

LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE MEETING

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August 27, 1987

Commenced at 4:55 p.m.

Seattle Sheraton Hotel and Towers
Metropolitan Ballroom
1400 6th Avenue
Seattle, Washington

Present:

Michael Wallace, Chairman
LeaAnne Bernstein
Paul Eaglin
Lorain Miller
Claude Swafford

Hortencia Benavidez
Clark Durant
Pepe Mendez
Thomas Smegal
Robert Valois

John Bayly, President
Timothy Shea, General Counsel

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

P R O C E E D I N G S

1
2 CHAIRMAN WALLACE: Let's get started. I apologize.
3 Both Mrs. Bernstein and I have been on the same plane, late out
4 of Chicago, but she is here. I think we have a quorum at this
5 point.

6 This is the meeting of the Operations and Regulations
7 Committee of the Board of Directors of the Legal Services
8 Corporation convened pursuant to notice duly given in the
9 Federal Register. The agenda is printed in the board book.

10 What I will do is ask unanimous consent to the agenda
11 as printed in the board book be adopted.

12 (No response)

13 CHAIRMAN WALLACE: Hearing no dissent, so ordered.

14 Let me explain how we are going to do this. We are
15 going to take such testimony today as we can. Mr. Smegal has to
16 get back to California tonight. He wanted to be present for the
17 testimony.

18 This committee will reconvene tomorrow afternoon. I
19 believe the time is 2:15 or 2:30, after the close of the
20 business day in the District of Columbia. Any comments that are
21 received by then will be telecopied to us and we may consider,

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1 at that time, any votes that need to be taken on this
2 regulation.

3 At this point, we have the minutes of the previous
4 meeting which was probably the shortest and least contentious
5 meeting over which I have had the pleasure to preside as
6 chairman of this committee.

7 Are there any additions or corrections to be proposed
8 to the minutes?

9 (No response.)

10 CHAIRMAN WALLACE: Hearing none, I will ask unanimous
11 consent that the minutes be adopted as printed in the board
12 book. Hearing no dissent, so ordered.

13 We are on, at this point, to consider Part 1612.13 of
14 the Regulation. This is only one section of the lobbying
15 regulation having to do with private funds.

16 At this time, what I would like to do is for the
17 general counsel's office to summarize comments we have received.
18 I believe I have read them all. I have read all of them that
19 got to me on my vacation in the wilds of Michigan.

20 If any have come in in the last couple of days, I am
21 sure they will be brought to our attention at this point. What
22 I would like to do is have these summarized, at this point, and

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1 after that I am going to ask Mr. Houseman and the general
2 counsel's office to essentially present their positions on the
3 constitutionality of 1612.13.

4 That is the issue which Senator Rudman asked us to
5 reconsider and that is what I want to focus on here today. We
6 have been on the wisdom of this thing for three years. I have
7 not seen anything in the comments so far, on the subject of
8 wisdom, that I have not seen for three years. I would like to
9 talk about the constitutionality and focus on that as much as we
10 can.

11 With that, if the general counsel will come forward
12 and give us a summary of the comments we have received, I would
13 appreciate it. Ms. Glasow, are you going to present this on
14 behalf of the general counsel's office.

15 MS. GLASOW: I believe Mr. Shea has some preliminary
16 comments to make and then I will follow up.

17 CHAIRMAN WALLACE: All right, fine.

18 MR. SHEA: Mr. Chairman, we have received some
19 comments that were filed with our office today. If you would
20 like to, I can distribute them. There are three others.

21 CHAIRMAN WALLACE: Can you have someone distribute
22 those? Maybe the secretary can do it while you are giving your

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1 presentation.

2 MR. SHEA: Very briefly, I will give a brief summary
3 of what we have. I will ask Ms. Glasow to summarize the
4 comments that we have.

5 As you know 1612.13 was noticed for comment. So far
6 we have received 26 comments. A number of the comments
7 addressed legal matters, both the constitutionality of the
8 1612.13 and I think it is fair to say, the legal authority with
9 respect to that.

10 We, the general counsel's office, did a brief summary
11 of our view of the legal issues. We will make that available to
12 the board members and we have a limited number of copies that
13 can be made available to the public.

14 We had some other remarks, but at this point, I think
15 what the Chairman has in mind -- we might summary briefly the
16 sum and substance of the 26 comments.

17 CHAIRMAN WALLACE: Please go ahead and do that, if you
18 would.

19 MS. GLASOW: The comments focused on three or four
20 issues. The main ones are the constitutionality of section
21 1010(c) and the 1612, also the authority of the Corporation to
22 apply Section 1010(c) two restrictions in the Appropriations Act

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1 that were commented on.

2 There have been some comments on the interpretation of
3 the language of Section 1010(c) and there have also been some
4 comments that have spoken really to a public policy issue.
5 These comments especially have shown that private funds are
6 being offered to recipients for legal services to lobby, with
7 the idea that it is good public policy to prevent problems to
8 the poor in the sense that lobbying for a change in the law
9 would be a good public policy to help the poor.

10 That is really the extent of the comments. The
11 comments that came in today did not offer any new issues that
12 had not already been considered.

13 CHAIRMAN WALLACE: Do any members of the committee or
14 board members who are with us at this hearing have any questions
15 they want to direct to the general counsel's office on anything
16 you have seen or heard in the comments at this point?

17 (No response)

18 CHAIRMAN WALLACE: I have a couple of things that come
19 to my mind. The notepaper I wrote them down on has been checked
20 at the bellman's desk when I came in.

21 I had a least two comments that referred to the
22 problem of conducting community legal education on the new

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1 immigration bill. Now, it was not clear to me the extent to
2 which this regulation restricts community legal education with
3 regard to this matter if it is not done in the context of
4 training, grass roots lobbying, organizing, that sort of stuff.

5 I am just not clear on the answer to that. I did not
6 have my whole file with me on vacation and I have not gone back
7 and looked over it. But, it was not immediately obvious to me
8 that there was a problem here, although, they seem to think
9 there is.

10 Did you see those comments and have you got any
11 thoughts as to how this regulation applies, to what is obviously
12 a major problem in a lot areas of the country right now.

13 MS. GLASOW: Yes, I do. I have read those comments,
14 and I think it's probably a concern that doesn't exist.

15 CHAIRMAN WALLACE: The concern exists. The question
16 is whether the justification exists.

17 MS. GLASOW: That is true. Part 1612 is restrictions
18 on lobbying. It is a restriction on training for lobbying. It
19 is restrictions on forming coalitions with the idea that these
20 coalitions would be groups that would lobby and do types of
21 things and activities that congress did not want recipients
22 involved in.

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1 That is different from educating what the law itself
2 says now, training people and educating people as to what the
3 law says now. It is not trying to change the law, so there
4 should be no problem with educating people on what the
5 Immigration Bill means now and what their interpretation of that
6 law is.

7 However, if they are training people to advocate to
8 change the law, to convince an administrative agency or
9 legislators that their are parts of the law that should be
10 changed, that would be restricted.

11 CHAIRMAN WALLACE: That corresponds reasonably
12 closely to my recollection, but I have not had my files. Are
13 there any other questions for the general counsel's office? Mr.
14 Smegal?

15 MR. SMEGAL: Yes, the last part of your brief, which I
16 believe Tim has dated August 25 -- at least the cover is dated
17 August 25 -- subsection Roman Numeral five, refers to the scope
18 of application. There have been some comments I have seen. I
19 do not know whether it is in the material that you provided or
20 in other material. It is certainly in Mr. Houseman's material
21 and I guess we will get to that when Mr. Houseman comes up.

22 It is a suggestion that Part 1612 be specifically

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1 limited to the provision of legal assistance. Now, you make the
2 point here that, in your view I guess, what I am reading here,
3 you believe that the way it is written it is limited to delivery
4 of legal assistance as opposed to the kinds of things that might
5 come up in foundation grants and other areas.

6 Is that what you are saying here? It is a very brief
7 section.

8 MS. GLASOW: Yes, I think Section Two says that the
9 language that is used there, that it is to regulate legal
10 assistance activities. It is another way of saying -- exactly,
11 I believe, what the language Mr. Houseman suggested says.

12 However, 1612 only restricts lobbying and lobbying-
13 type activities such as training and forming coalitions. We
14 feel, and I believe many of the recipients have argued, that
15 lobbying to change the law is a form of legal assistance. It
16 should be done on behalf of the poor. There many of the opinion
17 that this is the best way to help the poor.

18 We feel that these types of activities fall under the
19 definition of legal assistance. It is something that is totally
20 divorced from the idea of legal assistance such as providing
21 perhaps a day care center or some kind of social service work
22 that has nothing to do with the provision of legal assistance.

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1 MR. SMEGAL: So are you suggesting that 1612, either
2 13 or 2 or any of the other sections, does not prohibit using
3 private funds to train others than lawyers or paralegals? That
4 is a legitimate concern. I happen to --

5 MS. GLASOW: If it is training for lobbying or to
6 advocate a change in the law, that would fall under legal
7 assistance activities.

8 MR. SMEGAL: Let's assume it is not legal assistance.
9 Let's assume the people being trained are not lawyers or
10 paralegals. Let's take one bite at a time. Where does that
11 fall? Is that legal assistance, if it is not lawyers or
12 paralegals?

13 MS. GLASOW: It depends on what they are being trained
14 to do. If they are being trained to run a day care center and
15 that is totally outside of our concern, if they are being
16 trained to form coalitions, to lobby or to help with lobbying,
17 then indirectly they are trained to help the lawyers and the
18 paralegals to do lobbying-type activity, that would be
19 prohibited.

20 CHAIRMAN WALLACE: This does bring to mind another
21 question that I had. We have a letter from Mr. McGiver who does
22 training at Mass Law Reform Institute. He says, "We note that

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1 LSC fought tooth and nail to against the regional training
2 centers and MLRI v. LSC to sustain the position that training
3 centers were not engaged in the provision of legal assistance.
4 We take it that now LSC has now changed its position and has
5 concluded after all that training is indeed the provision of
6 legal assistance."

