items we have before us today. I would like to put in that
4 we are not going to be able to reach any conclusion on this
5 or for that matter on disallowed questioned costs today.
6 What I'd like to do is spend about an hour on part 1612. I
7 would like all witnesses to try to tell us what they think
8 are the most important issues here because there are record
9 keeping issues and technical issues. But what I'd like to
10 hear are what are the big substantive policy issues that we
11 ought to come to some decision on at our next meeting in
12 Washington.

13 And after we've done that, I would like to move on
14 to the questioned costs and see if we'd like to propose a
15 regulation and try to get out of here at five o'clock.
16 We'll spend about an hour on 1612 and the rest of the time
17 on questioned costs.

18 And with that statement, Mr. Daugherty, we'd be
19 pleased to hear your report.

20 MR. DAUGHERTY: Thank you, Mr. Chairman.

21 As we've discussed previously, part 1612 is an
22 attempt to implement through laws on the subject of
23 legislative and administrative representation in terms of
24 the Legal Services Act any funds that are still remaining
25 from appropriations before 1983 and presumably any future

1 appropriations that are not subject to specific
2 restrictions. We have a very restrictive rider from 1983
3 that is implemented by 1612.5(f) of the regulations. And
4 then we have current appropriations language that has been
5 in effect from 1984 and 1985 that is implemented by part
6 1612.6 and 7.

7 Let me recite just briefly what the history of
8 that is. The original provision of the Act was fairly
9 permissive with respect to lobbying activities. Stated in
10 terms of a general prohibition, but it made an exception in
11 the case of responding to requests from officials, in the
12 case where Congress or a legislative body is considering a
13 measure directly affecting activities under this title and
14 representation by an employee of a recipient for any
15 eligible client when it's necessary to the provision of
16 legal advice and representation with respect to such
17 client's legal rights and responsibilities.

18 Over laid on top of that through the early years
19 of the corporation was a rider to the treasurer and general
20 government appropriations bill that forbade the use of any
21 funds appropriated under any appropriations act to any
22 government corporation for the purposes of publicity or
23 propaganda designed to support or defeat legislation. That
24 is language that has been construed by the comptroller
25 general to preclude what is known as grass-roots lobbying.

1 That is, communications addressed to members of the public
2 intended to arouse them to in turn contact their
3 legislative representatives.

4 Much of the more restrictive language that we see
5 today, I believe, is a result of the fact that the
6 corporation was slow, slow, slow in recognizing that
7 limitation on grass-roots lobbying. It was part of the
8 treasury general government appropriations before the
9 corporation came into being. Congressman Moorehead put a
10 specific rider on our corporation starting in 1979
11 proposing that restriction on the matter of communication
12 before the Congress and also before the state legislature.
13 There were three GAO reports that called upon the
14 corporation to adopt regulations more specifically stating
15 what the law was in this area to specifically address to
16 the Moorehead grass-roots lobbying problem very critical of
17 activities of the corporation. And yet the corporation
18 maintained during that period of time that the
19 appropriations riders were subject to the exceptions in the
20 Act.

21 That issue is still relevant to you today because
22 that treasury general government appropriations rider is
23 not currently attached to the 1985 appropriation. And Mr.
24 Houseman in his comments has raised a question as to
25 whether or not our regulations that would preclude

1 grass-roots lobbying as it applies to local governments or
2 to administrative agency actions, in fact, has a basis,
3 absent a specific appropriations rider.

4 I thought it would be useful to point out to you
5 that in the General Accounting Office's opinion of May 1981,
6 they stated that they read this language in our Act section
7 107(a)(5)(a) as not broad enough to permit expenditures for
8 appropriated funds for grass-roots lobbies. They did not
9 view publicity or propaganda as a necessary provision of
10 legal advice and representation. And we accepted that
11 interpretation and therefore, the regulations -- the 1984
12 regulations which you're examining today contain that
13 prohibition in 1612.5.

14 In 1981, the House of Representatives considered
15 an authorization measure for us. They went much further
16 and by a vote of 271 to 141 adopted an amendment by
17 Congressman Cramer of Colorado that stringently limited any
18 lobbying activities concerning legislation. Lobbying was
19 forbidden except -- communications with officials on
20 legislation were forbidden except at the request and in
21 response to request to members.

22 Mr. Cramer's amendment with slight modification
23 became part of our 1983 appropriation. Following, the
24 corporation finally in 1983 adopted regulations
25 implementing that rider and also for the first time in

1 1612.5(d) spelling out the rules on grass-roots lobbying.

2 In 1983, we had another very critical General
3 Accounting Office opinion, very critical oversight hearings
4 in the Senate labor committee pointing out a great deal of
5 training events or development of organization of
6 coalitions by legal services personnel, letter writing that
7 was designed to elicit communications to Congress in
8 opposition to a broad range of legislation. In reaction to
9 that, Congress passed a rider to our 1984 appropriation, an
10 amendment by Senator Hatch that absolutely forbade any
11 lobbying with respect to legislation concerning the
12 corporation. Absolutely forbade lobbying with respect to
13 Constitutional amendments, ballot propositions, several
14 enumerated categories of legislation, and authorized
15 communication on other legislation only to bring a problem
16 to the attention of an official after the exhaustion of
17 judicial administrative relief.

18 There were also riders tightening up the
19 dissemination of information at training events concerning
20 public policy. There was also in the '83-84 riders a
21 limitation on the administrative representation, that
22 representation in particular with respect to particular
23 applications claims and cases. Senator Hatch stated that
24 it was his intent in offering his amendment to limit legal
25 services representation to adjudicatory proceedings to rule

1 out participation in rule making activities.

2 During the development of regulations to implement
3 those riders in spring of 1984, we received communications
4 from other members of the Senate indicating a very strong
5 disagreement with that interpretation of that provision.
6 And they believed that one could represent a client in a
7 rule making procedure on a particular application, claim or
8 case. That certainly was one of the most difficult issues.
9 That's one of the most difficult issues here. Senator
10 Rudman, in his comments after the adoption of the
11 regulations, described our regulation on the subject as
12 indecipherable. And there are those who might think that
13 the statutory terms on this are indecipherable if they
14 don't -- if a better meaning is to draw the line somewhere
15 other than where Senator Hatch drew, it's a little
16 difficult to find out where that line is. We made that
17 attempt in 1612.6.

18 Another very difficult issue indicated the
19 legislative representation is only authorized after
20 administrative and judicial remedies are exhausted. And
21 there's a prohibition there on those communications being
22 the result of a coordinated effort to make such
23 communications to elected officials. Defining coordinated
24 effort was a difficult proposition. And that is another --
25 it was defined in the regulation as meaning consulting with

1 a person who is participating in a coordinated effort. It
2 is an effort to draw the line that was enforceable.
3 Senator Rudman questioned that also. He said this denied
4 access to experts.

5 Another difficult issue is that of drawing the
6 line between grass-roots lobbying and neutral reporting of
7 legislative developments. It was the determination of the
8 corporation in 1984 that there was -- that while there was
9 every reason for such news letters concerning legislative
10 developments with lawyers in order that they be able to
11 advise their clients, clients who had a particular problem
12 in a particular area, that there was really no
13 justification for those communications going to clients
14 generally if they are addressing proposed legislation as
15 opposed to law that's currently in effect. That is an
16 issue that is controversial and is one that was intended to
17 prevent abuse.

18 And probably many of the other provisions that are
19 in question here are cases in which regulations were
20 drafted with the intention of attempting to prevent a
21 grantee from doing indirectly what he is prohibited from
22 doing directly. There's a provision in here, for example,
23 in the regulations that say that one may not -- that while
24 one may monitor legislative developments, may not do so for
25 the benefit of those that are engaged in lobbying

1 activities. Those provisions were among those that drew
2 comments during the commentary period. As you know, of
3 course, this issue is before you today because you directed
4 that the current regulations be published for comment in
5 February of this year.

6 There are six issues that Senator Rudman
7 identified specifically in his statement on the floor in
8 June of 1984 when he proposed language in this year's
9 appropriations bill subjecting these and other recently
10 adopted regulations to review by the appropriations
11 committee.

12 First, he said some of the requirements in the
13 regulation, such as the one limiting responses to federal,
14 state or local officials only in those instances where
15 officials are willing to put their requests in writing
16 clearly have no statutory underpinning. That is a
17 provision that had a very clear legislative underpinning
18 when it was adopted in 1983. I think in light of the
19 current legislative history, you might want to take a look
20 if that's the intention of the 1985 appropriations rider.

21 MR. WALLACE: It did come from an appropriations
22 rider, and it's no longer in the current one; is that right?

23 MR. DAUGHERTY: The current rider differs from the
24 1983 rider in that the word "formal" was dropped. 1983
25 responses were allowed responding to formal request of an

1 elected official. The word formal does not appear in the
2 1984 and '85 appropriation. No explanation was made in
3 1984 for the reason for the change. One would take from
4 Senator Rudman's comments in 1985 that he felt very
5 strongly that that was inappropriate. For rural
6 legislators to be asked to type a letter up to legal
7 services program making their request was burdensome.

8 The second objection was -- the one I cited --
9 earlier provision as to administrative advocacy. The words
10 can be construed to interpret administrative advocacy
11 beyond legislative intent.

12 His third objection, the provision precluding
13 communication to legislators on behalf of clients if such
14 communication is the result of participation in a
15 coordinated effort to provide communication, the purpose of
16 which has been interpreted to prevent legal services
17 programs from getting involved in the field which may be
18 legislatively active.

19 The fourth issue that he raised was that the
20 regulation precludes the use of LSC dues to anything other
21 than bar associations to take positions on matters before
22 administrative or legislative bodies. He feels that the
23 fact the word "substantial" as undefined could preclude a
24 legal services program from joining legitimate state or
25 local human service provider groups.

1 Fourthly, he objected to -- fifthly, excuse me --
2 the prohibition on the making of "indirect suggestions" to
3 eligible client to engage in lobbying. And the prohibition
4 on assisting others to influence legislation through
5 legislative liaison activities could both be construed to
6 prevent neutral reporting on legislative matters, functions
7 routinely and properly undertaken by a number of LSC
8 grantees.

9 Lastly, he objected that the regulations imposed
10 record keeping and the paperwork requirements that go
11 beyond already burdensome requirements enacted in the
12 specified appropriation bill itself.

13 I might add that a number of these points were
14 points on which he had addressed questions to the
15 corporation during the hearings process, answers to which
16 were fairly tardy in being delivered to the Senator. But I
17 think some of them would have addressed those concerns. He
18 was not wanting to file comments on the issue.

19 MR. WALLACE: Let me ask you. This may not be
20 something on which you're prepared to testify. But these
21 regulations have been in effect since the spring of 1984.
22 What sort of problems have they produced in practice?
23 We've got a file full of comments from people who don't
24 like them. But what kind of monitoring problems,
25 compliance problems, lawsuits have we been getting into?

1 What kind of headache have these regs been for the
2 corporation for the last year and a half?

3 MR. DAUGHERTY: I'm not really prepared to answer
4 that question in any detail. Most of the testimony and
5 comments that you've received were comments from people who
6 said that they were concerned that they were inhibited from
7 undertaking activities that they would like to undertake.
8 And to me, I think those cases would have been resolved
9 asking for opinions of counsel. Perhaps you might want to
10 see if the general counsel's office has been asked to
11 interpret the regulations.

12 One problem that was brought to my attention, and I
13 think it is a legitimate one, is the question of the
14 training, 1612.4, about dissemination of information about
15 public policies. One project director has indicated that
16 certain public laws are awfully vague and could be
17 construed to cover a statute or regulation. I think if we
18 do amend that regulation, I think that's the area in which
19 we might want to add that admonition.

20 There are a number of questions that arose in my
21 mind from reading Mr. Houseman and Schwartz manual on this
22 provision that we might want to address. Particularly, he
23 suggested there are a number of activities or coalitions
24 that I don't believe are consistent with the intention of
25 the Congress to rule out the participation and the lobbying

1 activities of coordinated communications.

2 MS. BERNSTEIN: Dennis, this is a question you may
3 or may not be prepared to answer. But Dan Bradley, when he
4 was president of the corporation, I think, testified before
5 the Senate that lobbying was only one tenth of one percent
6 of the funds allocated by Congress. Do you have any idea
7 what percent of program direct delivery funds are allocated
8 toward lobbying?

9 MR. DAUGHERTY: We have no specific figures on
10 that. It's not a separate item in anyone's budget. That
11 hasn't been a matter of reporting to us until 1983 when the
12 activity was very strongly limited. I think we had about --
13 we're average about 59 cases of lobbying activity in each
14 quarter of the year now.

15 MS. BERNSTEIN: On the national average?

16 MR. DAUGHERTY: That's nationally. That's the
17 national average under appropriations riders that
18 practically rule out activity except for response from
19 officials. I think that is at the permissible
20 administrative area. It was not a minor -- I think the one
21 tenth of one percent underestimates the amount of activity.

22 The House appropriations committee investigative
23 staff, for example, reported to Congress in 1979 that in
24 California, the California Rural Legal Assistance Program
25 in San Francisco maintained a permanent office in

1 Sacramento with five attorneys, all registered lobbyists,
2 two legislative, two administrative work, one on grant
3 matters. The same location states support center at four
4 registered lobbyists engaged in legislative and
5 administrative activities. One of the principal findings,
6 I think of Mr. Houseman, supporting needs and options
7 studies of the late service was greater emphasis on
8 national policy representation, several of whom opened up
9 Washington offices, and that being one of the principal
10 activities. We can't provide an exact estimate.

11 I think you have to recognize that the reasons for
12 the difficult area -- and an area in which many of our
13 programs feel it is very important. Going back to our war
14 on poverty origins with emphasis on law reform activities,
15 lobbying was not an incidental activity but a central
16 activity. If you're going to -- that's why I think GAO
17 felt it was important.

18 MS. BERNSTEIN: I notice in the job vacancies that
19 I see printed various places that we still have vacancies
20 for full-time lobbyists at various entities. So I'm aware
21 that there is activity there. I guess the other thing that
22 I wanted to find out, you hit on part of it. Has there
23 been any work done from the corporation in terms of looking
24 at state laws in terms of lobbying activity and lobbying
25 registration? And when monitoring terms are made, do we

1 ever cross check between what a program says they do in
2 terms of lobbying and to find out whether or not the
3 individuals who are attorneys in that program are
4 registered as state lobbyists?

5 MR. DAUGHERTY: I don't know the answer to that.
6 We could check into that. I don't believe we have anybody
7 with our monitoring unit with us today.

8 MR. WALLACE: Do we have any further questions of
9 this witness?

10 Mr. Daugherty, we thank you for providing us with
11 the introduction of the subject.

12 MR. DAUGHERTY: I think I should say in response
13 to the question that roughly a hundred of our programs
14 reported no lobbying activity at all during the last year.
15 So it is not a universal problem.

16 MR. WALLACE: Our next witness is Casey Schpall,
17 an attorney with Mountain States Legal Foundation in Denver.
18 Ms. Schpall, we're happy to have you here with us this
19 afternoon.