7 Neither one of you were here when that went on and
8 indeed, I came here just as it was winding up. I think we had
9 already had our tails kicked by the time I got on. What is the
10 answer to Mr. McGiver's contention? Does training constitute
11 the provision of legal assistance in our view or does it not?

12 MS. GLASOW: I am not familiar with that case, but if
13 the training involves training to lobby or to do those types of
14 activities that are prohibited, those types of political
15 activities that are prohibited under the Act, then it would be
16 prohibited.

17 That is what the recipients have been arguing all
18 along, is that lobbying is a form of legal assistance that they
19 should be allowed to do on behalf of the poor and -- generally,
20 not just individual clients.

21 CHAIRMAN WALLACE: Are there any further questions for
22 the general counsel's office?

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1 (No response.)

2 CHAIRMAN WALLACE: Thank you. Don't go away. Before
3 I get into public comment, let me ask -- Mr. Houseman is here.
4 He has prepared a brief for us and he has worked on this
5 regulation as long as we have. I certainly expect him to take
6 up the lion's share of the public time this afternoon.

7 So, I might judge what we are going to be doing -- we
8 have another meeting at 8:00 and I would like to check into the
9 hotel and have some supper at some point. Can I ask now how
10 many members of the public wish to speak to this issue at this
11 meeting so I can budget our time?

12 Okay, Ms. Garvey from the ABA. We are glad to have
13 you with us. Is there anybody else here?

14 (No response.)

15 CHAIRMAN WALLACE: All right, then what I may do at
16 this point is ask Ms. Garvey to go ahead and come forward. Then
17 we will get on to the discussion of Mr. Houseman. Thank you for
18 being with us this afternoon. I apologize for United Airlines
19 and I am sorry to keep you waiting.

20 MR. SMEGAL: Mike, let me interject just a moment, if
21 I may, a point of personal privilege?

22 CHAIRMAN WALLACE: By all means.

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1 MR. SMEGAL: I have known Joanne Garvey since she
2 could still hook with both hands and we used to play on
3 barrister club basketball teams together.

4 Joanne is a distinguished lawyer from San Francisco.
5 One of her distinctions is that she followed me by a couple of
6 years as president of the San Francisco and she has just been
7 recently selected as the state delegate for the state of
8 California to the ABA.

9 She is a distinguished tax lawyer from San Francisco
10 and an old and dear friend.

11 CHAIRMAN WALLACE: Welcome, Ms. Garvey.

12 STATEMENT OF JOANNE GARVEY

13 MS. GARVEY: Thank you very much. There are no
14 apologies needed. I arrived approximately ten minutes before
15 you on American. I don't know if this is the sign of our
16 wonderful deregulation or what. I am glad you were late because
17 I was afraid I was going to miss the whole meeting.

18 Our comments are set forth in our letter which I
19 believe was delivered to you. I notice that you wanted to
20 address the constitutionality and other issues --

21 CHAIRMAN WALLACE: Let me ask you right there, that
22 copy is one that apparently did not get to me in Michigan, so if

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1 somebody has got a spare copy of it, I would be delighted to see
2 it. Don't let me interrupt you. Somebody will find it for me.
3 Please, I will just --

4 MS. GARVEY: I will very briefly summarize it. You
5 set forth comments in the past. You are going to have Mr.
6 Houseman and your general counsel's office indulge in
7 constitutionality. The only expertise I have got in that
8 happens to be in the commerce clause. I don't think that will
9 add any light on this today.

10 I think the things that we would very briefly like to
11 call to your attention, as we have indicated in the letter, you
12 have relaxed three of the restrictions. We think this is a step
13 in the right direction.

14 However, I think the ABA remains opposed to the
15 regulation of private funds, as proposed, as basis in just plain
16 poor public policy.

17 As the letter sets forth, this sort of approach will
18 probably inhibit donations real -- prohibit the programs from
19 conducting activities which Congress permits and which low
20 income people need.

21 I am always rather amazed when I see these. I will be
22 leaving this meeting to return to San Francisco to join a group

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1 of clients who are going up for a local state legislature. I do
2 not lobby. They have a lobbyist up there, but I have been
3 involved for several years in dealing with the legislature in
4 changing tax laws.

5 It is of great interest to our clients who are some of
6 a very broad based coalition. We consider this very much a part
7 of providing legal services in the most effective way we can.
8 We have worked with the legislature and the with the task force
9 authorities over the years as a quick and fast way of trying to
10 solve the problems.

11 When I see these sorts of restrictions, I get a little
12 bit nervous because I think somehow you may be carving out an
13 area that perhaps should not be carved out.

14 What we are talking about here, really, is private
15 funds. I have had an opportunity to sit in Minneapolis a couple
16 of months ago when we heard from a couple of foundation
17 directors, their quotes are there, and in particular it was
18 mentioned from one of the representatives from the Untied Way,
19 that they thought that legislative advocacy was extremely
20 helpful.

21 They felt it was one of the most effective and cost
22 effective ways of solving problems. Problems of the poor in

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1 many cases come in clusters. They thought this type of approach
2 protected interests, it prevented the escalation of problems
3 that already existed. It seemed to serve more people with
4 effective long-time term solutions.

5 We were told that this type of regulation limitation
6 was a discouragement to them in a time in which their resources
7 are quite limited.

8 It seems rather anomalous to have a restriction when
9 you -- to drive away funds from private sources, when I believe
10 it is the intent of the Corporation to try and bring in more
11 private funding to supplement what is obviously very restricted
12 public funding.

13 Because of this comment, we ask you again to please
14 look very carefully at your restricting regulations because
15 those have now give are saying that they are a barrier, they are
16 a bar. If the idea is to try to broaden the base, bring the
17 private sector in more, get different types of funding, this may
18 be the wrong step.

19 Thank you.

20 CHAIRMAN WALLACE: Thank you very much. Let me ask
21 you, because I have just gotten this, you talked about the
22 wisdom of restricting private funds. Does the ABA have a

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1 position on Section 1010(c) of the Act, which does restrict
2 private funds?

3 MS. GARVEY: I think this position is set for in the
4 materials in question. With respect to 1010(c), I think it has
5 been pointed out that the appropriation restrictions, I think
6 this is the application -- the applicable portion of it do not.

7 Congress has been very careful to segregate and very
8 carefully delineate the language. This is not my area of
9 expertise and I think our position has been placed before you
10 before.

11 CHAIRMAN WALLACE: I am not making a legal argument as
12 to whether 1010(c) requires this regulation. My question again,
13 is simply one of policy. You have said that it is not wise to
14 place restrictions on private funds and that is why you oppose
15 this regulation.

16 Do you also oppose Section 1010(c) of the Act?

17 MS. GARVEY: I do not think you have to get into the
18 question of opposing 1010(c) of the Act. 1010(c) of the Act is
19 not directed specifically at this situation.

20 The question really before you is -- as I say, I am
21 not here to make a legal argument. I am here to present the
22 papers. They make the legal argument for us.

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1 1010(c) of the Act does not go that far. The question
2 really is: Should your regulations go that far, assuming it is
3 within your discretion to promulgate these regulations? From
4 what I understand that will be the focus of the discussion as to
5 whether it is constitutional or whether it is even permitted
6 under the Act.

7 Our question is: Assuming that you have the authority
8 to do so, is it a wise sort of authority.

9 CHAIRMAN WALLACE: Let me ask you. Is this a position
10 on which the Committee on Legal Aid Indigent Defendants has
11 taken a vote on this policy -- how was the policy adopted by the
12 committee, I guess is my question.

13 MS. GARVEY: The committee has taken a vote. The
14 position of the committee was submitted to the president and all
15 other committees as part of our regular longstanding policy to
16 see if there was any objection.

17 You were given a letter, I believe, in December of
18 1986, that fairly well set forth the argument. This was really
19 not any change in that portion of the argument. The only new
20 portion, I think, is the fact that we have not had the
21 opportunity to hear from private funding sources who gave us a
22 rubber stamp, that they saw use of legislative activity with end

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1 restrictions.

2 If you will notice, we have a few suggestions that
3 will allow you to do some of it, but not necessarily do all of
4 it.

5 It was an effective approach. There is, however, a
6 longstanding American Bar Association policy adopted by the
7 House of Delegates. It has always said that lawyers should be
8 able to represent their clients with every tool available to
9 them. Lawyers for the poor should have the complete right to
10 represent their clients with every tool available to them. That
11 includes things such as legislative activity.

12 Now if Congress wishes to put restrictions on it, that
13 is one thing. I think the issue before the board is: Should
14 you go beyond where we believe Congress has said you must have
15 restrictions. I think that is your issue.

16 CHAIRMAN WALLACE: Essentially Congress has rejected
17 the position taken by the ABA that lawyers ought to be able to
18 do everything. Congress has already decided to put some
19 restrictions, so not asking for a legal argument, what is the
20 difference in principle between 1010(c) of the Act and what we
21 do here.

22 We take a principle which Congress has established and

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1 decide whether or not to carry it farther.

2 MS. GARVEY: I think Congress has limited the
3 application of the principle. As I say, I did not come up here
4 to get the legal argument with you. As I say, this is not my
5 area of expertise by any means.

6 Congress has put specific limitations. I think what
7 you are doing is going beyond that because what you are
8 attempting to do is to put restrictions on the use of private
9 funds, whereas Congress has not put restrictions on the use of
10 private funds in other circumstances.

11 You may disagree, I mean, I am sure that sooner or
12 later this will be resolved by an authority other than you and I
13 talking across the table and making administrative argument
14 about it.

15 You obviously believe you have discretion to do
16 something. I think the question is it a wise choice. I think
17 you have already made your choice, so there is no point in my
18 really arguing about it, except to present to you, perhaps some
19 evidence you did not have before which is that you are seeking
20 to attract private funding which I believe is one of the things
21 the Corporation has been seeking to do over the last several
22 years.

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1 We are in an era of deregulation and an effort to put
2 more and more things into the private sector and bring the
3 private sector in. You have seen the rise of pro bono, which I
4 think we have all participated in.

5 You have also seen an effort to attract funding
6 sources other than the government. Now, we hear from some
7 funding sources who have given to these sorts of programs, that
8 they feel that this is an extremely cost effective way of
9 solving problems.