20 MS. SCHPALL: Good afternoon. I want to thank the
21 Board for an invitation to speak on the anti-lobbying
22 regulations that are being considered. Mountain States
23 Legal Foundation has been involved with this issue since
24 about 1980 when we first represented several U. S. Senators
25 and Congressmen in a lawsuit brought to enforce the

1 anti-lobbying provisions of the Legal Services Act.

2 Although the court didn't come to any specific
3 finding as to whether or not the provisions of the Act were
4 violated, the court did find that whether recipients out in
5 the field had violated the Act or not, there was no private
6 cause of action under the acts. In other words, the court
7 said there is no remedy for this except if Congress acts or
8 except if the Legal Services Corporation itself decides to
9 enforce the anti-lobbying regulations.

10 And I think that's the big issue that I would like
11 to discuss, is the enforcement provisions. Despite efforts
12 when the Legal Services Corporation Act was promulgated and
13 changed from the office of economic opportunity, one of the
14 major premises was to avoid politicizing the organization.
15 And unfortunately, I do not believe that that worked out
16 very well.

17 The age old problem here seems to be a split in
18 philosophy, whether or not the Legal Services Corporation
19 Act is intended to serve as a mechanism to deliver routine
20 legal services to people who cannot afford to hire an
21 attorney for those matters or whether or not it is an
22 opportunity for social reform. Mountain States Legal
23 Foundation takes the former view in that basically the
24 corporation is there to serve the mundane needs of the
25 indigent. And in that regard, it seems like lobbying

1 should be one of the least considered issues in providing
2 legal services.

3 The prohibitions in the Act specifically say that
4 funds shall not be used to engage in legislative lobbying
5 unless specific circumstances are there. And that is,
6 whether a client needs it for his own personal
7 representation. Now that's something that I guess each
8 recipient has to evaluate with the oversight of the
9 corporation. But in those instances when it's clear that
10 it's more of a comprehensive movement to reform, I think
11 it's inappropriate to spend taxpayer funds on those issues.

12 The other lawsuit we were involved in with Western
13 Center on Law and Poverty versus Legal Services Corporation.
14 And that involved an attempt by the Legal Services
15 Corporation to define for Western Center what they
16 perceived as inappropriate use of funds to organize a
17 campaign against Proposition 9 in California. In that case,
18 the judge there seemed to be very influenced by the fact
19 that when those activities took place, which was in 1980, '81,
20 the regulations on the books of the corporation didn't
21 specifically, clearly prohibit those types of activities.
22 In fact, Western Center had applied for a special needs
23 grant which was given to them by the corporation and used
24 for those allegedly illegal activities.

25 And so the court and also comptroller general's

1 report find it compelling that the Legal Services
2 Corporation had approved, at least, those kinds of
3 activities. And therefore, it was not just optional for
4 them for require recruitment from the Western Center. I
5 think that now you have some regulations on the books with
6 some teeth in them, the major hurdle is to enforce those
7 regulations. I notice that in the comments submitted by
8 the National Organization of Legal Services Workers, et al.,
9 they have specific problems with clarity and with
10 definitions of words and with the fact that the regulations
11 could be interpreted one way or another. And I think those
12 things should definitely be taken care of. I mean, if the
13 word substantial needs to be defined, define the word
14 substantial.

15 But on the whole, it doesn't appear to Mountain
16 States Legal Foundation that the corporation exceeded its
17 statutory authority in promulgating these regulations. I
18 mean, the appropriations bills that were passed with some
19 language -- the last two, I guess, it was to the effect
20 that you have to have a request from Congress in order to
21 lobby. It specifically says request from Congress. And
22 for the Legal Services Corporation to interpret that to
23 mean that you can't go around soliciting requests doesn't
24 seem like an unreasonable position for the corporation to
25 take.

1 And regarding the record keeping requirements, I
2 could see that they could be burdensome and there's perhaps
3 some modification that could be made.

4 But generally speaking, I think the regulations
5 carry forward the intent of the Legal Services Corporation
6 Act and puts some bite into the regulations where before
7 there weren't any. And I think that because of the past
8 abuses, perhaps the regulations appear a little bit too
9 strident. But I think once they're in place and people are
10 complying with them, they can perhaps be loosened up
11 several years in the future. But as they appear right now,
12 the regulations are properly promulgated and will do the
13 job that the funds are not used for purposes by the Act,
14 specifically lobbying.

15 MR. WALLACE: Let me ask you a similar question
16 because Mountain States has been involved in lobbying
17 disputes with Legal Services Corporation in the past. Have
18 any particular problems in this area come to the attention
19 of Mountain States over the last year or so that these
20 regulations have been in effect? Have you had complaints
21 from them with whom you deal that some of our grantees are
22 still failing to abide by what you perceive to be the
23 intent of Congress with regard to lobbying?

24 MS. SCHPALL: Since filing our brief in Western
25 Center versus Legal Services, I haven't kept up on what

1 violations there have been. And I don't know if Legal
2 Services Corporation has attempted to define anybody else.
3 But it appears to me that because of the success of the
4 recipient groups in avoiding any kind of service in a
5 judicial arena, I don't know why they should stop doing
6 what they feel is appropriate under the Act in their
7 opinion.

8 So I would assume until these regulations are on
9 the books for good and approved by Congress -- well, not
10 approved by Congress but asked to be reviewed by Congress,
11 it seems that the problem still exists. Until there's some
12 kind of stability in the regulations and their application,
13 I would think that some of those activities might still be
14 going on. I don't think they're probably as prevalent as
15 they were in 1980 and '81.

16 MR. WALLACE: Ms. Bernstein.

17 MS. BERNSTEIN: I was just going to ask the
18 reaction to -- another group had come forward and had
19 suggested to us that the problem could probably be solved
20 by restricting the lobbying that our programs engage in to
21 only those activities for which an individual who needs an
22 attorney's assistance. And I just want to get your
23 reaction to that approach to the lobbying restriction.

24 MS. SCHPALL: Well, obviously you don't
25 necessarily need an attorney's assistance to lobby.

1 Although if you're intending to authorize a bill or
2 something like that, it might be nice to have legal
3 expertise. It depends on what your interpretation is of
4 legal representation. I know as a private attorney, legal
5 representation can cover the full gambit from appearing in
6 court to lobbying on behalf of your client.

7 MS. BERNSTEIN: Have you ever lobbied before on
8 behalf of a client other than Mountain States?

9 MS. SCHPALL: Mountain States is precluded by its
10 tax status.

11 MS. BERNSTEIN: I mean, other than any clients
12 that may have been involved with a quasi-political or
13 philosophical issue.

14 MS. SCHPALL: No.

15 MS. BERNSTEIN: I mean, in the redress of
16 grievances, do you think that lobbying plays a major part
17 in the private practice of law?

18 MS. SCHPALL: I don't think it does. I think
19 perhaps in the corporate world it might play a bigger role.
20 But I think if you're going to focus on changing the law to
21 achieve your end, I think the run of the mill routine cases
22 that legal services were meant to take care of would go by
23 the way side. It's much more glamorous to engage in social
24 reforms than deal with the domestic landlord-tenant
25 disputes that I think were meant to be redressed by the Act.

1 MR. WALLACE: Mrs. Swafford is not a member of the
2 committee but is a member of the Board. Do you have a
3 question for the witness?

4 MS. SWAFFORD: Did I understand you to say that
5 this regulation as it now is written that it's adequate to
6 carry out the provisions of the Act?

7 MS. SCHPALL: It appears to be adequate to carry
8 out the provisions of the Act. As I said, there were a few
9 concerns that were raised by people who deal with this out
10 in the field such as record keeping and things like that.
11 There was some concern about not being able to pass on
12 client information because of certain prohibitions.

13 But I feel that these regulations do fulfill the
14 purposes intended by the Act in terms of prohibiting the
15 kinds of activities that could take the resources away from
16 the true intent of the Act. And the regulations appear to
17 carry out the purpose of the Act.

18 MS. SWAFFORD: Did you make comment? You know, we
19 gave a period of time for comments. And I just wonder if
20 you did respond to the formal comment.

21 MS. SCHPALL: No. Mountain States did not respond
22 to the formal comment.

23 MS. SWAFFORD: Has that time expired?

24 MR. WALLACE: The time probably expired about five
25 months ago. But we have been holding these hearings for

1 the purpose of getting as much input as we could after the
2 closed formal comment period. And we would certainly -- if
3 Mountain States has any further thoughts that they want to
4 put in writing, it will be some time before we act. And we
5 would be delighted to hear further from your organization
6 and from anybody else that's got anything to say to us.

7 MS. SWAFFORD: Well, I would suggest that the
8 comment time has expired, that you just make some response
9 in writing.

10 MR. WALLACE: Any further questions of Mrs.
11 Schpall?

12 MR. VALOIS: Would you comment on a particular
13 thing that concerns me. And that is, I assume you're known
14 to be with Mountain States and people know who you are and
15 what's your name. And if you took a day off and went to
16 Mountain States and said, look, I'd like to take tomorrow
17 off and you travel up to the legislature and say, I'm not
18 here on behalf of anybody but myself as a private citizen.
19 However, Mr. Legislator, I'd like you to vote for or
20 against this thing. Would that be acceptable to Mountain
21 States or would your identification with them be too well
22 known for the public to disassociate themselves from you
23 with your gray suit on instead of your brown suit?

24 MS. SCHPALL: Well, Mountain States has no kind of
25 specific internal procedures precluding their attorneys

1 from doing any kind of lobbying on their own time. I think
2 in my own judgment, I would probably not engage in that
3 kind of activity because it could easily be perceived as
4 being the position of Mountain States Legal Foundation as
5 opposed to my personal position. I think that's just
6 something that you have to contend with when you decide to
7 go into a public kind of employment. And I know that other
8 people may feel differently at the Foundation, but we've
9 never really had a problem with that. Generally speaking,
10 whenever we've appeared in public, it's on behalf of
11 Mountain States.

12 MR. VALOIS: Would you have the same opinion if
13 you just happened to be up in Washington on some Mountain
14 States legal matter and they were paying your way up there
15 and you get an hour a day for lunch. And while at lunch
16 time you happen to lobby some Congressman about some matter
17 that Mountain States would not have lobbied for. Would you
18 have the same sort of position?

19 MS. SCHPALL: I think I would make an effort to
20 not engage in any kind of activity like that, especially if
21 I was in Washington on Foundation business.

22 MR. WALLACE: Any further questions?

23 MR. VALOIS: No.

24 MR. WALLACE: Miss Schpall, we appreciate your
25 coming over from Denver to testify to us today. We thank

1 you for your time, and we appreciate your input into our
2 deliberations.

3 MS. SCHPALL: Thank you very much.

4 MR. WALLACE: Thank you.

5 Our next witness will be Mr. Alan Houseman, here
6 on behalf, as has been stated, of National Organization of
7 Legal Services Workers, et al.

8 We are happy to welcome you back to the committee.

9 MR. HOUSEMAN: Thank you. What I would like to do
10 is address the question that you asked. I want to first
11 make a few comments on what Dennis said. I think there
12 were some statements made that are just partially
13 inaccurate or are not the complete picture.

14 First of all, Senator Hatch was not the sole
15 author and indeed he may not even have been the author of
16 the appropriation rider to which we've been referring.
17 That was authored by Senator Rudman, appropriations
18 committee of the Senate, at this time in consultation with
19 the appropriations committee in the House. Senator Hatch
20 participated in those negotiations, as did any number of
21 other Congressman and Senators who were not on either of
22 the appropriate committees. So when we talk about Senator
23 Hatch's amendment, it is not Senate Hatch's amendment. And
24 the legislative history reflects that completely.

25 Secondly, I think it's important to separate out

1 when talking about this issue the GAO reports and to be
2 quite clear as to what GAO report said what on what issue.
3 And I don't want to take the time to do that. I will make
4 sure that when we get to the GAO report when we come in,
5 they'll probably do that. But there have been three GAO
6 reports that explicitly addressed various provisions that
7 this regulation deals with. And there was a report in 1979
8 that suggested that the corporation should change its
9 lobbying regulations but didn't suggest how. The first of
10 those reports was in November of 1980. And that report
11 dealt only with part of the lobbying provisions. And it
12 dealt with that those provisions that had to do with the
13 client exception. And that report is a very muddled report
14 if you read it. And I'll get back to that subsequently.

15 But the second report was May the 1st of '81.
16 That report dealt almost exclusively with the survival
17 campaign and the survival act of the corporation and
18 program. And it did not explicitly address either of the
19 two other exceptions in the Act. It was focusing on the
20 activities around the Legal Services Corporation. The
21 report in September of '83 made a quick reference to the
22 earlier two reports. But the report in '83 dealt with
23 organizing and training principally.

24 I think it's important that we be clear what GAO
25 has said when we get to various provisions in this, and we

1 ask what the GAO opinion was. I don't think the GAO
2 opinion is necessarily correct in every respect. But when
3 we get to each of these provisions, I think it's important
4 to be clear about who said what and what interpretations
5 were made by LSC or GAO.

6 In addition, some of this I think it's best that I
7 put in writing and not take up your time. But I think that
8 the record before you so far from the over 100 and some
9 comments that have been filed, of which only four or five
10 are in favor of the current regulation, the record from
11 programs from bar associations and others, has suggested a
12 number of problems beyond matters of inadmission, problems
13 with the current regulation. And I want to address some of
14 those things. When we talk about the issues that are
15 before us.

16 Finally, I made this point on numerous occasions,
17 and I want to try to make it again and maybe spend a minute
18 or two on it. And I urge us to come back to it and spend
19 much greater time on it. I think an understanding of the
20 problems that we see in the regulation, one must begin with
21 section 1007(a)(5) of the Legal Services Act itself. And
22 look at what that section of the Act says and doesn't say.
23 Part of the difficulty that exists here, I think, is that
24 the regulation does not separate out the interpretation of
25 section 1007(a)(5), at least in all respects, from the

1 appropriation riders. Although in three places it does,
2 many of the provisions in the general section 1612.5(a) are
3 interpretations of various appropriation riders and not of
4 the LSC Act.

5 The reason that this is important is that 1010(c)
6 in the Act. 1010(c) prohibits private funds from being
7 used for purposes that are prohibited by the Act. Private
8 funds, of course, can be used under the long standing
9 interpretation of the corporation for activities that are
10 only prohibited by an appropriation rider but not by the
11 LSC Act. So that you have to distinguish for the purposes
12 of private funds between provisions in the LSC Act in the
13 provisions in the appropriations riders. And therefore,
14 it's important in going through the regulation to attempt
15 to make that distinction as you look at each of the
16 sections.

17 Now, if many of the issues are resolved along the
18 lines of the suggestions that we have made, issues that I'm
19 going to address, most of these problems will be eliminated.
20 But if you continue many of the provisions, changes are
21 more restrictive in either the Act or the appropriations
22 riders, particularly in the general section, 1612.5(a), you
23 run into the problem of restricting private funds more
24 extensively than the LSC Act restricts funds. That's why
25 one has to pay attention to the statute itself as well as

1 of course the appropriation riders in various periods of
2 time.