10 All I am doing is raising the premise that perhaps you
11 ought to consider if that is another policy that you are seeking
12 to implement, that that ought to go into your mix in deciding
13 whether or not this becomes a barrier to attracting outside
14 funding.

15 Now, if you have already decided legally that you must
16 do this and you must restrict, that is a different issue. There
17 is nothing for us to talk about.

18 CHAIRMAN WALLACE: Are there other questions for Ms.
19 Garvey from members of the committee or members of the board?

20 (No response.)

21 CHAIRMAN WALLACE: Thank you for coming. I appreciate
22 your time.

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1 MS. GARVEY: Thank you.

2 CHAIRMAN WALLACE: Mr. Houseman, if you would come
3 forward? I have got to take a break and make a call because I
4 promised to do that when I got into town, but if you are getting
5 organized let me suggest how I would like to proceed with this.

6 I think we have very narrow issues before us.
7 Frankly, I would like to set a time limit on this and let both
8 sides talk and, frankly, just take it almost like an oral
9 argument.

10 Mr. Houseman, you can open and close because you have
11 got the burden of persuasion going after a regulation that is
12 already in place. Unless any member of the committee suggests
13 otherwise, I would like to limit this to half an hour a side.
14 Members of the committee should feel free to ask questions as
15 they arise within the bounds of getting on with our business.
16 Within an hour I hope we will have pretty well treated this
17 issue from both sides.

18 Is there any objection to proceeding in that fashion?

19 (No response.)

20 CHAIRMAN WALLACE: I would like to take a two or three
21 minute break and then get back here. We can get back here and
22 with a little luck we will be done about 6:30 and folks can have

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1 dinner before the board meeting.

2 (A short recess was taken.)

3 CHAIRMAN WALLACE: You are welcome to proceed, it is
4 good to see you and I hope you had a good trip out here.

5 STATEMENT OF ALAN W. HOUSEMAN

6 MR. HOUSEMAN: I was on vacation, too, Mike, also in
7 the wilds, the wilds of Colorado.

8 Let me just, before turning to my overall
9 presentation, let me just try to address something that just
10 came up. I want to start there because it is probably one of
11 the keys to one of the specific recommendations we make.

12 A- I understood what the general office said in
13 response to your question and Mr. Smegal's question, it was that
14 if you were training attorneys, paralegals or anyone else, so
15 long as all you were doing was informing them about what the law
16 is or is not, it would be permissible activity.

17 That is my understanding of what they said. I wish
18 that were true. If that were true, I think we can all go home
19 on the training issue at least, but that is not what the
20 regulation says.

21 What the regulation says in the face of it is that no
22 funds made available by the Corporation or private entities may

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1 be used to support or conduct training programs that disseminate
2 information about such policies or activities.

3 The word "such" in my view is referring to public
4 policies for political activities. You have defined public
5 policy in the regulation, Section 1612.1(i). It reads as
6 follows, the second sentence: "Public policy includes but is
7 not limited to statutes, rules and regulations already enacted
8 by a governing body."

9 Now, it is one thing to try and wash this away with
10 some back and forth in this committee meeting, but the fact of
11 the matter is that the regulation as written says that you
12 cannot conduct training programs that disseminate information
13 about existing law -- I am not talking about lobbying for
14 changes, just information about it -- unless you are training
15 attorneys and paralegals.

16 The problems we are having comes under precisely the
17 question that was asked, which is: You may be asked -- and a
18 number of programs are, and a number of programs have grants and
19 contracts to do it -- to provide training to social services
20 personnel, mental health agency personnel, church personnel,
21 non-profit organization personnel, none of whom are technically
22 attorneys or paralegals and they are asked to provide

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1 information, say, about the new immigration control Act.

2 The only way they can provide information is to
3 discuss what the law is. That is all they are doing.

4 My reading of this is, is it restricts you. If it
5 does not, what I suggest, if we don't mean to restrict that,
6 then lets spell it out in the regulation, we don't mean to
7 restrict it.

8 CHAIRMAN WALLACE: Let me just say, your recollection
9 of what it means is exactly what I recollect it means. That is
10 exactly what I meant it to mean and I think the general counsel
11 somehow has misread the regulation we wrote.

12 MR. VALOIS: Let me ask Alan a question. If you truly
13 mean providing information about the new immigration control
14 act, why can't the church group or the community group, whomever
15 it might be, get such information from the INS?

16 MR. HOUSEMAN: Because the INS does not go out and
17 give that information to people in an organized fashion. It
18 just does not do it. If you think it does it you are crazy, it
19 just does not do it.

20 Church groups, social service agencies are pounding at
21 Legal Services doors, they are pounding at the doors of the
22 American Bar Association and they are asking for information.

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1 INS has not and will not, has not, will not, go out and provide
2 that information.

3 MR. VALOIS: Putting the question of whether I am
4 crazy aside --

5 MR. HOUSEMAN: I did not say you were crazy, but what
6 is happening is crazy.

7 MR. VALOIS: The INS does provide such information,
8 and as far as I can tell, about every trade association, a group
9 of any kind you can imagine, is either sponsoring seminars or
10 putting on programs or writing things in a newsletter about the
11 immigration control. I do not --

12 MR. HOUSEMAN: Let me clarify that. That was one
13 illustration that was given. I know that a number of Legal
14 Services Programs have been asked to provide this information.
15 I know that in many places, including North Carolina, no one
16 else was available to do it. North Carolina Bar Association ran
17 a program in which the Legal Services people were asked to make
18 the major presentation on this.

19 I do not know anything more than that, I mean, I know
20 example after example. I am just saying your regulation, as I
21 read it, prohibits that.

22 What is ironic about it is that with private funds you

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1 can provide representation under the LSC regulations and under
2 the LSC rider to aliens whether they are legal or illegal. What
3 you cannot do, is you cannot train social services personnel on
4 something you can do.

5 What I have proposed in one of the proposals, which
6 has been a proposal before you before, is that with regard to
7 private funds you permit private funds to be used to train
8 around matters like the Immigration Control Act, where you can
9 use private funds to represent somebody. That is what our
10 proposal is. There is nothing more to it. That is what it says
11 and that is what I think you should do.

12 Now, the Act is different here than the rider. The
13 rider, appropriation rider, prohibits dissemination of
14 information on public policies or political activities unless
15 you train attorneys or paralegals.

16 The Act, on the other hand, explicitly says you can
17 provide, disseminate information, about public policies and
18 political activities. It is not restricted in the prohibition.

19 Here we have a classic case of the Act, which says one
20 thing a rider which says the other. What I am suggesting that
21 with regard to this issue, that you permit private funds to be
22 used for training what you can do directly with private funds.

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1 You can represent aliens with private funds under
2 existing LSC regulations. You ought to be able to train other
3 social services personnel and others with private funds if that
4 is what the private funds are given to you for. That is what my
5 position is.

6 CHAIRMAN WALLACE: Please go ahead. We have hit that
7 issue from both sides. I appreciate --

8 MR. HOUSEMAN: Let me just start out by saying I think
9 you are -- I am going to talk both about the constitutional
10 issues and our specific suggestions. I do not think you have
11 accurately characterized what letter from Senator --

12 CHAIRMAN WALLACE: I was not trying to characterize
13 the letter. I am trying to characterize what he said to me face
14 to face in the appropriations hearing.

15 MR. HOUSEMAN: I will say that letter explicitly made
16 reference to the fact that the regulation goes beyond
17 restrictions contained in the Appropriations Act and the Legal
18 Services Corporation Act.

19 I want to address both the constitutional issues and
20 what I think are ways that the regulation currently goes beyond
21 Section 1007.85 of the Legal Services Act.

22 Let me begin by the constitutional issues. We have

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1 prepared a brief -- I guess you call it a brief, I wouldn't but
2 it is at least a memorandum -- that lays out some of the legal
3 arguments that can be made with regard to those.

4 If you look at the cases, and here I am talking about
5 Reagan versus Taxation with Representation, the League of Women
6 Voters, Planned Parenthood and the case that I did not mention
7 in the brief and should have, a case which is entitled Federal
8 Elections Commission versus Massachusetts Citizens for Life,
9 which was decided in '86, 107 Supreme Court six, one, six.

10 If you look at those cases, I think there are two
11 basic black letter law conclusions that you can draw from them.
12 First, you can restrict federal funds under PRW, Taxation with
13 Representation. You can restrict federal funds with regard to
14 legislative activity even though it may restrict some
15 constitutional rights.

16 That is, federal grants can be conditioned to restrict
17 federal funds. There is no dispute about it under the case
18 laws. Secondly, however, you cannot restrict private funds for
19 first amendment usage, particularly speech, relating to the
20 process of government such as legislative and administrative
21 activity publication and training, those kinds of activities.

22 You cannot restrict it unless you cannot separate the

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1 restricted activities from the unrestricted activities. I think
2 that is the whole League of Women Voters case, Planned
3 Parenthood and the Federal Election Commission versus
4 Massachusetts Citizens for Life, if you read them carefully.

5 I have explored these in the memorandum, except in the
6 later case. The later case, by the way, just to clarify it, the
7 Supreme Court analyzed the constitutionality of Section 316 of
8 the Federal Election Campaign Act. That prohibited corporations
9 from using Treasury funds from making any expenditures in
10 connection with any election to any public office.

11 The plaintiffs were a non-profit corporation. They
12 mailed a letter to voters urging them to vote pro-life in an
13 upcoming election. The Supreme Court '86, held that the statute
14 applied on its face to the conduct.

15 Then the plurality said, it was a five-four decision,
16 the plurality held that because the Corporation could not
17 establish a separate segregated fund, that the restriction was
18 too broad and unconstitutional under the first amendment.

19 It dealt, in that case, with both the League of Women
20 Voters case and Taxation with Representation. The distinction
21 is that if you cannot separate restricted from unrestricted, on
22 the one hand you can restrict it, but if you can separate it you

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1 can restrict one side, but you cannot restrict the other.

2 Here, in LSC, you arguments, the general counsel's
3 position, the positions that you have asserted to Congress
4 continually attempt to make the case that allocations for funds
5 for overhead indirectly supports restricted activities as a
6 justification for your restriction.