3 Obviously what makes it so hard is that we have a
4 range of different appropriation riders that have applied
5 the funds at different years. And in fact in the last four
6 years, we've had three different sets of appropriation
7 riders that create different rules. So that when you sort
8 all this out, it gets very difficult in terms of drafting a
9 regulation.

10 MR. WALLACE: Mrs. Bernstein has a legal point.

11 MS. BERNSTEIN: Well, I'm not sure we'll clear it
12 up. Let me just voice my differing interpretation. The
13 appropriations riders that we're dealing with are a current
14 one which basically says that the appropriations made for
15 purposes of Legal Services Corporation Act, and then it has
16 the same restrictions as the previous appropriations rider.
17 The previous appropriations rider says again the purposes
18 of the Legal Services Corporation Act provided that
19 notwithstanding any regulation, guideline, or rule of the
20 corporation.

21 So anything that was in effect at the time that
22 that first appropriations rider was there, and the
23 interpretation of 1010(c) would in my view be carried over
24 to all funds. Because 1010(c) very clearly relates to --
25 but any funds so received for the provision of legal

1 assistance shall not be extended for any purpose prohibited
2 by this title. But what I'm saying is that the tying
3 together of these sections does not give any reason for
4 excluding 1010(c) from later appropriations.

5 MR. HOUSEMAN: I think that's absolutely wrong.
6 And the general counsel has historically -- and you have
7 historically made that differentiation.

8 MS. BERNSTEIN: It will not be the first time I've
9 disagreed with the general counsel.

10 MR. HOUSEMAN: The general counsel has taken the
11 position that private funds are not prohibited, that the
12 1010(c) does not reach private funds.

13 MS. BERNSTEIN: Let me ask you just from a --
14 really without being a technicrat on this. Do you real
15 truly believe it is Congress's intent to attach different
16 restrictions and different handles to defining lobbying in
17 different years?

18 MR. HOUSEMAN: Different years, sure.

19 MS. BERNSTEIN: And in terms of -- at the present,
20 1010(c). Do you really believe that they meant to exclude
21 1010(c)?

22 MR. HOUSEMAN: In the appropriation riders?

23 MS. BERNSTEIN: That its purposeful exclusion --

24 MR. HOUSEMAN: It wasn't purposeful. They did it
25 by the language.

1 MS. BERNSTEIN: But you're saying that by the
2 language, by their not knowing that you're going to
3 interpret it this way, that they didn't include it. And
4 that therefore, it was their intent to make it technically
5 impossible for us to get around it.

6 MR. HOUSEMAN: I don't think you can talk about
7 Congressional intent in this area in the sense that you've
8 got appropriation committees that are not the authorizing
9 committee making the authorizing legislation, so to speak.
10 But that's the situation that's been in since 1980 in terms
11 of looking at this.

12 So I don't think -- I'm not sure how to answer it.
13 I know Senate Rudman understands this distinction, and I
14 think Congressman Smith understands this distinction, who
15 have been the actors since 1980.

16 MR. WALLACE: I haven't communicated with them in
17 terms of the distinction.

18 MS. BERNSTEIN: Do they want this distinction,
19 Dennis? Has anyone communicated with them to know whether
20 they want this distinction?

21 MR. DAUGHERTY: The question did come up at our
22 appropriations hearing this year. Concern was expressed by
23 Senate Rudman that programs may be holding on to old funds
24 in order to use them for purposes that are currently
25 prohibited. I don't think he would understand an

1 appropriations rider as governing funds other than are
2 appropriated in that bill.

3 MS. BERNSTEIN: I understand what you're saying.
4 I'm simply questioning whether he would understand the idea
5 that we should not be trying to abide by Congress's current
6 interpretation in terms of delivering legal services.

7 MR. HOUSEMAN: Let me make sure you understand
8 what I'm saying. There's no question in my mind that LSC
9 funds are governed by the appropriation riders under which
10 those LSC funds were appropriated. And to the extent that
11 the riders are explicit and clear, which they have been
12 since 1983, there's no question in my mind that LSC funds
13 have to be used in those ways. We maybe differ on the
14 interpretation. What I'm saying is that in a regulation
15 that attempts to regulate attempts to interpret 707-85.
16 You must start with what 707-85 says and doesn't say
17 because of the 1010(c) problems.

18 MS. BERNSTEIN: But it puts us in an odd position
19 as fiduciaries to be trying to encourage the generation of
20 private funds for the support of legal services when those
21 private funds may be utilized for something other than what
22 is permitted under our Act.

23 MR. HOUSEMAN: Not what's permitted under the Act
24 under the current regulations.

25 MS. BERNSTEIN: That's correct.

1 MR. WALLACE: Let me try to move us off of this,
2 and I'll just repeat what you said before. Congress's
3 intent is what it puts in the statutes at large. And we
4 repeatedly encourage Congress to put a new authorization
5 act in the statutes at large so we'll know what they intend.
6 But trying to read a whole lot of internally inconsistent
7 laws passed year after year gets us into the kind of
8 argument we're having and we're not going to resolve this
9 afternoon. Let's move on.

10 MR. HOUSEMAN: Let me make two other points, and
11 then I'll answer your question. Two other points are that
12 I think the three exceptions to 107-85 are each different,
13 and I think you'd have to look at the exact language on
14 each of them. To lump the three together is a mistake in
15 interpreting 707-85. And I think to a large degree the two
16 things were as different as how far they carry the
17 exception.

18 In my reading, the first part of 707-85 is a
19 prohibition against direct and indirect lobbying. And I
20 think frankly that it covers grass-roots lobbying. Now,
21 I'll address this grass-roots issue in a second in another
22 context. The exceptions are to some degree an exception.
23 For example, activities relating to "a measure directly
24 affecting activities of the recipient or the corporation."
25 That exception is a broad exception to the prohibition.

1 The exception on representation undertaken at the
2 request is a narrower one. It specifies the kinds of
3 things you can do. The exception on representation
4 necessary to the provision of legal advice and
5 representation I think is in between those two.

6 That then leads you into the issue of what is
7 legal advice and representation, of which we've heard some.
8 And I do want to speak to you at some length about that.
9 But I would suggest here that if you look at the
10 legislative history that existed when the '74 Act was
11 passed and the '77 amendments were made, that they were, I
12 think, fairly clear that they wanted legal services
13 attorneys to have the same ability as private attorneys to
14 represent clients before the legislative bodies. And that
15 is said over and over again by both sides. And there's
16 virtually no disagreement among them. There's disagreement
17 about whether they're good, but there's no disagreement as
18 to what that phrase means.

19 Finally, on this regard, the Western Center case
20 went considerably beyond what the person for Mountain
21 States said. I don't think that the activities of the
22 Western Center were legal. That is, they were convergent
23 with the LSC Act, not only consistent with LSC's
24 interpretations.

25 Let me then turn to the other preliminary matter,

1 and maybe I just misheard Dennis because this was at the
2 end. Senator Rudman did file a comment in this proceeding.
3 And the comment makes four points that I want you to pay
4 some attention to when we get to the actual language. The
5 first point is it's a comment by Neil Smith and Senator
6 Rudman dated February 7th, 1985. Under normal rules of
7 statutory construction, the appropriations language in
8 lobbying constitutes exceptions to the LSC Act which should
9 be interpreted narrowly. There's more do it, but that's
10 the first point he makes.

11 The second point is the revised regulation should
12 not include restrictions or requirements which are not
13 explicitly authorized by the statutory language. It is
14 exceeding likely that such restrictions or requirements
15 were discussed during the Congressional negotiations on the
16 subject and rejected.

17 Third, the regulation should be as clear as
18 possible in statutory language.

19 And fourth, the regulation should not interfere
20 with the normal and legitimate activities and duties of the
21 legal services programs and their attorneys. For example,
22 legal services attorneys need to be able to consult with
23 experts in a field in order to best decide what course of
24 action to pursue. Neutral reporting on developments and in
25 administrative law is a proper function of the support

1 centers. That's the statement -- that's part, at least,
2 it's made there.

3 Now, to me, those are the issues the big issues,
4 most of which have been touched upon by previous speakers.
5 One of those issues, however, I don't think is a big issue.
6 It is quite clear now that grass-roots lobbying as defined
7 by GAO is prohibited. And whether it's prohibited by the
8 LSC Act or by appropriation riders going back to 1979, it
9 is prohibited.

10 We are not suggesting that you change that section.
11 We are not even suggesting that you move that section from
12 where it is. We have a change that we think makes the
13 current section more consistent with the GAO
14 interpretations, but grass-roots lobbying is prohibited.
15 It's prohibited with LSC funds. I think there's virtually
16 no question that it's prohibited with private funds, and
17 that is not an issue we're raising. I want to be quite
18 clear on that, and it's an issue you have to spend a lot of
19 time on.

20 The issues that I see that need time and are not
21 purely technical are these: First, responding to requests
22 and the limitations on those response. Not only a
23 requirement. Written request, but the requirement to
24 communicate to others even when the person making the
25 request has asked you to communicate with others.

1 And related to this is the problem with language
2 in relation to indirectly soliciting requests. It's the
3 rest of the language which could be construed, and it has
4 been by many programs, to prevent you from providing
5 routine information to members of Congress. Which is
6 something that I think many programs have historically done,
7 and I think many Congressmen should continue.

8 Second issue is the advice of clients issue. The
9 current regulation restricts advice of clients in a number
10 of circumstances. I do not believe the language in the
11 regulation can be construed to restrict such advice, and I
12 think it is wrong to restrict such advice, regardless of
13 how you come out on the question of lobbying.

14 Third, the communications to legal services
15 programs and clients. This is the area where the
16 grass-roots lobbying and the written materials issues as to
17 what kinds of written materials can be sent out and to whom.
18 That's that issue. And that is the only issue, I think,
19 with regard to grass-roots lobbying that we are raising,
20 and I think are legitimately raised, in the context of
21 where Congress has clearly come down. And our view is
22 obviously that communications to legal services programs
23 and to eligible clients, so as long as they do not contain
24 publicity or propaganda, should be permitted.

25 Fourth, legislative liaison. That's an issue.

1 Fifth, consultation with other persons and
2 organizations. The appropriation rider opposes some
3 restrictions upon coordination. Senator Rudman and others
4 have argued, and I think correctly, that it does not
5 prohibit consultation with other persons and organizations
6 should one encourage consultation so that the attorneys
7 provide the highest quality professional representation.

8 Six, dues payments of organizations that lobby.
9 That issue and how you deal with it, what limits are put on
10 it, is an important issue.

11 Record keeping, seven. Many of these are
12 technical. Many of these I think we can work out. But
13 there may be some ultimate policy questions about record
14 keeping that you're going to have to deal with.

15 Eight, administrative representation. I don't
16 find this issue as difficult. I think the statutory
17 language is clear. And I think the members of the Congress
18 are clear as to what it means. But it is an issue, and I
19 think it's best if you use the statutory language instead
20 of the gloss that was put on it by the regulation. That
21 isn't an easy issue, by the way.

22 Nine. Under the organizing restrictions in 1612.3,
23 I believe, there are three issues that I think you have to
24 deal with that are not purely technical issues. There's
25 two issues that you have to deal with that are technical,

1 and there's one technical issue. The technical issue is
2 the scope of the net working exception. The two policy
3 issues are whether you wish to have a prohibition that can
4 be interpreted and is interpreted as prohibiting informing
5 clients or other groups that assist them. And that is a
6 fair reading of the section. And I don't think we want to
7 inhibit a legal services program of informing a client or
8 client organizations or other organizations from which that
9 client can get assistance.

10 Second policy issue under organizing is whether
11 the current restriction which prohibits representation of a
12 client group if a substantial amount of its time is spent
13 on lobbying activities, whether that restriction is
14 consistent with the organizing section. I don't think it
15 is. The organizing section has a relatively broad
16 exception which says you can provide legal advice and
17 representation to any client organization. It makes no
18 distinction between client organizations, and I think the
19 reg should track the statute and make no distinction
20 between client organizations in terms of the kinds of legal
21 advice and representation which go on. And those are the
22 two policy questions that I think are in the organizing reg.

23 Training. There is one major policy question in
24 training, and that is whether you can permit training in
25 areas where program involvement is limited. And I really

1 think that you want to be able to do training in areas
2 where program involvement is limited. Maybe even where
3 program involvement is prohibited. At least you want to do
4 one kind of training. You want to be able to train legal
5 services staff on what they can and cannot do. And the reg
6 specifically prohibits you from training legal services
7 staff on what they cannot do with legislative
8 representation. I certainly think you want to be able to
9 do that. But I think you want to be able to go further.
10 And to the degree that legal services staff can engage in
11 representation, administrative representation and
12 legislative representation, you ought to have training
13 available on those skills that relate to what is
14 permissible.

15 There are a number of problems in training with
16 regard to definitions that are used in the actual reg
17 itself. One that you and I discussed, Mike, is the
18 definition of political activities. The other is the
19 failure to define public policies, which is, of course, a
20 very difficult issue. I think those are much more minor in
21 terms of practical fact than exactly what you can train on
22 and what you can't train on, etc.

23 There's one final issue that Mr. Valois raised
24 which I think goes through this. I don't think it's the
25 major issue of these regulations, but it is an issue. And

1 that is what can be done on your own time and under what
2 circumstances are you on your own time. Frankly, I think
3 given the First Amendment role, given the fact that the
4 First Amendment does play a role in this area, that you
5 should be very careful when the LSC Act is restricting work
6 on your own time that you don't go back on that. And
7 there's lines being drawn there. I've suggested a few
8 changes where I don't think it's a big issue, but I think
9 it's an issue.

10 Finally, I just want to clarify one thing. I've
11 clarified this with Mike previously. But just for the
12 record, there is an error in the draft you have in front of
13 you from -- an error we made, not you, in our proposal. On
14 page 42 of the committee book, section C4, in our proposal,
15 it's stricken. And we did not mean to strike it. That may
16 answer some of the concerns that were raised that I just
17 discussed. And our section by section analysis does not
18 deal with it. It was just a drafting error that was made.

19 And so those are the issues as I see them and I
20 think are very similar to the laundry list that's preceded
21 this. Those are the issues that I see are policy questions
22 that you have to address.

23 MR. WALLACE: Let me say at the outset that I
24 appreciate your delineation of the issues. We're not going
25 to get into the meat of them today. Let me make one overriding

1 point that you should know and everybody should know about
2 my approach to this as we go through it.

3 It is my view reasonably, well considered but not
4 absolutely firmly adhered to, that we do have at least as
5 much regulatory authority as a federal agency would to
6 expand upon the terms of the Act where we feel it's
7 necessary for carrying out the terms of the Act. Senator
8 Rudman and Congressman Smith say they don't believe we have
9 any authority to restrict anything which isn't restricted
10 in so many words in the Act or in their appropriations
11 riders. My tentative view is I don't agree with that. I
12 think we do have the ability to go farther if we think
13 that's in the best interest of the overriding rules of this
14 corporation and we're charged by the Act with carrying out.
15 I'll be in Jackson for a month. If you want to call me and
16 try to convince me of that before we start slugging it
17 through step by step.

18 But the sort of arguments that I'm looking for
19 with regard to all 11 or 12 of these points, depending on
20 how you count your subheadings, is not so much what went on
21 in the back rooms of the appropriation committee and
22 whether we can go beyond that, but whether they're good
23 ideas for carrying out the overriding goal of this
24 corporation, which is to get high quality legal services to
25 the poor. If these are things that ought to be done and

1 the appropriations committee hasn't done them expressly, if
2 we've got the power to do them, I want to do them. So what
3 I'm basically looking for is for people to tell me whether
4 they're good ideas or bad ideas. Because with the usual
5 discretion, I'm looking for arguments on the merit.

6 MS. BERNSTEIN: I just have a few questions for Al.
7 I notice that on section 1612.5(c)(6), which would prohibit
8 legal services employees from providing back up services
9 for others to engage in lobbying, that you would delete it.
10 It's on page 18. And I just wondered if Congress prohibits
11 LSC lobbying on behalf of clients, do you think that they
12 intended that we assist the League of Women Voters or the
13 AFL-CIO with their lobbying? If they're making
14 restrictions of our lobbying in certain instances, do you
15 think they really want us to be assisting the AFL-CIO or
16 League of Women Voters with theirs?

17 MR. HOUSEMAN: First of all, what this provision
18 does is far broader than you just stated. What this
19 provision does is that if you provide to any group that
20 you're asked to an objective analysis of a particular bill
21 and explain to them the impact of that bill and leave and
22 they somehow use that for some purpose, you would be
23 violating the section. Let's be clear what the section
24 does. It's a very broad section that precludes you from
25 attending a number of different community meetings, like

1 the New Hampshire Social Welfare League, and making a
2 presentation on what a particular bill or legislation may
3 or may not do for poor people. And I do not think Congress
4 in any sense meant to prohibit legal services programs from
5 doing those kinds of activities.

6 MS. BERNSTEIN: But you haven't offered any
7 alternative language. You said strike it.

8 MR. HOUSEMAN: First of all, Mike had a
9 conversation about this, and we agreed that I would attempt
10 to come up with some alternative language.

11 MS. BERNSTEIN: I just want to read into the
12 record a couple of things that had been done before there
13 was such a clear delineation of things that shouldn't be
14 done. This is from a memo to you December 2nd, 1980. Last
15 year legal services offices statewide joined with public
16 sector unions, naming several of them, including the
17 AFL-CIO, for opposing a restrictive state spending
18 referendum. In another instance in the memorandum, one of
19 the program attorneys is a member of the state executive
20 Board of a union, and she drafts most of the major labor
21 bills for the state AFL-CIO.

22 I just think that if we strike this section, I'm
23 not so sure that we're -- that our help of these other
24 groups doesn't come under the gambit, as far as I'm
25 concerned, of eligible clients. We will be diverting

1 assistance from our eligible clients to the support of
2 these groups. I just want to make clear my concerns. And
3 I'm sure you're aware of what has been going on with
4 programs without a clear delineation. And so I would be
5 opposed to striking of that section.

6 Second, let's look at 1612.5(f)(3). This
7 prohibits -- this is on page 46. This prohibits legal
8 services program from avoiding the prohibition of lobbying
9 by soliciting a request from an official. Now, the general
10 scheme of the current appropriations riders is to tightly
11 restrict legal services' initial involvement by response to
12 requests from officials.

13 Doesn't your proposal to strike it undercut that
14 scheme of Congress of permitting LSC attorneys to go out
15 and seek requests. Again, we've got no alternative
16 language. You're just striking it.

17 MR. HOUSEMAN: Two things. One, the problem with
18 the current language, which is why it was stricken, is
19 because it's subject to an interpretation that would
20 prohibit legal services programs from informing members of
21 Congress about activities they're doing, informing members
22 of Congress about areas in which they have expertise. And
23 I don't think Congress or you want to restrict legal
24 services programs, and not just Congress but other
25 legislative body, from knowing and understanding where

1 there's expertise and what the program is doing.

2 That's the problem with the current language.

3 There may be an alternative that can be worked out that
4 addresses our concern and yours. And I'm not at all clear
5 there isn't. And this is one of the things, also, Mike and
6 I discussed and I've discussed with Tom Bovard coming up
7 with an alternative that addresses the concern that you've
8 made and our concern. At the time we did this, it seemed
9 the easiest way and probably the best way of dealing with
10 it was to strike it completely.

11 But if there's a way to address the concerns that
12 you're mentioning, and they are concerns, I think we can do
13 it. I'm mainly concerned about the indirectly and the term
14 arrange, and I think there's a way of coming up with
15 something that's clear but permits what I think should be
16 permit and prohibits what you're concerned about.

17 MS. BERNSTEIN: On page 50. 1612.7(d)(2). What
18 is your understanding of the restriction on solicitation by
19 non profit legal organizations under the new model rule.

20 MR. WALLACE: First, the new model rule we ought
21 to enter.

22 MS. BERNSTEIN: Well, what would be your
23 understanding of the new model rule? It's a three part
24 question.

25 MR. HOUSEMAN: First of all, what section are you

1 talking about?

2 MS. BERNSTEIN: 1612.7(d)(2), in which you propose
3 language consistent from client in violation of
4 professional responsibilities. You're ending the
5 solicitation on the professional responsibilities rules.
6 And I am just trying to clear up what your understanding is
7 of proposed rules that we may be under, current rules, and --

8 MR. HOUSEMAN: My understanding is that the model
9 rules do not change with regard to legal services, the
10 provisions under the code of professional responsibility.
11 The code of the professional responsibility was
12 definitively interpreted by the ABA in formal opinion 334.
13 And there is an extensive discussion of solicitation in
14 publicity -- solicitation in formal 334. And that's what I
15 was referring to. So I'd have to go back and look clearly
16 to answer your question.

17 But I'm referring to the long standing
18 interpretations by the ABA ethics committee. Solicitation
19 within the context of legal services and saying that given
20 the LSC Act provisions under 1006(b)(3), that you should
21 incorporate a reference to solicitation is not violating
22 professional responsibilities in this section.

23 You can -- of course, under the ABA opinions, you
24 can publicize your program, you can publicize the services
25 available, you can publicize the kinds of activities you do.

1 You can go out and educate clients on the kinds of
2 activities you do. You can affirmatively -- I'm not sure --
3 you can affirmatively inform clients of what their rights
4 and responsibilities. All of those things, I know you can
5 do. But I'd have to go take a careful look. I have not
6 looked at the solicitation in a while.

7 MS. BERNSTEIN: It is your position that a program
8 should be able to represent a legislative body?

9 MR. HOUSEMAN: No. My position is that the
10 restriction on soliciting requests from clients should not
11 be any more extensive than the restrictions posed by the
12 code of responsibility upon the responsibilities on
13 attorneys. Again, I'm trying to cross reference what I
14 think 1006 requires, which is the interpretations of the
15 ABA of the code. I think the code provisions are similar
16 to the model rules.

17 Let's go back and take a look what the model rules
18 says, what the code says, what the ABA's interpretation
19 says. I don't think it goes out as far as going out and
20 saying to the a client let me represent you before a
21 legislative body. But it does permit you to go out and
22 inform them of what laws affect them adversely.

23 MS. BERNSTEIN: In the handbook that you prepared
24 with Barry Schwartz on what you can and can't do in your
25 opinion under our regulations, at one point you said that

1 none of this should prohibit legal services attorney from a
2 legal check up of clients as they come in the door. Would
3 you define what you mean by a legal check up.

4 MR. HOUSEMAN: Legal check up is a term that's
5 been used for years. I think it was originally coined by
6 Gary Bellow in his book with B. Milton on the hearing
7 process, which is the standard text book used in law
8 schools. A legal checkup is an effort to ask clients about
9 the range of problems that they may have when they come
10 into our office.

11 And all I'm saying is that the program routine
12 goes through a check list of issues and the regs, and it
13 does prohibit asking clients in the course of those legal
14 check ups issues that may have some bearing on pending or
15 proposed legislation. I don't think many do this, although
16 there are legal education workshops and there are some
17 programs where the clients are waiting to see an attorney,
18 a paralegal will go through a number of issues with them in
19 order to find out if there are other problems or in order
20 to help them understand what their rights and
21 responsibilities are. That's what the term refers to.
22 There's nothing sinister about it.

23 MS. BERNSTEIN: The only thing tricky about it was
24 your discussion about it in relation to the problems of
25 soliciting clients. And that makes me worry a little bit

1 about the legal checkup.

2 MR. HOUSEMAN: Well, I think you should look at
3 what the code and model rules say about soliciting clients
4 by legal services organizations. And I think if you go
5 back to what they say and what the ABA's opinions on this
6 are, I think this will clear this matter up.

7 MS. BERNSTEIN: Okay. Would you turn back to page
8 37 of our draft. And our Act prohibits advocacy of a
9 particular public policy in a training problem. How do you
10 square that with your proposal to delete all of 1612 at
11 4(a).

12 MR. HOUSEMAN: You already have in the -- (a)1
13 prohibits advocating or opposing particular public policies.
14 (a)(24) in the current regulation would prohibit you from a
15 training program which encouraged or facilitated the
16 advocacy --

17 MS. BERNSTEIN: If you are, we're not allowed to
18 influence them.

19 MR. HOUSEMAN: You are allowed to influence them.
20 That's my point. You are allowed to influence them under
21 certain circumstances. And to the degree that you can
22 influence them, you ought to be allowed to train them.

23 MS. BERNSTEIN: Give me an example.

24 MR. HOUSEMAN: You are allowed to participate,
25 under our regulations, if you represent a client in

1 administrative rule making procedures if the client has a
2 claim or case that is affected. You ought to be able to
3 train on how you can influence an administrative rule
4 making procedure. That's an example. You are allowed to
5 communicate to legislatures under certain circumstances on
6 appropriations. You ought to be allowed to train on the
7 context of what you can do and how you can do it.

8 MS. BERNSTEIN: I understand what you're saying.

9 MR. HOUSEMAN: That's all. I mean, if there's a
10 better way to write to get it, we can probably do it.

11 MS. BERNSTEIN: On page 23, I seem to be jumping
12 around. It's not 23.

13 MR. WALLACE: It's 48. We've got two numbers on
14 each page, which is confusing.

15 MS. BERNSTEIN: Okay. 1612.6. Could you explain
16 what you think Congress intended to permit and to restrict
17 by prohibiting administrative advocacy except on particular
18 applications, cases or claims. What do they mean by those
19 words?

20 MR. HOUSEMAN: Application, claim or case. I
21 think what they meant quite simply was that if you -- a
22 client has a matter that is affected adversely or
23 positively by administrative agency, practice or policy and
24 that's the matter that the client came to see you about,
25 that you ought to be able to represent that client before

1 an administrative agency on that matter. I think that's
2 what it means.

3 MS. BERNSTEIN: That's not particularly different
4 from the wording that we had. I just wonder why you think
5 your wording is better.

6 MR. HOUSEMAN: Because the wording which I am
7 using tracks the statutory language, which is more clear
8 than the gloss that's been put on it.

9 MS. BERNSTEIN: Well, except that we're saying as
10 is necessary to assert, which you're striking. In other
11 words --

12 MR. HOUSEMAN: But the statute doesn't say as is
13 necessary.

14 MS. BERNSTEIN: So what you're basically telling
15 me is that you don't think the legislature intended for
16 this to be a narrow exception. They intended it to be a
17 broad exception.

18 MR. HOUSEMAN: I think what they meant was that
19 you can represent a client when the client has a problem
20 that requires representation before an administrative
21 agency. I think that's what we mean. Necessary to assert
22 you can get into all kinds of questions about whether or
23 not it is necessary to assert there. But I think you want
24 to encourage programs not to go to court but in fact to
25 work these things out at the administrative agency. And

1 I'm just trying to get the language back to the statute and
2 take some of the ambiguity out.

3 MS. BERNSTEIN: Okay. On page 42, 1612.5(c)(4)
4 you've said that you didn't intend to strike at all.

5 MR. HOUSEMAN: That's right. That's a mistake.

6 MS. BERNSTEIN: So you would agree that this is
7 wrong to be spending legal services' money for this purpose.

8 MR. HOUSEMAN: I would think that in interpreting
9 this, that the current appropriation rider does mean to
10 prohibit this kind of activity, yes.

11 MS. BERNSTEIN: 1612.5(b)(4) on page 41 would make
12 some changes in -- we've got a problem in terms of the
13 1010(c) restrictions which we were talking about earlier.
14 Section 1010(c) would apply the Act's lobbying restrictions
15 to private funds, would it not?

16 MR. HOUSEMAN: That's the way it's currently
17 interpreted, that's correct.

18 Q. On what basis then did you advocate that there be
19 no time record keeping with respect to lobbying done?

20 MR. HOUSEMAN: That's not what I'm suggesting.
21 I'm suggesting that you should not tell the programs how to
22 do it. That you should require that they maintain records
23 documenting the expenditures of funds to permit them to
24 develop the system that they want to use to be able to
25 document those expenditures. That's all I'm saying.

1 MS. BERNSTEIN: Yet on the following page you
2 strike the word together with such supporting documentation
3 as required by the corporation.

4 MR. HOUSEMAN: The reason that is stricken is
5 because I think you should spell out what support
6 documentation you want and not leave it open ended in a reg.

7 MS. BERNSTEIN: Okay. Page 37. Could you explain
8 why you advocate deleting the prohibition in section 1612.3
9 on assisting in the formation of an organization, a
10 substantial purpose of which is to influence elections or
11 ballot propositions.

12 MR. HOUSEMAN: There's nothing in the Act limits
13 providing legal assistance to an organization which is
14 undertaking those activities.

15 MS. BERNSTEIN: And yet given the fact that the
16 GAO fairly clearly said that those were not the types of
17 activities that the corporation was meant to be pursuing,
18 you're saying that it's okay to assist other people to
19 pursue --

20 MR. HOUSEMAN: I'm saying it's okay to provide the
21 legal advice to such an organization. I don't think the
22 GAO disagrees with that. There is a disagreement between
23 GAO and Judge Parker and the Western Center. But it's not
24 over that issue.

25 MS. BERNSTEIN: Okay. The question of public

1 versus private funds. We have a disagreement about as to
2 how it's applied because I tend to believe that we could go
3 a little bit beyond the technical reading of it. But would
4 you advocate the use of federal public funds for allotment?

5 MR. HOUSEMAN: Federal public funds. Would I
6 advocate -- the statute doesn't prohibit it. I think your
7 only role is to -- the statute absolutely permits using
8 public funds in any way that is permitted under those
9 provisions.

10 MS. BERNSTEIN: Okay. Federal public funds are
11 restricted by Circular A122.

12 MR. HOUSEMAN: Not all of them.

13 MS. BERNSTEIN: They are.

14 MR. HOUSEMAN: Believe me, they are not. There's
15 all kinds of exceptions to Circular A122. For example --

16 MS. BERNSTEIN: Alan, I said if they are, would
17 you agree that then public funds would also be subject to
18 some restriction?