7 The problem with that is simple. The problem is that
8 we have dealt with that problem in Regulation 1620. Part 1630,
9 which we labored over last year, the staff and I worked out a
10 compromise that is working, that regulation absolutely prohibits
11 a grantee from using LSC funds for overhead and then private
12 funds for restricted activities.

13 CHAIRMAN WALLACE: How do you deal with Buckley v.
14 Valeo when my inestimably generous board chairman wants to pump
15 thousands and thousands of dollars into Jack Kemp campaign
16 pockets, the federal government says Mr. Kemp cannot take that
17 money and Mr. Durant cannot give it to him.

18 Is it because there are no segregated accounts in the
19 business of running for president? How does that work?

20 MR. HOUSEMAN: There is a basic distinction in the
21 case law. Buckley, Letter Carriers, the Civil Service
22 Commission versus Letter Carriers, which is the Hatch Act case,

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1 and Smith v. Erlich, which is the Legal Services Corporation
2 case that the brief of the general counsel's office makes
3 reference to here, and your comments to Senator Rudman made
4 reference to -- all of these cases deal with electoral activity,
5 that is running for public office or spending for public office,
6 electoral activity.

7 There is a distinction drawn in those cases between
8 electoral activity and what they call political speech in those
9 cases. The Letters carriers explicitly said that if we were
10 restricting the right to vote or we were restricting the ability
11 of someone to make political opinions, to express political
12 opinion, to make political speech, it would be unconstitutional,
13 but we were not.

14 What we were restricting was the ability of a
15 candidate to run for public office. Now, Smith v. --

16 CHAIRMAN WALLACE: So, you are saying the electoral
17 activity -- I realize it is not you saying, you say the cases
18 say that electoral activity has less protection than ordinary
19 first amendment political speech?

20 MR. HOUSEMAN: That is correct and the cases draw a
21 distinction and I think the Leak Case, Planned Parenthood,
22 Federal Election Commission case, Taxation with

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1 Representation, make that clear.

2 CHAIRMAN WALLACE: Is there a different -- is the
3 difference in the type of the speech, or is the difference in
4 the weight of the public interest to be protected? I mean, is
5 there really that bright line between two types of speech or do
6 they just say in the electoral context, you have a much, much
7 greater public interest supporting restriction.

8 Which side -- where does the analysis come down?

9 MR. HOUSEMAN: The analysis essentially is that there
10 is a greater public interest in restricting electoral activity,
11 but when it comes to pure speech, political speech or voting
12 activity, that falls on the other side of the line. So, it is a
13 balancing test that they are applying.

14 Just as an aside, *Smith v. Erlich*, which is a case
15 against the Corporation in the early days, had to do only with
16 Part 1608 of the regulations. It had to deal with whether a
17 person could run for public office in a partisan election and--
18 a recipient staff member could run for public office in a
19 partisan election.

20 It did not deal with any of the issues we are talking
21 about here. That is, it did not deal with the kind of political
22 activity, as you define it, we are talking about here. So, that

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1 is not really a precedent and others for Buckley, for the issues
2 that I am raising.

3 Thus, in my view, under the constitution, as I have
4 tried to set out in this memorandum, I think the Corporation
5 cannot impose restrictions on private funds so long as the
6 private funds are segregated from the LSC funds, on all the
7 overhead and the indirect activity for those private funds. I
8 do not think the Corporation can impose restrictions on those
9 private funds with regard to legislative and administrative
10 activity, training and other activities regulated by 1612.

11 That is the fundamental position that I am asserting
12 on behalf of my clients.

13 Now, let me turn, however, to the second part of this
14 and briefly go over suggestions I have made, both --

15 CHAIRMAN WALLACE: Before you get out of
16 constitutionality, I have got what I consider to be the \$64,000
17 question here.

18 Is it your position that Section 1010(c) of the Act is
19 unconstitutional?

20 MR. HOUSEMAN: As regard to legislative activity, yes.

21 CHAIRMAN WALLACE: Okay, I am glad to see we are
22 playing on the same wave length. You can go on wherever you

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1 want now.

2 MR. SMEGAL: Do you agree with him?

3 CHAIRMAN WALLACE: No. I disagree with him, but I am
4 glad to know that our disagreements are neat and clean. I mean
5 I think we have the same constitutional authority for this
6 regulation that congress has for 1010(c).

7 I am glad to see that you agree. You just think
8 congress did not have any either and we do not have to argue
9 about that. We could be here all night if you had tried to draw
10 some distinction between them.

11 MR. HOUSEMAN: No, there is no distinction.

12 CHAIRMAN WALLACE: Good.

13 MR. HOUSEMAN: What I would say to you, though, is
14 given the constitutional problem I think you have to be
15 extremely careful how much private funds -- how you restrict
16 private funds.

17 That gets me to the statutory argument, not the
18 1010(c) argument which is resolved -- we disagree, but it is
19 resolved. It gets me to what I would call the 1007(a)5 argument
20 and the training argument. I have already dealt with the
21 training so let me stay away from that for the time being.

22 Now, with regard to the proposals that we made and the

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1 statutory argument, we have made, other than a relatively minor
2 proposal to change existing 1612.13(c), which I think is just
3 meant to bring it in line with what you and I tried to work out.
4 -- we have proposed five additional provisions inn 1612.13,
5 which, in my view, would bring this regulation in accord with
6 Section 1007.85 and would also express what I think is a
7 rational and a supportable public policy.

8 Let me go through each of the proposals that we have
9 made here. I talked at length about training. I just want to
10 say again that what we are proposing is that the restrictions in
11 1612.9 on training, which are not in the LSC Act, not be imposed
12 on private funds that only the restrictions in the LSC in
13 1007(b)6 be imposed on private funds with regard to training.

14 Programs ought to be allowed to train social service
15 agency personnel, health services personnel, mental health
16 personnel, private non-private personnel, if they get private
17 funds to do so, if they get a grant or a contract they ought to
18 be allowed to do so, so long as they do not advocate particular
19 public policies.

20 Our proposal would permit them to provide training
21 about the existing law so long as they do not advocate
22 particular public policy. That is consistent with 1007(b)6.

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1 Now, the second proposal, which is 1612.13(e), page
2 two, is that we would be able -- programs would be able to use
3 private funds to make representations in response to requests
4 from government officials or legislative or administrative
5 bodies.

6 What this proposal does is track the language in
7 1007(a)5, explicitly tracks it. It does not add on to the
8 gloss, which you have put on, in the existing LSC regulations
9 with regard to responses to requests.

10 The existing regulation, 1612.6, adds three
11 limitations on responding to requests. One is it must be in
12 response to a specific matter. Secondly, you can only respond
13 to the party who made the request, even if the party asks you to
14 respond to other people. Third, that you can therefore arrange
15 a request. We have been over this before with regard to LSC
16 funds.

17 Our proposal with regard to private funds is that you
18 ought to be able to respond to requests to the full extent
19 authorized by 1007(a)5 and that these three additional
20 restrictions should not be imposed on private funds. That is
21 that proposal.

22 Now, with regard to maybe the most controversial

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1 issue, although I am not sure that it is, coalition meetings.
2 This is one which I think you and I should have explored a
3 little more thoroughly in our public and private discussions.
4 Let me try to address it here.

5 What we are proposing in 1612.13(g) is very simple.
6 If you cannot use private funds to do something directly, you
7 ought to be able to use private funds to go to a coalition
8 meeting which discusses it. The existing regulation prohibits
9 private funds to go to a coalition meeting to discuss something
10 they can do with private funds.

11 Let me give you a simple example. Suppose there is an
12 existing coalition which you did not form and they are going to
13 discuss something about the LSC authorization for appropriations
14 or, to make it more -- bring it down home, they are going to
15 discuss what happens in many states now, they are going to
16 discuss something about a state appropriations for Legal
17 Services money.

18 Under the state restriction you have authorized,
19 Section 1612.13(a), you can directly use private funds to engage
20 in those activities. Yet, under 1612.3(f) you could not attend
21 a coalition meeting if they were going to discuss those
22 activities. That, to me, seems crazy, frankly.

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1
2 What my proposal is, is that if you can do something
3 directly with private funds you ought to be able to go to a
4 coalition meeting to discuss it. I tried to draft language that
5 says that. It maybe could be drafted better. We could put our
6 heads together on that, but frankly, this seems to me to be
7 straightforward.

8 "Recipient may use private funds for an employee to
9 attend meetings of coalitions so long as the employee does not
10 engage in activities in which private funds cannot be used."

11 It is straightforward and simple. It gives clear
12 guidance. It would allow you to do with private funds what you
13 are permitted to do directly. It would allow you do it
14 indirectly.

15 CHAIRMAN WALLACE: Suppose the coalition is engaging
16 in grass roots lobbying on that issue. I understand that you
17 may not be engaging in grass roots lobbying when you sit in the
18 room and talk about how important it is to preserve the
19 appropriation for the Legal Services Corporation, but if that
20 coalition walks out of the room and starts doing grass roots
21 lobbying, it seems to me you are right back where you were in
22 1981 when -- on which we have a GAO report of some substantial

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1 length.

2 Say somebody else formed the coalition, you did not,
3 but I am not sure that is a big enough distinction to satisfy
4 me.

5 MR. HOUSEMAN: You are raising two separate questions.
6 Let me go back. One question is grass roots, which I am about
7 to get to. Let me answer your question.

8 If you prohibit programs from doing grass roots
9 lobbying, I do not think that under this language you could go
10 to the coalition meeting and engage in something that is going
11 to lead to grass roots lobbying.

12 Now, let's get to grass roots lobbying. This is an
13 issue that I think is probably the bell weather of all of this
14 stuff.

15 First of all, let's start with GAO opinions. The GAO
16 opinions never discuss private funds. There is no mention
17 anywhere in any GAO opinion about private funds.

18 The activities that GAO is focusing on that occurred
19 in 1980 and 1981, occurred prior to 1980 and 1981, after 1980
20 and 1981, had to do with LSC funds. GAO has not dealt with this
21 issue of private funds in this context.