19 MR. HOUSEMAN: They'd be subject to the
20 restrictions of 122.

21 MS. BERNSTEIN: Has there been any analysis of
22 what funds are received by our grantees from federal
23 sources and to what extent those are restricted by A122?
24 Because in an earlier meeting A122 was irrelevant to us.

25 MR. HOUSEMAN: To the LSC funds.

1 MS. BERNSTEIN: Anyway, I would like you to do
2 some work with looking at non-LSC public federal funds.

3 On page 21 of the 1985 Schwartz Houseman draft,
4 it's on page 20, 21. Legislative and administrative
5 representation, organizing and training, permissible
6 activity under the LSC regulations and applicable law.
7 There is a statement at the bottom of section F, the bottom
8 of that paragraph, which says programs should consult with
9 the organization affected or with the Center for Law and
10 Social Policy for advice on how to plead with dues payments.

11 If I were coming to you, Center for Law and Social
12 Policy, what kind of advice are you going to give me?

13 MR. HOUSEMAN: It depends on what the issue is.

14 MS. BERNSTEIN: Well, let's just ask -- since this
15 has been out to the programs, since this is January and
16 we're now in August.

17 MR. WALLACE: How about the ABA? Can you pay dues
18 to the ABA?

19 MR. HOUSEMAN: Yes, under the reg.

20 MS. BERNSTEIN: Can you pay dues to PAC?

21 MR. HOUSEMAN: I think under the subgrant
22 provisions under this reg that you can. First of all, I
23 don't represent PAC on this issue. So I would refer them
24 to their attorney that represents them on this question.
25 In that case, I would refer that question to that attorney.

1 I think the answer, and I cannot recall correctly, is that
2 under the current regs and the subgrant provisions, it is
3 permissible to pay PAC dues. That's my understanding. But
4 they have an attorney that can address that question. I
5 did not represent them in this matter.

6 MS. BERNSTEIN: Have you had any other requests?
7 I mean, this was put out in funds that were partially
8 provided through the management project of NLADA, which I
9 think we funded.

10 MR. HOUSEMAN: Funds for printing and distribution.

11 MS. BERNSTEIN: Well, so we distributed
12 information. Have you had any particular request regarding
13 other kinds of funds?

14 MR. HOUSEMAN: Not that I can recall, and if I
15 could, I could not reveal them to you.

16 MS. BERNSTEIN: So they're asking you to become an
17 attorney for each of the programs?

18 MR. HOUSEMAN: Sure.

19 MS. BERNSTEIN: Okay. Page 47 of that document.

20 MS. SWAFFORD: Just a minute before you go on. I
21 don't have a copy of this. Do you have an extra one?

22 MR. WALLACE: And I will say to the staff, I know
23 there are copies of this floating around. And I think it
24 would be useful as we get into these regulations for the
25 members of the committee and members of the Board to have

1 it.

2 MR. HOUSEMAN: Just so the record is clear, this
3 was an effort to write guidance to programs on the lobbying
4 reg and to give them as much interpretation as they would
5 need to make an intelligent decision on how to interpret
6 the reg. There was nothing coming from the corporation
7 that attempted to do this. There were a lot of questions
8 coming up. I felt the best way to do it was to try to
9 prepare something in writing and give advice and provide a
10 layout and give all the relevant information. Included at
11 the back of this document are all of the GAO -- all of the
12 previous regulations that may or may not be applicable and
13 all of the ABA opinions that are relevant. And I think
14 I've included everything that's relevant here in terms of
15 the provision of the Act, interpretations of the Act and
16 various view points on the Act.

17 MS. BERNSTEIN: Okay. You make a distinction.
18 This is another place --

19 MR. HOUSEMAN: I'm not sure where you're at.

20 MS. BERNSTEIN: We're on page 46, 47. You make a
21 distinction between 1984-1985 funds to disseminate
22 information about particular public policy and political
23 activities in public training programs. And you basically
24 say that 1984-85 funds cannot be used for that purpose.
25 And then you say that grantees and contractors can use all

1 previous legal services funds and private funds to
2 disseminate information about public policies or political
3 activities. I just wondered. I am not following how you
4 can use all previous legal services funds and all private
5 funds.

6 MR. HOUSEMAN: Because the LSC Act provisions on
7 training particularly permit dissemination of information
8 about public policy and political activities in public training
9 programs, the prohibition is in the '84 and '85
10 appropriation riders which prohibits dissemination of
11 information. But the Act itself, the training provision of
12 the Act itself, which is 107(b)(6), says you cannot support
13 or conduct training programs. And then it says for the
14 purpose of advocating particular public policies or
15 encouraging political activities as distinguished from the
16 dissemination of information about such policies or
17 activities.

18 So that the Act is quite clear. You can
19 disseminate information about such policies and activities.
20 The appropriation riders do not address this issue,
21 previous appropriation rider. And the first approach --
22 the first was Public Law 98-166. And then that was carried
23 over into the '85 appropriation 90-8411.

24 MS. BERNSTEIN: I've got lots more questions, but
25 I see my chairman looking at his watch. I do have one

1 final practical question that maybe you don't know the
2 answer to this. But it's about this book that you've
3 prepared and with our discussions that are going on right
4 now with all the different money that can be used for
5 different activities.

6 At what point is it decided what pot it would come
7 out of? Because some of these questions as to what's
8 allowable begin at intake. And if the intake person in the
9 local program has to make a decision whether there are any
10 funds available to do that of 1983 private funds, 1983
11 public funds non-committed to A122. I'm just wondering how
12 the intake person can decide to take this case. Because I
13 presume after you've taken it, you've got a professional
14 responsibility to carry it through. And wouldn't it be
15 simpler to assume that the most restrictive covers all of
16 it so that you can take the client as they come into the
17 door without sitting back in the accounting department to
18 decide if there are funds available in that pot?

19 MR. HOUSEMAN: It might be simpler, but the fact
20 that every program receives funds from a number of
21 different sources, all of which have different criteria.
22 Some public funds can be used certain ways. Some public
23 funds have to be used certain ways. And every program has
24 to allocate its cases and make decisions, not just cases
25 involving lobbying as to what funding source they're going

1 to use. This is not an unusual practice of programs.

2 And so yes, obviously it's simpler. But given
3 what I think the law requires and the Act requires what is
4 permitted and what isn't, I think you have to make these
5 distinctions. And the programs are capable of making
6 distinctions if it's clear what is prohibited.

7 MS. BERNSTEIN: Under your understanding, then, of
8 the private funds, your interpretation of 1010(c), the
9 funds that are being generated through most IOLTA programs,
10 most of the them that are funded through a private bar
11 foundation other than a state agency, those would be
12 available to take up the lobbying activities that would not
13 be prohibited under our Act.

14 MR. HOUSEMAN: I'm not sure of the answer to that
15 question. I think there's no simple answer to that
16 question. And I don't think there's any definitive
17 interpretation of the IOLTA and the various IOLTA funds as
18 to whether they're public or private and what restrictions
19 apply and what don't. I don't want to give an answer that
20 I haven't given enough thought to. I don't think it's a
21 simple question.

22 MR. WALLACE: Mr. Houseman, I thank you.

23 I had one request to testify on this subject this
24 morning. I apologize I don't remember the gentleman's name.
25 But if you'd come forward. And while you're on your way,

1 let me say I'd like you especially to focus on any areas
2 that nobody else has talked about. And if you haven't got
3 any new areas to emphasize, then tell us what we've heard
4 before that's really important and then we're going to take
5 a break.

6 MR. FITZSIMMONS: My name is James Fitzsimmons.
7 I'm the director of North Dakota legal services, and the
8 lady on my left is the program administrator for California
9 Indian Legal Services and also the Chair of the steering
10 committee for the National Association of Indian Legal
11 Services, Mary Trimble-Norris.

12 MS. TRIMBLE-NORRIS: I am going to be fairly brief.
13 But in listening to this, I'm not a technocrat, but I
14 appreciate the dialogue. But I wanted the Board to
15 consider the policy ramifications when you finally do set a
16 policy for the corporation and how it affects all segments
17 of the clients that this corporation represents through its
18 recipient programs.

19 Indian programs, as you know, as we've told you
20 before time and time again, have a special, unique
21 relationship with the federal government. And in order to
22 provide high quality representation to our Indian clients,
23 legislative advocacy is a necessary, sometimes, and
24 effective tool.

25 And you should be aware that Indian people are the

1 most regulated citizens in American society. Congress has
2 power over Indians. There's a special Congressional
3 committee on the Senate side and a similar one in the House.
4 Each year, there are between 20 to 30 bills before Congress
5 that deal specifically with Indians or Indian tribes. And
6 to limit our ability to represent clients by being overly
7 restrictive doesn't allow Indian people to have the same
8 level of representation as other citizens. And I think Jim
9 wanted to address from a program point of view how that
10 works or in a practical situation, how the regs affect the
11 practice of Indian country.

12 MR. FITZSIMMONS: I don't have the attendance
13 record, Mr. Wallace. I've never been to one of these
14 meetings before, so if I do take a few minutes of your time.
15 But I have I'm going to have a few people back in North
16 Dakota mad at me if I tell them I came here and had a drink
17 of pop and a good time and went home.

18 We had private attorneys involved in delivering
19 legal services long before any rate came along because
20 that's the only way we can survive. And what I'm being
21 told in North Dakota, this reg is restricting our full
22 legal representation of clients. It possibly forces us to
23 violate our code of professional responsibility. It does
24 hurt private bar -- restricting of our private bar
25 attorneys. And it is providing in a number of situations --

1 we're being forced by the inability to administratively and
2 legislatively advocate, we're being forced to get into
3 costly time consuming litigation that isn't just going to
4 cost our time, it's going to cost the opposing attorney's
5 fees. And I'll give you examples of that in the past.

6 North Dakota basically only has 600,000 people.
7 We've got five Indian reservations, barely more than a
8 thousand attorneys in that entire state. We still call our
9 attorneys by their boyhood nicknames. We call our
10 Congressmen and Senators by their first names. Our
11 Congressman and Senators probably recognize half the people
12 in our state. Basically, what we believe in is
13 communicating with one another. That's how we've been able
14 to survive up in North Dakota. And in a way, 1612 has
15 taken that away from us. I realize I am talking about
16 North Dakota, but I realize a lot of people come from rural
17 programs.

18 There are well over 33 Indian programs in the
19 country. The problems we have with 1612 are the
20 limitations on the advice that we can give the clients. We
21 have real problems with private attorneys in western North
22 Dakota when we go to these people and say would you like to
23 help us out. Would you like to represent some of our
24 Indian and non-Indian clients on a reduced fee under our
25 private attorney involvement. And they say, let's see your

1 rates. And they say, I like this 12 1/2 percent. But then
2 they see 1612. And I've had a couple of gentlemen pushing
3 60 say, this is ridiculous. I don't think that you can
4 tell me that I can represent a client but there are
5 certainly things that I can't advice them on. This is
6 again, 60-year-old people who have established their
7 practice, and they don't need to get involved in legal
8 services. But that scares the hell out of them. They
9 think there's some real problems.

10 What I can tell a client who's middle income or
11 wealthy is one thing. But because a client is low income,
12 I have to leave out some things, and that is in 1612. And
13 that is a real fear back home.

14 Another problem is I've got staff attorneys
15 throughout North Dakota, probably seven, to cover the whole
16 state. And for a number of years, the legislature has
17 relied heavily on us for expertise in dealing with Indian
18 reservations and dealing with the problems of the poor.
19 You get 600,000 people in the state, you don't have a lot
20 of social workers. You don't have a lot of public service
21 attorneys. Since 1612 has been enacted, the present
22 regulations in May of 1984, a staff attorney of mine got a
23 call to go down to the legislature and testify before a
24 committee. One of the individuals said, would you please
25 come down. He said, I'm going down. I said, before you go

1 down, read the reg. I may not agree with it, but we're
2 going to follow it because we're required to. He read the
3 reg and said Jim, you go. I ain't going. And I said, why
4 not? And he said, Jim, the way this reg is set up, I go
5 before that committee. And if I'm asked a question by the
6 gentleman who invited me down, I respond to that question.
7 If the lady on his left asked me a question, according to
8 this reg, I've got to look her right in the eye and say,
9 ma'am, would you please put that request in writing before
10 I respond to it.

11 I don't think that was the intent of Congress, and
12 I don't think that is the intent of the Legal Services
13 Corporation. But if you read that reg closely, that's
14 where we're basically sitting. Before 1983, we were
15 somewhat involved in legislative advocacy when there was a
16 particular situation. I'm going to give you one. But I
17 think this will give you an idea of where legislative
18 advocacy can save money not just for our clients but for
19 attorneys on the other side.

20 In 1982, the former governor of North Dakota and
21 the head of legal services department made an
22 administrative decision to terminate legal assistance to
23 all American Indians who were members of tribes who owned
24 tribal land because they had a small part of that tribal
25 holding in land, even though federal regulations prohibited

1 them from selling it and even though those people owned one
2 one-billionth of that land. If I had more time, I'd
3 explain to you the problems of Indian trust land. But as
4 it stands right now, there were people in nursing homes,
5 and summarily the social services department started
6 sending out notices of cutoffs. We had nursing homes, we
7 had people -- I mean, that was all we did for two weeks.
8 It became total chaos. We did what legal services programs
9 are always accused of doing. We went to federal court and
10 filed a class action saying Congress did not intent this to
11 happen.

12 But while we were doing this, nursing home funds
13 were drying up. Low income people were being scared to
14 death. People who had relatives in nursing homes were
15 being told, we've got to get your mother out of here. And
16 while we filed a class action, we knew that that was not
17 the solution. The State of North Dakota told us, look, we
18 maybe don't like the social ramifications of this, but
19 we've got to do it. And we're scared if we lose this case,
20 we're going to get paid no attorney's fees. So we went to
21 our Senator and said, what can we do with this? He said,
22 we'll run something through the United States Senate
23 basically clarifying this. And as a result of that, the
24 State of North Dakota had to pay absolutely no attorney's
25 fees. As a result of it, this matter was resolved in one

1 month. Where had it not been resolved, we would have been
2 in litigation for two years.

3 But under the present situation, the only way we
4 can go to Congress on this is that if we have exhausted our
5 legislative and our judicial remedies. What we are
6 suggesting is a number of situations where exhaustion of
7 legislative and judicial remedies is so time consuming and
8 costly, not just to ourselves but to the opposing parties,
9 that there is another alternative. How to incorporate that
10 into our regs and deal with lobbying, I don't know.

11 We have a very similar situation right now in
12 North Dakota where the IRS has come in and said, all of you
13 Blackjack dealers -- we have terrible two dollar Blackjack
14 in North Dakota to help our charities. It's something
15 that's been in effect for a year and a half. And
16 fortunately, a number of welfare people have been able to
17 get jobs as Blackjack dealers. Most of the them receive
18 between 10 and 20 percent in tips. Three weeks ago the IRS
19 came out with a decision that everybody in the state is
20 making 75 percent tips and sent out a thousand notices of
21 back IRS payments. My staff got a call from a
22 Congressional staffer saying, we've got a problem. What
23 are we going to to? And my staffer said, I don't mean to
24 offend you, but I don't know how to respond. To which the
25 Congress the staffer said, we've got a thousand people in

1 North Dakota who have got the IRS breathing down their back.
2 So when I get home I'm going to have to pour through that
3 1612 and bounce around how we can work with Congress in
4 this situation to get the IRS to realize that nobody in
5 North Dakota tips 75 percent on an Indian reservation.

6 The poor of North Dakota on our Indian
7 reservations supposedly have an equal access to justice.
8 They have a right to legal representation just like their
9 middle class neighbors and their wealthy neighbors. And
10 we've got to give it to them. We were giving it to them
11 before 1612, and I think that 1612 is a step in the wrong
12 direction. I agree that some of the -- I think that the
13 proposed changes by Mr. Houseman, i think they're a step in
14 the right direction. And on behalf of a lot of people in
15 North Dakota, I would strongly urge you to pay some
16 consideration to them.

17 MR. WALLACE: Thank you. Mr. Valois had a
18 question to ask.

19 MR. VALOIS: James, you obviously have
20 organizations like tribal councils and other corporate
21 bodies.

22 MR. FITZSIMMONS: That's correct.

23 MR. VALOIS: And do they have outside counsel?

24 MR. FITZSIMMONS: In North Dakota, I believe all
25 four of the Indian tribes have outside counsel. We in

1 North Dakota do not represent Indian tribes per se. We did
2 years ago, but due to certain situations, the tribes have
3 been able to come up with outside funding. That is not the
4 situation in all of the United States. But in North Dakota,
5 they do have outside counsel, and the North Dakota Indian
6 Legal Services Program does not represent the tribe per se.

7 MR. VALOIS: I mean, do those tribal council lawyers
8 engage in advocacy on behalf of the tribal council or on
9 behalf of the tribes?

10 MR. FITZSIMMONS: No question about it.

11 MR. VALOIS: So what you're saying, I guess, is
12 that the tribes, the Indians, would not be completely
13 without legislative advocacy if you were forbidden to do
14 all kinds of lobbying. You all would not be permitted to
15 advocate on behalf --

16 MR. FITZSIMMONS: In North Dakota it's pretty well
17 understood that tribal attorneys advocate tribal positions.
18 For example, land claims. And the tribe basically has two
19 attorneys who every time I call them up on the phone tell
20 me they're too busy to talk to me. And it would be no
21 different from taking the state of North Dakota -- the
22 attorney general represents the State. Private attorneys
23 and legal services represent the individuals in the state
24 of North Dakota.

25 MR. VALOIS: Is there an Indian commission?

1 MR. FITZSIMMONS: Yes.

2 MR. VALOIS: Do they ever intervene in the
3 legislature?

4 MR. FITZSIMMONS: It's a touchy political
5 situation. The individual is hired by a committee of about
6 eight. It's called the Governor's Commission on Indian
7 Affairs. It's a governmental appointment. So
8 theoretically oftentimes if state interests are adverse to
9 tribal interests on say a jurisdictional issue, they do not
10 get involved. They have worked closely with us on working
11 with group clients or individuals who say are adversely
12 affected by certainly actions.

13 MR. VALOIS: My only point is that while legal
14 services is an important function in this country -- we
15 wouldn't all be here if we didn't think it was. It is not
16 the beginning and the end of all representation for all
17 people whether or not they can afford it. And you all are
18 a little bit more representative in that respect, it seems
19 to me, than the diverse interests of people who have no
20 particular affiliation with one another as you all do. So
21 that when the tribal counsel speaks, they're speaking for
22 the tribe. And when you speak, you are speaking on behalf
23 of the tribe, also, at least so many of them as are
24 qualified.

25 MR. FITZSIMMONS: I think that is a very accurate

1 analysis of North Dakota. I think that's -- as fast as I
2 went and as much as I jumped around, that is very accurate.
3 But I do not think that is the situation in a number of
4 states in a number of Indian tribes where basically the
5 tribes are so poor that basically they are their own source
6 of representation as legal services.

7 MR. VALOIS: You think you accurately described my
8 situation with the Lumbees. They do have a tribal council,
9 and I assume they're represented. But beyond that, I think
10 you're right. Thank you.

11 MR. FITZSIMMONS: Thank you.

12 MR. WALLACE: Mr. Fitzsimmons, we appreciate you
13 being with us today. I'm sorry that you did run through it.
14 But we appreciate your time.

15 It is 4:10. This committee is going to reconvene
16 at 4:15.

17 (Recess)

18 MR. WALLACE: Everybody's going to have to talk
19 loud, because we don't have any microphones, apparently.

20 The next thing on our agenda is our instruction on
21 questioned costs and our consideration of whether to have a
22 published regulation on questioned costs. I believe that
23 the published regulation has been distributed. I think
24 also --

25 MS. BERNSTEIN: Let me say for the benefit of

1 everyone here. It's not been held back from you. The
2 draft has been in the process in trying to get it ready for
3 this meeting, and we Board members are just getting it, too,
4 in terms of this proposed draft.

5 MR. WALLACE: Okay. We have Pat Nalley, Tom
6 Bovard -- and I've lost my agenda. And I don't know who is
7 scheduled to start first.

8 MR. NALLEY: I'd like everyone to refer to a
9 handout dated August 1st on the subject questioned costs.
10 I'm also going to be using some illustrations that face the
11 Board. I'm not trying to be selfish with them, but you'll
12 find that in the handout the very same illustrations are
13 attached to the handout.

14 I'd like to tell the committee a little bit about
15 the history of the corporation's procedures for resolving
16 questioned costs and the overall status of questioned costs.
17 First of all, a questioned cost is a charge to a
18 recipient's grant that could be determined to be an
19 ineligible charge. And we determine to be an ineligible
20 charge by chapter four in the LSC audit guide. And it
21 lists various types of charges that based on investigation
22 could be determined to be ineligible. If that is the case,
23 then it would be a disallowed cost.

24 The current questioned cost list contains many
25 different charges, and many of them are disallowed, but

1 they still remain on the list. By the way, I'm a grant
2 specialist in the grants and services budget unit. And
3 I've been involved in the review of questioned costs for
4 about a year and a half, starting about 1977. The
5 controller's office issued a standard procedure on audits.
6 And even though that was primarily regarding recipient
7 audits, it contained a section in it about the resolution
8 of questioned costs. And that was an appropriate place to
9 put it at that time because still to this day, most of the
10 recipient questioned costs are identified through the audit
11 report that we receive about the end of each recipient's
12 fiscal year. That's about March or April because some
13 questioned costs are also identified through monitoring
14 visits. Others are identified through complaints through
15 the office of compliance and review.

16 Another standard operating procedure related to
17 questioned costs was also put forth by the controller's
18 office in 1978. It just up dated some of the procedure.
19 Starting in 1980, the audit division became involved. And
20 at that time, the audit division became required to follow
21 up on and keep track of all questioned costs. Prior to
22 that time, the corporation did not track questioned costs
23 at headquarters. They were kept track of at regional
24 offices only and resolved at regional offices only. And
25 still until 1983, the regional director had sole

1 responsibility for resolving questioned costs.

2 Both in 1981 and 1982, the audit division
3 published standard operating procedures for audit, once
4 again, taking responsibility over from the controller's
5 office. And both of those procedures included sections on
6 questioned costs and added a few criteria of things that
7 would be considered to be ineligible charges. The
8 procedure that we have today is published in the Board book.
9 And it's called instruction 83-8 standard. It was
10 published in 1983, became effective the last week of 1983.
11 And it consolidated for the first time the resolution of
12 questioned costs.

13 Final is vested in a manager of the office of
14 field services grants and budget unit. Currently, the
15 monitoring office, which in most cases is the traditional
16 nine regional offices, are responsible for conducting
17 investigation. They have five months to conduct an
18 investigation. And then they make a recommendation to the
19 management of grants and budget unit on whether or not the
20 costs should be allowed or disallowed. Then the manager of
21 the grants and budget unit -- this procedure, by the way,
22 is outlined in Exhibit 2. But I'll go over it briefly
23 since we are pressed for time here.

24 Basically it involves -- after a recommendation is
25 received by the grant and budget unit, we have 30 days to

1 decide whether it allow. And if it is allowed, then the
2 letter goes to the recipient and there's no further cause
3 of action. However, if it's disallowed, then there is the
4 situation where the monitoring office has to send another
5 recommendation in on whether the funds should be recovered
6 from the recipient.

7 And I'd like to clarify that it has been the
8 corporation's policy to try to avoid disrupting servies to
9 clients because of the actions of a few programs. For this
10 reason, we have usually reserved recovering funds from a
11 recipient with the exception of situations where it was
12 deliberate or the more serious cases. One of the most
13 frequent ways of resolving a questioned cost has
14 subsequently been disallowed, provided that this charge
15 would not have been in violation of section 1010(c) of the
16 LSC Act. For instance, it was a conducting agreement or a
17 purchase of equipment that was required to have prior
18 approval. The recipient frequently charges that amount to
19 another fund. And it will remain on the questioned cost
20 list until the next audit report comes in or we get a
21 letter from our auditor confirming that this transfer has
22 taken place.

23 Now, I'd like to talk a little bit about the
24 current status. I've mentioned something called the
25 questioned cost list. For about the last three years, the

1 audit division every two months has been distributing the
2 questioned cost list. It's organized by the traditional
3 nine regional offices plus the program development and
4 substantive support section as well as national support.
5 It keeps track of questioned costs by each recipient. It
6 lists the dollar amount. The date is identified, and it
7 gives a brief description of the item. If you will refer
8 to graph A. This is in the back. It follows page 6 of the
9 report. I also have it here in color. We have taken --

10 MR. WALLACE: Just a second. I hope Mr. Valois
11 notes that we have charts both on the chart and in the
12 handout. The questioned costs on the July --

13 MR. VALOIS: I don't have the handout.

14 MR. NALLEY: They total \$1,675,000. What we have
15 done in graph A, we've listed them by type. We have made
16 seven categories. They're primarily categories that are
17 listed in instruction 83-8. Category one on the left-hand
18 side totals \$245,000. These are regulatory violations.
19 These are direct violations of one of our regulations or
20 the LSC Act. The \$245,000 is approximately 14 percent of
21 the total, by the way.

22 If I were to say what is a typical questioned cost
23 in this area, most of the them are violations of our
24 subgrant, regulation 1627, which went into effect in 1984.
25 Now, a recipient is required to have all subgrant approved

1 by LSC headquarters. Now, in audit reports of December
2 31st, 1984, were reviewed, it was discovered that many of
3 the auditors in their supplemental letters as they're
4 required to do to check supplemental charges listed in
5 subgrants for various amounts where the recipient did not
6 have an approval letter from LSC. So that's what most of
7 these are.

8 There are some other situations where members of a
9 recipient Board of directions participated in a PAI program.
10 That's a violation. A small amount in this category also
11 relates to some lobbying violations.

12 I'd like for you to look at column two and column
13 three. Column two and column three, when we first did this
14 graph, they were one column. And as you can see, we had a
15 problem, and we didn't know whether to tape the two pieces
16 of construction paper together or what. So we thought that
17 we would separate the real estate, property purchases and
18 consulting approvals, because they are so substantial into
19 the third column.

20 But all of these basically are approval
21 requirements for purchases or consulting agreements that
22 are required by chapter four of the LSC audit guide. So in
23 column two, which totals \$655,000, these are basically
24 consulting agreements exceeding the limit in the audit
25 guide. And that is, the total dollar amounts exceeds

1 \$2,500 or I think it's \$122 per day. Also, if the purchase
2 price of that equipment would have been greater than \$5,000
3 without prior written approval.

4 Property purchases. In this handout it says
5 purchases or real estate. It should say purchases of real
6 estate for offices without written approval. Interestingly
7 enough, this was all incurred by one recipient. And by
8 \$470,000, I have to fill in it was a rather large recipient.
9 Fortunately, I think I can say that no purchases have
10 happened like that since 1981. And most of the these will
11 be satisfactorily resolved because the recipient has
12 produced an amount of correspondence from the corporation
13 from about three years ago agreeing to retroactively allow
14 those costs provided to reversionary interest agreements
15 with the corporation be signed. And so they still rely on
16 the questioned costs lists until those agreements are drawn
17 up. But that \$470,000. And it's all with one recipient.

18 The next category unreasonable or unnecessary,
19 totaling just under \$77,000. Unreasonable or unnecessary
20 expense basically, as I believe it's defined in the audit
21 guide, would be an action that a prudent person, based on
22 all the circumstances, would not take. A typical
23 unreasonable or unnecessary expense is a situation where a
24 recipient has not paid its quarterly payroll tax on time.
25 As a result of that, IRS assesses a penalty of \$200. And

1 we consider that an unreasonable and unnecessary expense.

2 I might also add that although this column adds up to only
3 \$77,000, it is the most frequent occurrence. And that
4 means that many of our questioned costs are a third or
5 small items.

6 Another situation that is on this category as an
7 unreasonable or unnecessary expense, there was a recipient
8 that was in a dispute with IRS over social security
9 payments, and its participants hadn't been paying social
10 security. And the recipient decided it didn't think it was
11 subject to it. So it refunded all of the deductions back
12 to their employees, and they represented the employees
13 against IRS. Well, the employees had to sign a promissory
14 note agreeing to pay the recipient back if they lost the
15 case. Well, needless to say, they lost the case and just
16 wrote off the amounts and didn't get the money back from
17 the employees. We have disallowed that amount, and we are
18 currently reducing grant checks for a 12-month period. So
19 we are currently in the process of getting that money back.

20 The next column five, total \$35,000. These are
21 costs that usually appear or are discovered by auditors.
22 It just means that documentation is lacking. In many cases,
23 these costs might be necessary and reasonable. They might
24 not be a violation of any regulation or audit guide
25 requirement. They simply don't have that documentation.

1 Sometimes later on they can produce the documentation and
2 we can allow the cost.

3 Fraud or embezzlement, total \$25,300, in column
4 six represents only about two percent of the total, and two
5 recipients have been involved in this. Or this only
6 represents two cases right now. One of them has been
7 resolved, and we are currently deducting three grant checks
8 beginning in August and ending in October to take that
9 money back. The other recipient, the investigation has not
10 been concluded, so I don't have very much information on
11 that.

12 The last column, other, totaling \$165,000. The
13 reason why this is under other is because I called the
14 regional director and also discussed at headquarters, and I
15 couldn't decide what category to put it in. It basically
16 involves a dispute between a recipient and subrecipient.
17 It is a very large total. However, the problem is the
18 subrecipient has refused to give an accounting or submit an
19 audit report for the subgrant. And so that's why it's on
20 the questioned costs list. But it really didn't neatly fit
21 in any of the other categories.

22 Does anyone have any questions on this particular
23 illustration?

24 MS. BERNSTEIN: No. I just want to reclarify what
25 I think you said earlier. You and I have discussed

1 privately that the source of the questioned costs have in
2 the past by and large come from the audits. But there is
3 no reason why questioned costs should not be placed on this
4 list from monitoring reports, compliance and review,
5 Congressional inquiries, complaints by clients, complaints
6 by community people. Placing them on the questioned cost
7 list from all of these sources would allow the corporation
8 an opportunity to investigate them; is that correct?