22 Secondly, the question is: Can you under Section

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1 1007(a)5 of the Legal Services Corporation Act, engage in grass
2 roots lobbying? I think you can if you fall within the
3 exceptions. There are three exceptions in Section 1007(a)5 of
4 the LSC Act.

5 One exception permits, if you go to Section 1005, it
6 is structured this way. Section 1007(a)5 says you cannot
7 indirectly or directly concert things and then it has three
8 exceptions. The first exception is legal advice and
9 representation on behalf of eligible clients. The second
10 exception is responding to a request from a legislator or
11 somebody. The third exception is, and there is no limits on
12 this exception. You can engage in self-help lobbying, et
13 cetera.

14 It seems to me, reading the Act, if, as I believe,
15 Section 1007(a)5 restricts grass roots lobbying in the
16 prohibition section, if you fall with the exceptions, you can
17 engage in grass roots lobbying only if you fall within the
18 exceptions and only if the exceptions apply.

19 What I have proposed is what I think is a reasonable
20 effort to accommodate this view with regard to private funds--
21 let me be quite clear, we are not talking about LSC funds--
22 grass roots lobbying is absolutely prohibited with LSC funds.

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1 The rider makes that explicitly clear. If there is any doubt
2 about that the rider clarifies that beyond any question. I am
3 talking about private funds.

4 It seems to me you can engage in grass roots lobbying
5 if it is necessary to the provision of legal advise and
6 representation with respect to a client's legal rights and
7 responsibilities. That is one exception.

8 Secondly, if the program is engaged in self-help
9 lobbying permitted under the regulation or under the Act. In
10 those circumstances, it seems to me, you can engage in grass
11 roots lobbying with provide funds.

12 I have proposed Section 1612.13(h) on behalf of the
13 clients -- I have proposed you adopt that which would permit
14 that activity. Now, you say one of the possible responses to
15 this, which I would anticipate is that legal advise and
16 representation does not involve grass roots lobbying, but of
17 course it does.

18 If you were before a legislative committee and you
19 were representing a client, you are going to talk to other
20 lobbyists about your views and ask them to support you. That is
21 grass roots lobbying.

22 MR. VALOIS: I am not sure I agree that that is grass

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1 roots lobbying.

2 MR. HOUSEMAN: It is under this regulations. Mike
3 will agree with me.

4 CHAIRMAN WALLACE: I think so. I have no argument
5 with you on what it means.

6 MR. VALOIS: Under this regulation?

7 MR. HOUSEMAN: Yes, but that is what we are talking
8 about. My point is that if you can -- that the statutory
9 language is broad enough to include that kind of activity if it
10 is necessary for legal advice and representation. I do not
11 think that is an example of how that plays out in the real
12 world.

13 In my view, the private funds under Section 1007(a)5,
14 you can engage with private funds in legislative representation
15 if you fall within the exceptions.

16 The final suggestion, proposal that we have is to deal
17 with what I call the grandfather situation. Here is the
18 situation. A number of existing grantees have grants or
19 contracts, private foundations, to engage in activities that
20 this regulation now restricts. Many of these -- what I am
21 talking about is grants or contracts that were entered into
22 before this regulation became effective.

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1 Our proposal is that you allow programs to fulfill
2 existing contracts, obligations under such grants or contracts,
3 from a private donor that were entered into before the
4 regulation became effective.

5 CHAIRMAN WALLACE: Some grandfathers live a long, long
6 time. We haven't seen any of these grandfathers. How long do
7 you think is a reasonable time to disengage.

8 MR. HOUSEMAN: Most of the contracts and grants that I
9 am familiar with run from a year to two years. I have not seen
10 anything longer, which is not to say there are not some even
11 longer. My guess would be that for those private foundation
12 contracts or grants, most United Way grants, those kinds of
13 things, run either one year or two years or eighteen months. It
14 varies. I have never seen any that run over two years duration,
15 so I don't think we are talking here of very long.

16 Let me give you some practical examples of this.

17 MR. SMEGAL: Aren't those subject to renewal on the
18 same terms and conditions?

19 MR. HOUSEMAN: Yes. Let me give you some practical
20 examples. I know some local programs that have contracts with
21 the United Way to train social services personnel, mental health
22 personnel, et cetera. It involves the dissemination of

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1 information. We are sort of back to the training thing. It
2 depends on how you resolve some of these how necessary this is.

3 There are a number of programs that have such a
4 contract. I think you have a comment from a couple of programs.
5 One was the Legal Services in North Carolina, as a matter of
6 fact, that talked about some of this.

7 They have contracts from United Way or other
8 organizations to train people on various things that would be
9 restricted under the new regulation. Programs have contracts to
10 prepare analysis of regulations and distribute them. Under the
11 way we have now interpreted publicity or propaganda, which is a
12 new interpretation, under that interpretation as we have ironed
13 it out, some of what they were doing and have contracts to do,
14 they could not do under this regulations. That is another
15 example of this.

16 The third example is a number of programs have
17 contracts to prepare publications about public policy, which may
18 in the course of the publication cross publicity or propaganda
19 lines as we have now interpreted it.

20 Those are examples of situations that are practical
21 that arise today, that I think ought to be grandfathered in.

22 CHAIRMAN WALLACE: Let me ask. I think I understand

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1 the point, anyway. The half hour is up and I have got one
2 question I want to ask and I think some other people may have a
3 couple, but my one question is this: Do we have the
4 constitutional authority to say as of today or as of a year from
5 now or as of some point in time, we will no longer do business
6 with people who also do business with private donors?

7 It is not a question of trying to restrict how you use
8 private funds, it is simply saying we have the right to choose
9 with whom we are going to enter grants and contracts. Can we
10 say that we simply will not choose to contract with people who
11 are going to take private funds and cause all of these
12 accounting headaches. Are there any constitutional infirmities
13 with that position?

14 I am not saying we take it, but I am trying to carry
15 your constitutional analysis out to what I think is the final
16 point on the line.

17 MR. HOUSEMAN: I think you do and that is, if you are
18 imposing a penalty on the exercise of a constitutional right,
19 and that arises through a real penalty with regard to private
20 funds, then I think you have crossed the constitutional line.
21 That follows from Shapiro versus Thompson and a line of cases
22 that talked about penalizing constitutional rights, the exercise

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1 of constitutional rights. It is carried through in the League
2 of Women Voters, Planned Parenthood Case and it seems to me
3 Reagan versus Taxation with Representation as well.

4 If you, in fact, are going to penalize the exercise of
5 constitutional right, that is a recipient using private funds to
6 do something you do not want them to do, you are not going to
7 give them a grant. I think that crosses the line.

8 CHAIRMAN WALLACE: What we have here is a case where
9 congress has set up a program and instead of doing what it could
10 have done, which is to put federal civil servants in offices all
11 over the country, it chose to deal with 501(c)3 corporations.
12 Your view is that having made the decision to deal with
13 corporations established under the laws of the several states,
14 congress cannot tell those corporations as a condition of
15 receiving grant, that they cannot take money from private
16 foundations?

17 MR. HOUSEMAN: I think the direct implication of
18 Planned Parenthood was that, because Planned Parenthood was
19 precisely that case. The State of Arizona said to Planned
20 Parenthood you cannot use any private money for abortion
21 counselling, abortion related activities or we are not going to
22 give you any state money.

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1 That went up and it is a summary affirmis and I think
2 we both understand that that is not the same weight as a full
3 opinion, but court in the summary affirmis of the 9th circuit
4 said you could not do that.

5 MR. VALOIS: Is that the condition of a new grant?

6 MR. HOUSEMAN: Oh, yes. The Arizona statute
7 explicitly prohibited going to any organization that used
8 private funds and was a grantee situation. It is directly
9 analogous to this.

10 MR. VALOIS: Would you also consider analogous, as a
11 penalty at least, the prohibition put on federal employees to
12 engage in political activities -- the same kind of penalty?

13 MR. HOUSEMAN: I said there is distinction in the case
14 law between electoral/political and political speech. It is
15 drawn in these cases. I have analyzed them and the Supreme
16 Court has analyzed them.

17 MR. VALOIS: I am having a little bit of trouble
18 understanding what is meant by penalty. In the case of the
19 federal employee, he can go to work elsewhere after settling
20 whatever the consequences are of having engaged in political is;
21 is that right? The penalty is that he has to go to work
22 someplace else?

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1 MR. HOUSEMAN: Well, you asked the penalty --

2 MR. VALOIS: That is what I am trying to figure out.
3 What do you mean by "penalty"?

4 MR. HOUSEMAN: I think we are mixing apples and
5 oranges. What the Supreme Court has held is that with regard to
6 electoral activity, it does not rise to sufficient protection
7 that restrictions on electoral activity by federal employees, in
8 this case LSC staff attorneys, that that is not sufficient
9 enough to raise suspicion on a first amendment activity, that
10 congress cannot restrict it.

11 MR. VALOIS: But, in Buckley v. Valeo, on the other
12 hand, congress can control certain sorts of political activity;
13 right?

14 MR. HOUSEMAN: No, electoral activity. That is what
15 Buckley versus Valeo was all about. It was not about lobbying.
16 It was not about political speech. It did not involve voting
17 rights.

18 MR. VALOIS: Now, tell me about the penalty you are
19 talking about in these cases.

20 MR. HOUSEMAN: There is a line of cases -- Shapiro
21 versus Thompson is the classic case in this line, which is an
22 equal protection case -- which say that you cannot penalize

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1 somebody -- the federal government cannot impose laws which
2 penalize the exercise of a constitutional right.

3 What I was responding to Mr. Wallace was that if the
4 Corporation is going to take a position that you are not going
5 to give LSC money that use private money to engage in activities
6 you do not like or you think should not be done -- the question
7 was; Is that constitutional? My answer was no.

8 MR. VALOIS: Tell me what the penalty is? What is the
9 penalty?

10 MR. HOUSEMAN: You are penalizing them from getting
11 LSC funds.

12 MR. VALOIS: Penalizing them from getting, now you are
13 -- do they have a constitutional right to get?

14 MR. HOUSEMAN: No, that is not the point of Shapiro.
15 There is no constitutional right to welfare.

16 CHAIRMAN WALLACE: What about the Hyde Amendment case?
17 The Supreme Court decides it is a penalty or an encouragement
18 depending on which way it wants the case to come out. What is
19 the difference between the right to an abortion and you can't
20 get Medicaid for that, that sounds like a penalty to me.
21 Anybody with common sense would call it a penalty.