9 MR. NALLEY: You're right. And some of them do
10 come from other sources.

11 MR. WALLACE: Who in the practice of the
12 corporation makes the determination to put something on the
13 questioned cost list?

14 MR. NALLEY: It does not come from the grant and
15 budget unit that resolves them. It can come from almost
16 anyone else. Different things have been put there by the
17 audit division. They've been put on by monitoring offices.
18 And they simply make a request to the audit division to do
19 it.

20 MR. WALLACE: Okay.

21 MR. NALLEY: Looking on to the next illustration,
22 graph B. This is a pie graph about the frequency of
23 incidence. The questioned costs list totaling \$1,675,000,
24 by the way, involves actions by 51 recipients and
25 subrecipients. The \$1,675,000 is composed of 86 incidents

1 of a known amount. There are another eight incidents where
2 we know the category or type of questioned cost it was.
3 But because the investigate has not been done or even
4 started in some cases, we don't know the amount. So the
5 total incidents we know about are 94. And the total that
6 we have a cash amount for are 86.

7 MR. WALLACE: Just from looking at your graph,
8 would you say most of the ones we don't know the amount on
9 would be in real property?

10 MR. NALLEY: No. We know all the amounts on real
11 property.

12 MR. WALLACE: Now, you said there was one incident?

13 MR. NALLEY: No. There are five. This graph does
14 not take into consideration the dollar amounts at all.

15 MR. WALLACE: So that's not one \$475,000 problem?

16 MR. NALLEY: This is five purchases of property by
17 one recipient. So like one's \$46,000 and so on.

18 MR. WALLACE: I understand.

19 MR. NALLEY: So graph B does not take the dollar
20 amounts involved at all. It's simply the number of
21 incidents in a particular category divided by the total of
22 94. For example, in this particular case, in the lower
23 left-hand corner, unreasonable or unnecessary is 34 percent.
24 Now, 34 percent happens to be composed of -- I believe it's
25 32 different incidents out of a total of 94. Yet dollar

1 amount on the graph before that under that same category,
2 it's category four, is only \$77,000. So this part of this
3 represents 34 percent. The largest chunk of the pie only
4 totals about \$77,000. The next highest amount, which is 26
5 different incidents, these are the audit guide approval
6 violations. And this was represented in the previous graph
7 in column two. So that's \$655,000. But it's 26 different
8 incidents.

9 So when you get down to real property in the
10 right-hand corner, it's only 5.3 percent. But the total of
11 that very small slice of pie is \$470,000. So what this
12 graph really does show is this large section here is
13 composed of a lot of \$50 and \$100 items. Whereas some very
14 small sections of this are very large dollar amounts.

15 Any questions on graph B?

16 MR. WALLACE: It looks like the biggest problem,
17 if there is a consistency here, is approvals. That's a big
18 chunk of the total incidents and it's also a big chunk of
19 the money. Any particular reason that comes up so much?

20 MR. NALLEY: Well, we will get to it. But I think
21 I can say that you'll see that unfortunately, they're very
22 localized. One of the problems from 1979 to 1981, a lot of
23 expansion money was put forth to recipients in the
24 Southeast. And those recipients may not have been familiar
25 with LSC procedures for receiving approvals for certain

1 items. And in this situation, also, that regional office
2 which is responsible for monitoring and giving the
3 approvals is responsible for 65 programs. And that's more
4 than any other regional office. And for the last several
5 years, I'm not sure for how long, but as long as I've been
6 in the corporation, there have only been two people in that
7 regional office. So not only do recipients have a serious
8 problem in obtaining approvals from at that office. If
9 they have a questioned cost because they didn't have
10 approval, the problem comes again because that regional
11 office is not able to conduct an investigation of the
12 questioned cost in a timely manner. So the problem is
13 compounded. And unfortunately, most of the them are
14 localized in that area of the country.

15 Looking on to the next pie chart. As I believe I
16 said earlier, an item will stay on the questioned cost list
17 from the time it is first identified until there is no
18 further action to be taken. That means either the amount
19 has been disallowed by the corporation and we have
20 recovered the funds or some other action has been taken or
21 they have agreed to charge the amount to another fund. We
22 are waiting for proof of that or an amount has been allowed.
23 If it's allowed, then it is taken off the list. So this is
24 divided into the status of the items of \$1.6 million that's
25 on the questioned costs list.

1 On the upper right-hand corner 23 percent totaling
2 \$385,000. We consider that to be resolved. That just
3 means that there are no further decision processes to be
4 taken by the corporation. But it is to stay on the
5 questioned cost list based on verifications that are still
6 needed. For instance, as I said, it was being charged to
7 another fund. We're going to wait for them to audit. Or
8 if there's some sort of agreement to be signed, it will
9 stay on there until that agreement is signed. But there's
10 no further action to be taken.

11 Also, the items that have been disallowed where we
12 are recovering funds by either asking the recipient to send
13 in a grant check or we are reducing the monthly grant
14 checks. That amount stays on the questioned cost list
15 until every last amount of it has been recovered. So
16 that's what that is about. That is the problem.

17 Where is the amount disallowed, totaling \$657,000
18 or approximately 39 percent. These are amounts that the
19 first part of the procedure of the instruction has been
20 followed. The investigation has been done. It has been
21 determined this was an ineligible charge. The amount has
22 been disallowed. And the reason why it's in this category
23 is one, we either have not received a recommendation from
24 the monitoring office on appropriate action whether to
25 recover the funds or recover a portion of the funds or take

1 some other type of disciplinary action. Or we may have
2 received a recommendation. We have in two particular cases
3 now where we haven't taken action because we're still
4 discussing it at the corporation.

5 The other item in the lower right-hand corner that
6 says unresolved, 37.7 percent. Those are items in which an
7 investigation has not been completed, and we have received
8 no recommendation on whether to allow or disallow the cost.

9 Moving on to graph D. Well, without a whole lot
10 of explanation, this shows a lot of the problem. A lot of
11 questioned costs are localized in certain parts of the
12 country. This particular chart is organized by the
13 traditional former nine regional offices, including program
14 development and substantive support and national support
15 all the way over on the right. As this chart, which is in
16 color, the amount that is green or the dark cross-hatched
17 section are amounts that are disallowed. Even though it
18 says disallowed on the handout, it means disallowed and a
19 decision on recruitment has not yet been taken. So this is
20 the same as the \$631,000 in the lower right-hand corner of
21 graph C. Everything that's in green or the very closely
22 cross-hatched section.

23 Are there any questions on this graph?

24 MR. WALLACE: It shows us where the problems are.

25 MS. BERNSTEIN: How old are most of these?

1 MR. NALLEY: Some of them are quite old. The
2 \$1,675,000 on there does not mean that these are questioned
3 costs necessarily that have been incurred in the last year.
4 The procedure in the instruction requires that the
5 questioned cost be resolved in nine months after they are
6 first identified. However, because of problems that I've
7 just mentioned in getting recommendations and getting the
8 investigations completed in certain parts of the country,
9 these deadlines are not always able to be met. So there
10 are some items on the questioned costs list that go back to
11 1981. And most of the those are localized once again. So
12 in a sense, the \$1.6 million is misleading because it
13 doesn't mean that we had that amount of costs incurred in
14 the last 12 months

15 This leads to another problem that they stay on
16 the questioned cost loss for a long time when
17 investigations can't be done quickly is that very often we
18 lose the opportunity to take appropriate action. And if we
19 lose the fund, then very often we just have to write it off
20 and forget it.

21 For example, last month the questioned cost list
22 last month was almost \$2 million. And that's because there
23 was a very old questioned cost from a recipient that has
24 now been refunded and we had to write off over \$400,000.
25 And the reason for that was this recipient was defunded in

1 1979, I believe. And if the about \$4,000 worth of the
2 questioned cost costs -- they filed for bankruptcy, I
3 believe, in 1980 or 1981. This is described a little bit
4 on page 6 of the handout. And the corporation was not
5 accredited. All of the assets of this recipient were
6 quickly liquidated.

7 MR. WALLACE: We were not accredited?

8 MR. NALLEY: We were not a creditor in the
9 bankruptcy proceedings.

10 MR. WALLACE: So -- I know that we were not a
11 creditor. We got no money.

12 MR. NALLEY: Most of the amount that was
13 questioned never went through all the procedure. The
14 problem is they were given interim funding during the
15 defunding procedures that lasted seven months, I believe it
16 was seven months. And then they refused to allow auditors
17 to come in and audit the interim funding. So the
18 corporation simply questioned the whole amount, even though
19 they did have some questioned costs before that. So a lot
20 of that \$400,000 or some of it may have been spent for
21 appropriate purposes, but they wouldn't let the auditors in
22 the door, from the report that I read dated 1981. So the
23 only thing to do was take it off the questioned cost list
24 after so many years.

25 MS. BERNSTEIN: I don't know what else you were

1 going to present, Tom, in terms of the presentation, but I
2 know that my chairman has determined we're going to get
3 something done by five o'clock. And Mr. Mendez had a
4 question.

5 MR. MENDEZ: Yes. I have a question. On the
6 graph -- it's the second page, 5 sub 1 under part B, \$5,000.
7 How did we ever come to \$5,000?

8 MR. NUSBAUM: Five one is a dollar amount that has
9 been in the audit guide since 1979, I believe, or '81.
10 It's the dollar amount that when they were last revised the
11 audit guide through a process maybe similar to this that
12 the corporation decided that any purchases above that
13 amount are significant enough that we would require a
14 recipient to get our approval.

15 MR. MENDEZ: Do you still feel that that's
16 significant enough? A purchase of \$5,000 doesn't seem like
17 very much to me.

18 MR. NUSBAUM: Personally I think we might want to
19 raise it. One of the things about going the regulatory
20 route is it gives us an opportunity to discuss these issues
21 among ourselves and among the public and come up with
22 different amounts. We did suggest raising the amount for
23 consultant contracts.

24 MR. MENDEZ: What do you think is a fair number to
25 raise it to?

1 MR. NUSBAUM: \$7,500, \$10,000. \$10,000 would
2 probably be reasonable.

3 MR. WALLACE: To a certain extent, we're pulling
4 numbers out of the air. I don't know the cost of office
5 equipment these days.

6 MR. MENDEZ: I don't think -- do we want to freely
7 approve all computers that they're buying? That just
8 doesn't seem --

9 MR. NALLEY: If I may say, it's a very common
10 question of cost now. A personal computer usually does
11 cost more than \$5,000. But we consider all of the
12 components of an item such as the computer, printer and
13 cost wire. All of the components that make the item work
14 commonly cost \$5,000, even though each individual item
15 might be less than that.

16 MR. WALLACE: So I think one thing we'll want to
17 look at if we publish this in the comment period is what's
18 a reasonable cut off level.

19 MR. NUSBAUM: I think what it boils down to is how
20 much the corporation wants to be involved in decisions of
21 the budget management.

22 MR. WALLACE: We don't want every word processor
23 out in the country. But if there is a big item, we need to
24 know what is big. There's a lot of equipment that didn't
25 exist five years ago.

1 MR. MENDEZ: How often are you over \$10,000? How
2 many times a month do you have this type of issue come
3 about and between 5 and 10; how many times a month?

4 MR. NUSBAUM: Well, I can't answer that. The
5 audit division is concerned with programs requiring
6 compliance. The situation is concerned with programs
7 complying with the requirement. That's my perspective.
8 Approval has to be obtained either from the regional
9 offices or headquarters. So I'm not aware of how many
10 numbers of different times.

11 MR. WALLACE: We need to do two things during the
12 course of this investigation: We need to know one, what
13 kind of requests for approvals the regional offices are
14 questioning. If they're heavily loaded at the bottom, if
15 six percent of their requests fall between 5 and \$10,000,
16 our cutoff is too low. The same thing we need to know is
17 how many questioned costs that are not getting approval are
18 those low numbers. If 60 percent of those are between 5
19 and 10, then it's probably a bunch of people who have to
20 have a word processor right now, and they haven't got time
21 to get approval for it and go get it. And if that's where
22 most of our problems are, between 5 and 10, we probably
23 need it raise it to 10. If it's between 5 and 75, we need
24 to raise it to 75. We ought to be able to make reasonable
25 investments without -- and we can look at the approval and

1 questioned costs list and see where these numbers fall. If
2 we're real heavy on the bottom, move the bottom up.

3 MR. EAGLIN: This suggests that most of the these
4 would drop off.

5 MR. WALLACE: I wouldn't be surprised at all. But
6 that's the purpose of going through the exercise is to
7 think about what the numbers ought to be.

8 Tom, why don't you tell us a brief outline of what
9 is in this draft procedurally so that we'll know what it is
10 we're proposing to do.

11 MR. BOVARD: This is the core of this draft, the
12 operating section is 1630.2, the definition section. And
13 section B defines an ineligible cost. That's something
14 that somebody shouldn't do. And these provisions are taken
15 from our current operating procedures, and of course we
16 want to reexamine the numbers. But the procedure of the
17 corporation is when it suspects that something falls into
18 the category of ineligibility as in B, it questions it.
19 Then there is a determination as to whether the cost should
20 be disallowed. So the regulation sets up a sort of four-point
21 procedure, four stages of review. Four points at which the
22 corporation makes the decision.

23 The first point is the corporation determining
24 whether something should be questioned. Whether it
25 suspects it falls into the category of ineligibility. If

1 it does, it issues a notice of questioned costs. And a
2 recipient would have 30 days to respond to that.

3 Let me back up. There are four points at which
4 the corporation will take action. At each of those points,
5 a recipient has 30 days to respond. If it doesn't respond,
6 the decision is final. So the first point is this notice
7 of questioned cost. The recipient has 30 days to respond
8 in writing.

9 The second point is the determination as to
10 whether the cost should be disallowed. Again, you'll find
11 that at 1630.4, the decision process. Again, the
12 corporation has 90 days after each response on the part of
13 a recipient to issue a further decision. So it just goes --
14 you have your initial decision and then 30, 90, 30, 90.
15 And after the notice of determination on disallowance and
16 the recipient 30 days to respond, there is then a notice of
17 resolution of the disallowed cost. Okay. And then the
18 recipient has 30 days to appeal that.

19 The final point is the president would decide the
20 appeal. And we give no time limit on him. We suggest 20
21 working days would be -- let me back up to just a couple of
22 things.

23 Probably the most interesting aspect is the
24 resolution of the disallowed cost. The normal procedure is
25 to recoup money under this through the grant checks,

1 reducing grant payments or requiring that they issue a
2 payment to us. But in a lot of cases, that's not the
3 procedure that we usually use to resolve a cost. So we
4 have given the recipient time to respond and to say why
5 those two procedures should not be used. And if they're
6 persuasive, there are other things that can be done. For
7 instance, shift from another fund. And as Pat mentioned,
8 that's probably one of the most common ways of resolving
9 this.