22 Is the difference that the things we are talking about

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1 are in the first amendment and abortion is just something Harry
2 Blackman made up?

3 MR. HOUSEMAN: No. The difference is that you are
4 only restricting federal or state funds. You are only
5 restricting governmental funds. You were not restricting
6 private funds. That is -- the Hyde Amendment cases dealt with
7 the question of whether federal funds could be restricted.

8 CHAIRMAN WALLACE: You just told me that federal funds
9 cannot be restricted on the basis of the exercise of a
10 constitutional right. That is just not so. The Hyde Amendment
11 -- Rowe v. Wade says you have got a constitutional right to
12 abortion. The Hyde Amendment case, the name of which escapes
13 me, says we ain't going to give you no money.

14 MR. HOUSEMAN: The Hyde Amendment case, McCray,
15 ultimately finds that there is not a penalty on the --

16 CHAIRMAN WALLACE: That is typical Lew Powell gobbly-
17 gook; isn't it? That is a penalty and everybody knows it is a
18 penalty.

19 MR. HOUSEMAN: They say it isn't.

20 CHAIRMAN WALLACE: Okay.

21 MR. HOUSEMAN: In the analysis it is, whether it is
22 Lewis Powell gobbly-gook or not, the analysis is that there you

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1 are talking about restrictions on federal funds, which I concede
2 you can impose restrictions in the first amendment area or in
3 any other constitutional area on federal funds. You can
4 condition a grant with federal funds with certain -- we are
5 talking about a different thing.

6 We are talking about private funds. What you and I
7 are talking about is how far can you go with regard to federal
8 funds and can you ultimately say to a recipient, "If you are
9 going to use private funds to do something, we are not going to
10 give you any federal funds."

11 I think that crosses the line established by Shapiro,
12 it may not. I think it does.

13 CHAIRMAN WALLACE: Mr. Smegal is next.

14 MR. SMEGAL: I thought I heard Mike asking a broader
15 question than I heard you answer. Let me give the analogy that
16 I thought Mike was seeking.

17 In San Francisco there is a San Francisco Neighborhood
18 Legal Assistance Foundation who, because of the limitations on
19 the federal funding that they were receiving went to the Bar
20 Association of San Francisco who set up a pro bono panel to
21 handle uncontested dissolutions.

22 Let's assume that rather than going to the San

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1 Francisco Bar Association, SNIFLAF, had gone out to a foundation
2 and said, "Give us some money to do uncontested dissolutions
3 because our federal funding is now insufficient in our list of
4 priorities to continue to do that."

5 The next question was: Don't we have the right to
6 tell SNIFLAF that if they go and get private funding to do
7 uncontested dissolutions, we are not going to give them the
8 federal money? That was Mike's question that I heard him ask.

9 MR. HOUSEMAN: That is a far broader question.

10 MR. SMEGAL: That is right. That is a far broader
11 question than the answer you gave.

12 MR. HOUSEMAN: I would probably take the same
13 position. That is, I would probably take the position that if
14 you are engaged in legal assistance activities covered by the
15 first amendment, you could not penalize the exercise of those
16 activities by preventing private funds to be used for that.

17 There are a lot of different distinctions here, but I
18 mean -- as a broad answer, and I think there may be some
19 examples where that is not the case, but we have to go example
20 by example.

21 We are talking about legislative, administrative
22 representation.

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1 MR. SMEGAL: The question was: If you don't want to
2 play our game, you don't want to play our game. Our game is we
3 will give you federal money as long as you don't get any other
4 money.

5 MR. HOUSEMAN: I think that there are problem with
6 that with regard to certain activities, maybe most of the
7 activities of the recipients if not all.

8 CHAIRMAN WALLACE: Ms. Bernstein?

9 MS. BERNSTEIN: Alan, don't we also have this problem
10 coming up in a lot of other areas where choices have to be made
11 by various entities if they want federal funds? In the
12 education area, in a lot of other programs where grants are
13 solicited either the federal restrictions go with it or you do
14 not get the grant. That may mean that you actually are
15 infringing on what would be arguably a first amendment right,
16 especially in the religious area.

17 The hospitals that are not taking federal money
18 because they do not want certain restrictions on or certain
19 mandates regarding their doing abortions. Aren't there
20 situations even in the Grove City area that you ask yourself the
21 question, if you are able to make the decision as a grantee that
22 either the solicitation of this grant and the restrictions that

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1 go with it are what is important and we can then either -- we
2 don't do these activities, this is not as important, or a
3 separate organization does the other activity.

4 See, our problem is really an accounting problem
5 because we are trying to enforce an act that says you don't do
6 something with our money that is -- something with private funds
7 that would not be permissible with LSC funds, and that is a
8 condition of the grant.

9 I think what Mike is asking is if we just start from
10 square neutral and say, "You do not have a right to these funds.
11 If you want these funds, here are the rules that go with it."

12 You are saying that constitutionally we cannot do
13 that?

14 MR. HOUSEMAN: Constitutionally you can do --

15 MR. SMEGAL: Excuse me, before you answer that.
16 Haven't we laid to rest by 1630 the question of accounting?

17 CHAIRMAN WALLACE: I do not know. I do not see my
18 accountant here and I do not know if 1630 is working or not. I
19 just don't know the answer to that, that we have laid it to
20 rest. Theoretically, we wrote a beautiful regulation. I have
21 no knowledge of how it is working in practice and there is
22 nobody here whom I can ask that question.

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1 What I think this question is is this. Look at good
2 old Bob Jones. Bob Jones has a first amendment right to do all
3 kinds of awful things, but the IRS has penalized him for doing
4 all of those awful things which are thoroughly protected by the
5 first amendment.

6 Now, I just think that is pretty obvious. Grove City
7 is not Bob Jones and it is not doing awful things and it has
8 first amendment right to do lots of things with private money,
9 but the federal government has said, nonetheless, we can control
10 how you run your university.

11 Now, what is the difference between Grove City and Bob
12 Jones on the one hand and the people who cash our checks on the
13 other? There rights are religious or associational as opposed
14 to political or electoral?

15 MR. HOUSEMAN: No, of course not. I think there is a
16 basic distinction between Grove City, Bob Jones I am not as
17 familiar with. What Grove City involved was the extent of which
18 federal funds restricted certain activities within the
19 university context, not to the extent to which private funds of
20 that university that were separated from the federal funding, as
21 I understand Grove City.

22 Grove City did not deal with the segregation issue.

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1 CHAIRMAN WALLACE: I understand that.

2 MR. HOUSEMAN: -- with the separation of funding
3 issue.

4 CHAIRMAN WALLACE: But, it dealt with penalties for
5 the exercise of first amendment rights.

6 MR. HOUSEMAN: Absolutely.

7 CHAIRMAN WALLACE: Let me say, if there are no further
8 questions from the board, I would like to get on to the general
9 counsel. We ran a little over time, but I imagine a good bit of
10 what you all were prepared to say, we have hashed out at this
11 point. If that ain't so, say anything you need to say.

12 MR. SHEA: Yes, in many respects it already has. I
13 think we can be fairly brief. With respect at the outset with
14 respect to training, I do not think that we disagree with the
15 result that both Mr. Houseman and the Chair expect out of the
16 regulation.

17 I think the issue here that Mr. Houseman is pressing,
18 and there is something to it. The issue is do those words say-
19 - do those words actually permit this interpretation. I think
20 fundamentally that would depend on the interpretation of the
21 words "such policies or activities" is 1612.9(a)3.

22 I do not pretend, I will have to tell you, there is

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1 probably some ambiguity there, but it has been our view that
2 "such" referred back to the advocacy and the encouragement that
3 are identified in parens one and two before it.

4 CHAIRMAN WALLACE: Everybody knows how little regard I
5 have for legislative history, but I sure did not think I had
6 made that in the least big ambiguous when we wrote it. So, put
7 it any way you deem fit.

8 MR. SHEA: I might add that in the preamble there is a
9 statement there that learning about the law is entirely
10 different from undertaking to influence officials or instructing
11 people how to influence public officials.

12 All I am suggesting is I do not think we are disagree
13 as to the result, but maybe some notion as to whether those
14 words could be honed in some different fashion.

15 CHAIRMAN WALLACE: They cannot be honed here, really,
16 because that is not part of 1612.13, but in any event we have at
17 least codified our confusion. Let's talk about thirteen for a
18 minute.

19 MS. GLASOW: I would like to try to distinguish
20 between the Planned Parenthood case and the LSC situation.
21 First of all, it is my opinion that the cases are not dealing
22 with just electoral activity. They are dealing with some type

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1 of political activity that congress has determined is an evil in
2 that it interferes with the political process as such.

3 Congress chose in the Hatch Act to limit certain
4 political activities of federal employees. There is a long
5 history of why they wanted to do that. The court upheld those
6 restrictions. They did not even use strict scrutiny in those
7 cases. They just looked to see whether the government had a
8 interest. It really was because they understood the evil that
9 was caused by federal employees being involved in certain
10 political activities.

11 Those cases do deal with political activities.
12 However with the Legal Services Corporation congress chose not
13 to make us a federal agency. Instead, they wrote an act that
14 made us a nonprofit corporation.

15 However in the act they chose, again, to limit certain
16 political activities that they felt were important in a legal
17 services atmosphere. They did not just limit the political
18 activities of the corporation employees, but they went straight
19 to the recipients and their employees. It is very clear in the
20 act that there are certain political activities they felt would
21 interfere with the political process as such.

22 I think our case is much closer to the Hatch Act cases

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1 than other cases. In the Planned Parenthood case, surprisingly,
2 that case did not even deal with Reagan or the League of Women
3 Voters. I think the difference there is the right they were
4 talking about, the abortion right, the courts bent over
5 backwards to protect that right and it is totally different from
6 a case of Legal Services Corporation. We are much closer to a
7 federal employee type of a case.

8 I do not think congress would use strict scrutiny in
9 our situation. I think they would find, if they had determined
10 that certain political activities in our situation were unwise
11 for the political process. I feel in that sense, it can be
12 distinguished from our situation.

13 CHAIRMAN WALLACE: Mr. Shea?

14 MR. SHEA: I just want to add two other quick points
15 in that regard. One is, there is no flat prohibition for this
16 activity. I think it is important. In these other cases there
17 was a flat prohibition at least in the League of Women Voters on
18 various kinds of editorializing.

19 Here, there is political activity that is permitted in
20 the self interest of our recipients. Under 1612.13 there are
21 exceptions for -- if there is a client available, so it is not
22 an absolute prohibition across the board.

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1 Now, finally, our point is and this is the position we
2 make as part of our paper and that is, this regulation is
3 indistinguishable, in effect, from 1010(c) insofar as it simply
4 applies 1010(c) and it does not extend it in any fashion.

5 CHAIRMAN WALLACE: Are there any questions from
6 members of the committee or members of the board for the general
7 counsel's office?

8 MR. VALOIS: I do not want to get us off chasing
9 rabbits, but was it -- did you all talk about, Michael, in the
10 hearings leading up to his regulation, the extent to which we
11 are interested in controlling the time and activities of the
12 employees of grantees as well as our own employees?

13 Assuming that Alan is right or wrong about what they
14 can or can't do, should or shouldn't be doing, they still are
15 employees of our grantees. They have only got, like the rest of
16 us, so much time. If they are engaging in a project in which we
17 say they should not be engaging in, but they are using private
18 funds to do it, they are still using employee time or grantee
19 employee time.

20 I think we do have a right to speak to that because we
21 have some duty to supply enough people to accomplish the
22 purposes of Legal Service Corporation Act. Did you talk about

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1 that at all?

2 CHAIRMAN WALLACE: In the course of three years we
3 have talked about just about everything and that has been
4 mentioned. I mean the notion that we have an investment in the
5 staff of the corporations, many of which exist because of the
6 Act. It is like a non-competition agreement. I mean, you put
7 money into somebody and you expect him to be devoting his time
8 to the purposes that congress set up in the Act.

9 And it not just, well somebody else paid him those
10 three hours, you have got a lot of capital invested in this
11 fellow. It has been mentioned, but it has not been dwelt upon.

12 MR. VALOIS: Let me ask Alan. Alan, suppose there is
13 a grantee program in North Carolina or South Carolina or
14 anywhere and we will take this specific immigration reform act
15 and everybody in the community wants our guy to come out and
16 talk about immigration reform for three or four days out of a
17 month.

18 Do we, as Legal Services Corporation grantors, have
19 any right to say we would much prefer that that fellow's
20 activities be directed to something else. Do we have any
21 control over that?

22 MR. HOUSEMAN: You have some control but not as much

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1 as you would like. The reason you don't is because Section
2 1007(a)2 explicitly states that the priorities for service by
3 grantees are to be set by local boards and that local boards
4 are to make the kind of resource allocation decisions that we
5 are talking about except if there are other restrictions in the
6 act that congress has imposed.

7 With regard to representation of aliens and the
8 Immigration Control Act, congress has imposed some restrictions
9 on LSC funds. It has not imposed restrictions on private funds
10 and a local board could make a decision to use some of those
11 private funds or public funds or any other funds they have,
12 assuming they were not LSC funds, to do that activity. That
13 would be permitted.

14 So, there is a restriction on what you can do and
15 can't do with regard to legal assistance activities. It is
16 Section 1007(a)2, priority section.

17 MR. VALOIS: When these folks go out doing this stuff,
18 do they take themselves off the grantee's payroll?

19 MR. HOUSEMAN: No, they don't have to because they are
20 using private funds. They have to make sure they do because all
21 the costs indirect and direct are charged to private funds.

22 MR. VALOIS: Including their own salaries and

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1 everything?

2 MR. HOUSEMAN: Sure, time and all the rest. They have
3 to have some sort of an activity that does that. It probably
4 requires some timekeeping.

5 CHAIRMAN WALLACE: Are there any other questions or
6 comments from members of the board?

7 MR. SMEGAL: Yes, I have a question for Tim Shea. In
8 Mike's material, which is not dated, but came to somewhere along
9 the way. I guess it was copied to me in a letter that Martha
10 Bergmark sent to you dated August 17.

11 CHAIRMAN WALLACE: Do you mean Mr. Houseman's
12 material?

13 MR. SMEGAL: I am sorry, what did I say? I meant Mr.
14 Houseman.

15 CHAIRMAN WALLACE: It is the shell shock of three
16 years of this.

17 MR. SMEGAL: I am sorry if I misspoke. The comment I
18 would make or the observation or question I would ask of you,
19 Tim, is with respect to Mr. Houseman's material in part one
20 subsection Roman Numeral two, there are a series of proposals
21 for amendments a, b and c.

22 If we could first focus on c, which is Mr. Houseman's

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1 recommendation and five additional subsections added to 1612.13,
2 to delineate activities that could be accomplished with private
3 funds. Do you have any comment on that? Certainly your paper
4 did not speak to that because it was prepared ahead of that I
5 understand.

6 MR. SHEA: Actually, we tried to address what we
7 called threshold issues, that is the matter of
8 authority/constitutionality.

9 MR. SMEGAL: I understand.

10 MR. SHEA: We were not trying to address, at least in
11 our paper, matters for exercising the board's discretion.

12 MR. SMEGAL: I understand, but I am just asking for
13 your comments on Mr. Houseman's position under subsection roman
14 numeral two, part one. What is your reaction to the proposal
15 that there be sections E through I? Do you have any comments?

16 MR. SHEA: I guess we have not formulated one, per se.
17 I do not think we do, no.

18 MS. GLASOW: Basically, we felt this was up to the
19 board's discretion. They have the authority to reject these
20 suggestions. They have the authority to decide they may like
21 another exception. They have chosen four exceptions to the flat
22 prohibition in the past. We just felt these were policy matters

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1 under the board's discretion.

2 CHAIRMAN WALLACE: If I may say, Mr. Smegal, I think
3 for comments on policy, how this would work in practice, we
4 would do better if we would address it to the monitoring
5 accounting people who are not here.

6 There is not a lot the general counsel could tell us,
7 I think, about how this would work out in practice. It is a
8 question of experience and it is also a question of compromise.

9 MR. SMEGAL: Would you anticipate we will have an
10 opportunity to direct such questions to the people in
11 monitoring?

12 CHAIRMAN WALLACE: Mr. Bayly, are people in monitoring
13 here?

14 MR. BAYLY: No, Mr. Chairman, there is no one here
15 from monitoring as I had not expected we would want a report on
16 issues of this sort but the experience has been and -- how we
17 would predict monitoring would find this additional language.

18 CHAIRMAN WALLACE: All I can say is, we have not got
19 them? Tomorrow we will look for the rest of the comments. If
20 the committee decides it wants to vote or not to vote on this,
21 tomorrow that is where it will be. If there is majority
22 sentiment to hold it over for the next board meeting, whenever

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1 that is, we could have the monitoring people available.

2 I think that is going to have to wait until the second
3 half of the meeting tomorrow. Mr. Shea, were you about to say
4 something?

5 MR. SHEA: If you would like us to prepare for the
6 next meeting recommendations we would be happy to do that.

7 CHAIRMAN WALLACE: I will state my own view. I think
8 that after three years most of us ought to have a sense of how
9 these things work in practice.

10 I certainly interpret Senator Rudman's remarks to me
11 at the Appropriation Hearing to focus not on mechanics, not on
12 the wisdom, not on the practicality, but entirely on the
13 constitutionality of the issue. Since the committee has asked
14 us -- well, I do not know how you interpret the letter, but I
15 interpret the letter to "get moving quick or we may do something
16 about it in September."

17 So, I hope to answer the questions that are before us,
18 one way or the other, tomorrow. That may not be the majority
19 sentiment of either the committee or the board. I think we know
20 enough to act.

21 MR. SMEGAL: I guess if I may, if you will indulge me
22 one further comment? If votes are going to be taken, as you

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1 know, I cannot be present, but I would like it known that
2 assuming various votes are taken, one of the votes I would like
3 to see taken is the possibility of amending not only 1612.13 in
4 the way Mr. Houseman has indicated in part one of his material,
5 but also the corresponding sections which refer to private funds
6 that are set out in subsection roman numeral two, segments A and
7 B.

8 I appreciate I cannot make that motion today. I do
9 not intend to, but I would like this board, if it gets to the
10 board, Mr. Wallace, from this committee that those lesser
11 included proposals be considered in some form.

12 I believe from my comments you can appreciate where I
13 would vote.

14 CHAIRMAN WALLACE: I certainly do and I think out of
15 courtesy to you, we can certainly vote on those things. If we
16 vote at all, I think we can vote on those things tomorrow and
17 get the board on record on these issues.

18 MR. SMEGAL: I might say that the reason I have stated
19 what I have is that I feel with the kinds of changes Mr.
20 Houseman has proposed here, we may not have to trouble ourselves
21 with the constitutional issues.

22 I think the kinds of things that are set forth in E

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1 through I of his proposed 1612.13 go a long way to responding to
2 the concerns that I have heard expressed by various of our Legal
3 Service Corporation grantees. Thank you.

4 CHAIRMAN WALLACE: Are there any further comments from
5 members of the board?

6 (No response.)

7 CHAIRMAN WALLACE: I thank you all and again, at the
8 close of business in Washington, D.C., tomorrow, we will
9 reconvene the committee and have such discussions as may be
10 appropriate at that time. Thank you everybody for your patience
11 today.

12 I ask unanimous consent that this committee stand in
13 recess. Hearing on dissent, so ordered.

14 (Whereupon, at 6:35 o'clock, p.m., the committee was
15 recessed.)

16

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P R O C E E D I N G S

1
2 Whereupon, the Operations and Regulations Committee
3 reconvened on August 28, 1987, at 3:40 p.m.