10 MR. WALLACE: You and I have discussed this before,
11 and I'll just state it for the record. It would be my
12 natural inclination at this point when we tell somebody to
13 try to convince us why the cost shouldn't be recouped to
14 give them in our resolution some idea of the criteria we
15 intend to apply. I am not an auditor, and I don't know
16 what criteria we ought to apply and I don't know how easy
17 it is to put that in English that the people can understand.
18 So it's just my natural inclination when you give somebody
19 a chance to convince you of something, you ought to tell
20 them what it is you're looking to hear.

21 MR. BOVARD: I just wanted to make one final point
22 about the skeleton of this reg. This 30, 90, 30, 90
23 process ending up in the appeal is slightly longer than the
24 time limits under our current instructions because we've
25 added an appeal process which does not exist in the current

1 regulation. However, at first it appears that 90 days was
2 too long for the corporation. The corporation shouldn't be
3 taking 90 days to make a decision at each stage.

4 Particularly if you are -- if you've done an investigation
5 in advance. The reality at present is whether we could
6 resolve things in less than 90 days. And that's an
7 organizational factor that we need to discuss because
8 there's been a great deal of problem in taking a lot of
9 time resolving these things.

10 MS. BERNSTEIN: Well, my concern is there would be --
11 and I know that you're talking about the practical problems
12 in that we've had an internal reorganization and a
13 reorganization of the regional offices recently. And that
14 if we're going to adopt these regulations, we have to look
15 at whether or not we're in a structural position to deal
16 with things. But presumably, this regulation would not be
17 redone every time we turn around, so maybe we should be
18 thinking about in terms of the regulation, what we believe
19 to be the reasonable amount of time. And then I think
20 there's waiver provision here that -- we recognize we may
21 have to gear up some sort of method for executing a waiver
22 provision for a while until we get things down pat. That
23 would be my approach, that we look toward what is the
24 reasonable regulation and move toward that rather than
25 starting with something to accommodate our less than

1 perfect structure right now.

2 I've got a question, though, and I'm wondering
3 whether or not it's a typo. Can you explain to me what the
4 reason is under 16.6 appeal process. It says under A
5 within 30 days after received notice whether the recipient
6 can appeal. Wouldn't that be both A and B? Why would they
7 only get an appeal?

8 MR. BOVARD: Because if they've resolved it under --
9 let me see. This works out. Let me just see. It's --

10 MS. BERNSTEIN: In other words, the appeal process
11 would apply, I think, to however the corporation has
12 decided it's going to resolve.

13 MR. BOVARD: I think we could --

14 MR. NALLEY: The whole section 1630.5 I think
15 would cover it.

16 MS. BERNSTEIN: Because otherwise if you do it on
17 a regular basis, you do get an appeal. But if you do it
18 under special circumstances, you do get an appeal.

19 MR. BOVARD: Let's remember to make that as an
20 amendment.

21 MR. WALLACE: Well, let's strike it on our graph.
22 Strike paragraph B. So this would determine the result of
23 disallowed cost as described under section 1630.5. One
24 thing about the 90 days, and I think Mr. Mendez' concern
25 ends up here. If we raise the limit to \$10,000, a lot of

1 our problems are going to drop right off the chart. And
2 there will be a lot fewer things to resolve, and we may be
3 able to handle things in 60 days.

4 MR. BOVARD: As it is now, this entire procedure
5 that we've outlined would take 290 days or approximately
6 ten months. And we might want to --

7 MR. MENDEZ: Mr. Chairman, this is your committee,
8 but I was expressing two people's opinion that that's way
9 too long.

10 MR. WALLACE: Well, that would be my concern. I'm
11 willing to to publish this as is, but there are numbers
12 that are going to have to be changed in here. How much
13 longer is it than the practice we use right now under the
14 instruction?

15 MR. NALLEY: It's eight and a half months right
16 now.

17 MR. WALLACE: And this is like nine and a half
18 with an appeal procedure.

19 MS. BERNSTEIN: But the idea is that that's too
20 long because we get into situations like the recipient that
21 we're not a creditor of, and you end up writing the whole
22 thing off.

23 MR. NUSBAUM: It would be best if we could get it
24 down to six months. And I think that's consistent with
25 some of what GAO tries to do.

1 MR. WALLACE: I don't think from here we're going
2 to say what numbers, either on days or dollars, but one of
3 the chief concerns we're going to have during the
4 consideration of this matter is getting the time down.
5 Because if we're asking programs to act within 30 days, we
6 shouldn't take 90. We ought to be -- I think Mr. Mendez is
7 correct. We ought to be dealing with fewer small problems
8 and concentrating on big problems that could be worked out
9 as we go along.

10 Now, members of the panel, I've asked you to
11 compress your presentation, but I don't want to cut you off
12 on things that you think are urgent at this time. So let
13 me just ask you if there is another major point or two you
14 think we need to understand here before we decide whether
15 or not to publish this.

16 MR. NUSBAUM: One of the intentions of putting in
17 the definitions the way we did it would be to eliminate
18 chapter four of the audit guide which now basically designs
19 what questioned costs are. And since we're going to be
20 formally proposing a regulation to deal with the issue,
21 there would be no need for that in the audit guide. We
22 will reference the -- because we're going to be dealing
23 with potentially resovered funds from the program, we
24 thought that the regulation process made more sense.

25 MR. WALLACE: Any further thoughts?

1 MR. MENDEZ: Mr. Chairman, I just have one other
2 comment. I guess I've been practicing law in Colorado too
3 long, but 1630.6(b), I think that we shouldn't say normally,
4 and as soon as practicable. I think we should have a fixed
5 time.

6 MR. WALLACE: Where is Mr. Wentzel?

7 MR. MENDEZ: It's just --

8 MR. BOVARD: This is wording from our other regs.

9 MR. WALLACE: This is what it says in our language
10 on funding, for example. I agree with both of you that we
11 ought to have something to tell us when to do it.

12 MR. VALOIS: We don't want anyone --

13 MS. BERNSTEIN: I would agree with them that I
14 would like to try putting out for publication with a
15 straightforward this-is-when-it's-to-be-done approach.

16 MR. BOVARD: Within 20.

17 MR. WALLACE: Within 20 working days after receipt
18 of the written notice of appeal, the president shall either
19 adopt --

20 MR. MENDEZ: Mr. Chairman, I would suggest that we
21 don't say 20 working days, we say 30 days.

22 MR. WALLACE: Why have working days? I agree.

23 MR. MENDEZ: It's your committee, and I don't want
24 to interfere.

25 MR. WALLACE: You're in charge of the audit

1 committee, Mr. Mendez, and we appreciate your input into
2 the process.

3 Within 30 days after receipt of the written notice
4 of appeal.

5 MR. VALOIS: You've got 1630.7 as a saving grace,
6 anyhow. I guess we can extend our own time.

7 MR. WALLACE: I imagine we can, but that's one
8 thing we're going to clear up if we decide to do it.

9 Let me ask this. We're going to have several more
10 meetings on this subject. The only action we would take,
11 if any, today, would be to vote to publish this and give
12 everybody a chance to comment on it. And we're sitting
13 here in the dark after the close of business. I'm going to
14 ask for public comment for this purpose. If anybody has
15 anything they need to tell us why this is so outrageously
16 awful we shouldn't publish it or even think about it, I'd
17 like to hear you. If you have problems with the individual
18 questions, let's wait until next meeting and the meeting
19 after that to deal with them.

20 MR. HOUSEMAN: Mike, I have something in between.
21 Let me just do it from here. I think one of the things
22 that this doesn't address is the process used and the
23 standard used around prior approval. That is, the process
24 before you have a questioned cost. One of the ways of
25 coming at it is what you're doing, is to raise the amounts

1 and therefore cut down the amount of problems. But the
2 biggest problem aside from the amount, which is probably
3 the biggest problem. But the second biggest problem is
4 there's no process around the prior approval. There's no
5 time periods, there's no uniformity of practice between
6 regions to enforce some standard, to manage the corporation.

7 I think one of the reasons you'll find the Atlanta
8 office doing this is it has a different different
9 philosophy. And whatever the philosophy turned out to be,
10 it should be uniform. So the only comment I have is that
11 you ought to be dealing both with the process, the prior
12 approval and the standard for decision under prior approval
13 somewhere. And I think if you're going to get into this
14 reg, the place to do it is in the reg. At least there's
15 got to be discussion. Because that is, as the statistics
16 indicate, where the bigger problems are.

17 MR. WALLACE: I think that's a fair comment, and I
18 know you have been working with our staff on this
19 regulation. And I think throughout this comment period, I
20 would encourage that continued cooperation. Let me just
21 say if we do vote to publish this, I think that any
22 preamble that's published with it ought to in summary form
23 address all of these concerns that have been raised here so
24 that people know we're focusing on the time period, we're
25 focusing on dollar amounts, and we will consider what kind

1 of criteria ought to be applied in dealing with the
2 disallowed costs. And we'll consider if we've got any good
3 ideas on doing it, consideration of the approval process.
4 We may do it in a different reg.

5 MS. BERNSTEIN: I was going to say, it may not fit
6 here, but I don't object to the process being examined.

7 MR. WALLACE: But let's get it in a preamble so
8 people know what is on our minds.

9 MR. VALOIS: Mr. Chairman, I just really think
10 these items are extraordinarily long, and I would suggest
11 that we get them nearer to something which some of the
12 members of the Board would support before we publish it.

13 MR. WALLACE: Because I know that the staff is --
14 I mean, you've all had meetings about this and you've
15 considered it and I know this has been a major concern.
16 And maybe you can address Mr. Valois' concern which we all
17 share. What has the staff been telling us about how fast
18 this can get done?

19 MR. NALLEY: I wrote the first draft, and I am the
20 originator of the 90 days. And the reason I put it in
21 there is simply because of some of the problems that I've
22 described here. Throughout the country, if you have
23 noticed the many regions, there's a half an inch of a bar
24 graph where they're resolved very quickly. But because I
25 know that some questioned costs are more cumbersome ones

1 are very difficult that have consultations with the general
2 counsel's office, the controller's office and so on to
3 decide what to do.

4 MR. VALOIS: But you have a mechanism in 16.7 to
5 take care of the unusual situations. If you give an
6 arbitrator 90 days to make a decision, how long does it
7 take?

8 MR. MENDEZ: Your primary problem is the first 90
9 days. It's not the appeal process thereafter. And could
10 we cut down the -- leave the first 90 days and then look at
11 30 days thereafter?

12 MR. BOVARD: 90 days to make a notice of
13 determination on disallowed.

14 MR. WALLACE: What Mr. Mendez is saying on 40
15 1630.5(b), it shouldn't take us 90 days to decide whether
16 or not they've got a good reason for what happened.

17 MR. VALOIS: And if we do need 90 days, we can
18 extend it under 1630.7.

19 MS. BERNSTEIN: So you are saying to 30 days.

20 MR. WALLACE: I think we could probably do it then.
21 If we had an urgent task -- Mr. Nalley, how many of these
22 get to this point? How many of these concerns get to the
23 point where they've written us back their explanation and
24 asked us to waive it?

25 MR. NALLEY: Most of them get here or most of the

1 them drop off before here at this point in the flow chart
2 where it's 1630.5(b). We have disallowed the cost, they
3 have written us back an explanation and a request for
4 leniency.

5 MR. WALLACE: How many of these get to this point?
6 How many leniency requests do we get?

7 MR. NALLEY: Oh, every single one of them. Every
8 one is going to ask.

9 MR. WALLACE: Every single disallowed cost we're
10 going to get this back.

11 MS. BERNSTEIN: But that's not the question
12 whether or not they have demonstrated it. Is that two
13 different questions?

14 MR. NALLEY: Oh, sure. That's two different
15 questions. But we will get that response from every single
16 person.

17 MR. WALLACE: But it takes time to determine.

18 MR. BOVARD: Now, the first determination is --
19 disallowance is the big determination. The second on just
20 how we're going to resolve it, whether it's going to be by
21 recoupment or by some other method, would seem like it
22 would require a lesser amount of time.

23 MR. NALLEY: I disagree because every time we have
24 recovered funds, you better be right if you're taking
25 somebody's money back. And we've always been very cautious

1 on that, and we've always conferred in writing with the
2 audit division general counsel's office to be sure that
3 we've agreed with it. And if they have disagreed with it,
4 we have not done it. But if the investigation is completed,
5 then it shouldn't be that difficult to determine whether or
6 not this charge is an ineligible charge or not. So
7 actually, I think the first 90 days could be shortened
8 easier.

9 MS. BERNSTEIN: Let's try shortening both of them
10 to please Mr. Valois and Mr. Mendez. And if the comments
11 come in that this is a problem --

12 MR. WALLACE: The comments aren't going to tell us
13 that we're not giving ourselves enough time.

14 MS. BERNSTEIN: Well, I presume the staff will
15 also be wishing to make comments.

16 MR. NALLEY: We have 45 days to approve subgrants
17 on reg 1627: Is that a compromise?

18 MR. WALLACE: I'd be happy to put 45 in both of
19 them.

20 MR. MENDEZ: Now, we have in 1630.4, we have 90
21 days, as well, Mike.

22 MR. WALLACE: I think what we said is we'll cut
23 both of the 90-day periods back to 45. And since we do
24 have a waiver provision in there, you know, most of them
25 ought to fall off in 45 days.

1 MR. MENDEZ: I've got a question. Can we publish
2 \$10,000 or \$7,500 now? We've got a recommendation to raise
3 it.

4 MR. WALLACE: They haven't told us what they'd
5 raise it to. Let's leave that number and ask them to
6 examine where these things fall.

7 MR. NUSBAUM: I have received a lot of comments on
8 particularly the section chapter four on questioned costs,
9 and I will be sharing that with Mr. Bovard as he goes to
10 rewrite the regulation. Because as Alan pointed out, a
11 lost concerns about the recipients have to do with the
12 process of getting approvals which in fact they're not
13 getting them. We're incurring all these questioned costs
14 and certain things without raising various limits which we
15 should be aware of.

16 MR. WALLACE: Any further comments?

17 At this point, the Chair would entertain a motion
18 to publish this draft in the federal register with the
19 changes that have been dictated into the record during the
20 course of our debate. Do we have such a motion?

21 MS. MILLER: I make such a motion.

22 MR. WALLACE: Is there a second?

23 MS. BERNSTEIN: I'll second.

24 MR. WALLACE: Is there any further discussion
25 before we vote on whether to publish this? All in favor

1 say aye. Opposed? Hearing no dissent, the motion carries.

2 This will be published as amended here.

3 We thank you all for your time.

4 At this point, the Chair will entertain a motion
5 to adjourn.

6 MS. BERNSTEIN: I move to adjourn.

7 MR. WALLACE: Is there a second?

8 MS. MILLER: I second it.

9 MR. WALLACE: By unanimous consent, this committee
10 stands adjourned.

11 (Adjourned at 5:25 p.m.)

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REPORTER'S CERTIFICATE

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I, Carolyn Tanner Sullivan, do hereby certify that the foregoing pages 3-115 inclusive, comprise a transcript of the proceedings on August 1, 1985.

DATED this 7th day of August, 1985.

Carolyn Sullivan
COURT REPORTER