4 CHAIRMAN WALLACE: I apologize for length of the
5 board's executive session. We have called the meeting to order.
6 Let me report on what we have perceived in the final round of
7 comments. We have had additional comments come into the office
8 in Washington before the close of business. We have them here,
9 I have read them and I am happy to represent to the committee
10 that Mr. Houseman has done his usual thorough job of covering
11 the concerns of recipients of our funds.

12 The concerns that are expressed in these comments
13 basically break no new ground other than what has been
14 thoroughly discussed yesterday and in the past. There is a
15 comment from someone that is not our recipient, Washington Legal
16 Foundation.

17 Washington Legal Foundation in commenting on Section
18 13 thinks we ought to repeal all of it; that there should be no
19 exception to private funds.

20 So, on the one hand, we got what we always get on this
21 regulation, which is the people who get the money want fewer
22 restrictions and the conservative, public interest foundations

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1 want to have more restrictions -- you know, will wonders never
2 cease. In any event, that is where we are. We have basically
3 added nothing new to the discussion from yesterday.

4 At this point, I believe it is appropriate for the
5 committee to address the regulation and to deal with any changes
6 that may need to be made.

7 Let me state my own views at the outset and, then,
8 anybody that wants to make a motion can make one. I believe
9 that with regard to Section 13(c), Mr. Houseman's proposed
10 qualifier, the last words that apply to private funds, basically
11 does remove an ambiguity that might otherwise exist.

12 What we have said and what we intended to say, I
13 thought, was that dues may be paid to tax exempt organizations
14 so long as those funds are used only for purposes permitted by
15 the act and all regulations adopted thereto that apply to
16 private funds.

17 Basically we were saying that if you cannot use
18 private funds in your organization, you cannot use it by paying
19 dues to another organization.

20 Obviously, regulations that do not apply to private
21 funds would not attach to this money whether it is in the hands
22 of our grantees or in the hands of a dues recipient. If this is

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1 in any way ambiguous, I have no problem, myself, with adding
2 these few words to the end of (c).

3 I also believe that it would be appropriate to adopt
4 something of a grandfather clause with a very short fuse. I do
5 not want grandfathers to live forever. I think people want to
6 have a period of some months in order to wind up their
7 relationships in an orderly fashion and I will have some
8 language to propose on that at the appropriate time.

9 Other than that, I am going to have nothing else to
10 propose to this regulation. I believe it is constitutional. It
11 is at least as constitutional as 1010(c) which I think we all
12 agree. I think that we are entitled, indeed almost required--
13 not required, but almost required -- to assume that the statute
14 that gives life to this corporation is constitutional.

15 I think if we were to assume that 1010(c) was
16 unconstitutional or, indeed, if we were to assume that any other
17 portion of the statute was unconstitutional and declined to
18 enforce it, we would be treading on very thin ice, indeed.
19 Because I believe 1010(c) is constitutional I believe these
20 regulations are constitutional and in my mind that settles the
21 main question we came here to discuss.

22 Mr. Smegal, before he left, asked us to have a

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1 recorded vote on the amendments that Mr. Houseman has proposed
2 to us. It is my view that we should go ahead and vote on those
3 amendments on block, so we can have a recorded vote. Mr. Smegal
4 has already told us how he would vote, and, again, as I say, I
5 have a few amendments of my own that I will offer at the
6 appropriate time.

7 Before we start running through all of that, are there
8 other members of the committee who would like to either take
9 issue with my proposed order of business, or have other
10 amendments of their own that they would like to propose to this
11 regulation?

12 (No response.)

13 CHAIRMAN WALLACE: Hearing no dissent, then, what I
14 will do is this: I am going to go ahead and move it and I ask
15 somebody to second it in accordance with my assurance to Mr.
16 Smegal.

17 MOTION

18 CHAIRMAN WALLACE: I would move that we adopt in block
19 the amendments to part 1612 of the regulation which appear on
20 pages 1 and 2 of the PAG NLABA proposal given to us by Mr.
21 Houseman. Is there a second so that we could have a vote?

22 MR. EAGLIN: Second.

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1 CHAIRMAN WALLACE: This is committee meeting at this
2 point, Mr. Eaglin.

3 MS. BERNSTEIN: To adopt them?

4 CHAIRMAN WALLACE: To adopt them in block.

5 MR. DURANT: You mean these are Mr. Smegal's?

6 CHAIRMAN WALLACE: This is what Mr. Smegal asked us to
7 do -- was to have a recorded vote on whether or not to adopt
8 these. I told him if at all possible I would try to do that.
9 So I think that we need a second and then we can vote. He has
10 told us how he would vote and we can all go ahead and vote our
11 way.

12 MR. MILLER: I second.

13 CHAIRMAN WALLACE: It has been moved and seconded. Do
14 any members of the committee have any debate on the amendment
15 which I offered on Mr. Smegal's behalf to adopt these proposals
16 in block?

17 (No response.)

18 CHAIRMAN WALLACE: Hearing no debate, let's go ahead
19 and have the roll-call vote on what is essentially Mr. Smegal's
20 amendment.

21 Ms. Miller, do you vote yes, or no?

22 MS. MILLER: No.

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1 CHAIRMAN WALLACE: Ms. Bernstein?

2 MS. BERNSTEIN: No.

3 CHAIRMAN WALLACE: Mr. Durant?

4 MR. DURANT: No.

5 CHAIRMAN WALLACE: And, the Chair votes no.

6 I will make the proposal with regard to subsection (c)
7 of the regulation which is that the following words should be
8 added to the end of subsection (c) "that apply to private
9 funds". This is what the whole section will read: "A recipient
10 may use private funds to pay reasonable annual dues to
11 organizations which are tax exempt under Section 501(c)(3) of
12 the Internal Revenue Code provided however that such funds may
13 be used only for purposes otherwise permitted by the act and all
14 regulations adopted pursuant thereto that apply to private
15 funds".

16 MOTION

17 CHAIRMAN WALLACE: I make that in the form of a
18 motion. Is there a second?

19 MR. DURANT: Is that your motion?

20 CHAIRMAN WALLACE: That is my motion. This is not for
21 Mr. Smegal. It is me. I think this removes an ambiguity and
22 does not change substance. That is certainly my understanding

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1 of it.

2 MS. BERNSTEIN: I guess maybe I am not completely
3 tracking with you because it seems to me that it does change the
4 substance. You want a second before you get in the discussion
5 though --

6 CHAIRMAN WALLACE: Yes.

7 MS. BERNSTEIN: I will second it for the purposes of
8 discussion and I tell you that I am inclined to vote against it.

9 CHAIRMAN WALLACE: Let me tell you what I think it
10 does, and the general counsel's office and I have talked about
11 it. If anybody has got a different view -- there are certain
12 things, notwithstanding this regulation -- but there are certain
13 things that our recipients may do with private funds that they
14 may not do with public funds. All this says is that a
15 regulation which restricts the use of private funds in the hands
16 of our recipient, also restricts the use of those funds in the
17 hands of an organization to which we pay dues.

18 The potential ambiguity without this modifier is that
19 a regulation which applies only to public funds in the hands of
20 our recipients might be interpreted as applying to the dues
21 collecting organizations, so that something that our
22 organization can do with private but not public funds would

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1 nevertheless be prohibited to a dues recipient organization to
2 do with private funds. I do not think that it is appropriate
3 for the private funds to be more restricted in the hands of the
4 dues paying recipient than they are in the hands of our own
5 grantee. That is the only reason that I am trying to remove
6 that ambiguity.

7 I will ask the general counsel's office with whom I
8 have discussed this and Mr. Houseman who proposed this, if I
9 have misstated anything in describing the affect of this
10 language. Did the general counsel's office understand it that
11 way?

12 MS. GLASOW: Yes.

13 CHAIRMAN WALLACE: Mr. Houseman, do you understand it
14 that way?

15 MR. HOUSEMAN: Yes.

16 CHAIRMAN WALLACE: That is all I am trying to do --

17 MS. BERNSTEIN: I guess there is some mental block I
18 have got here someplace because -- would you take a real live
19 example and show me why we need to say -- I understood that is
20 what it said before.

21 CHAIRMAN WALLACE: Okay.

22 MR. VALOIS: Just for us non-members, can you tell me

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1 again the precise change? I see you are working from Mr.
2 Houseman's?

3 CHAIRMAN WALLACE: That is it.

4 MR. VALOIS: Okay. Now tell me --

5 CHAIRMAN WALLACE: Just that language that apply to
6 private funds; tacking it on.

7 MR. VALOIS: Tacking it on where? What do you want to
8 do to make this read the way you want to amend it?

9 CHAIRMAN WALLACE: That is it.

10 MR. VALOIS: That is it?

11 CHAIRMAN WALLACE: Yes, I am adopting his amendment.

12 MR. VALOIS: Oh, okay.

13 CHAIRMAN WALLACE: In our draft, there is a period.

14 MS. BERNSTEIN: Except for the "reasonable" -- we are
15 keeping "reasonable" in.

16 CHAIRMAN WALLACE: "Reasonable" stays in. I
17 appreciate your close attention so we will not do it again in
18 the board meeting in five minutes.

19 MR. VALOIS: Right, that is what I am trying to avoid.

20 CHAIRMAN WALLACE: The one that came to my mind as I
21 was thinking about this, and there may be others, would have to
22 do with the representation of aliens because under the rider I

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1 think you can longer use our funds to represent aliens in
2 certain contexts.

3 Nevertheless, we have a regulation that says you may
4 use private funds to represent aliens, and I think most of that
5 has to do with aliens who were previously being represented by
6 our recipients and you are using private funds to wind up the
7 representation.

8 I do not know how that one would -- I do not know if
9 there are any dues collecting organizations that would fall
10 exactly into that category, but if you have a dues collecting
11 organization that is using private funds to represent a holdover
12 illegal alien, I do not see any reason why there should be any
13 problem with that because our own recipients can use private
14 funds to represent holdover illegal aliens.

15 That is the one that came to my mind. There may be a
16 whole lot of other ones out there, but I did not spend the last
17 few days going through the regulation case by case.

18 Any other discussion of this amendment? If we are
19 ready to vote -- all in favor say aye.

20 (Chorus of ayes.)

21 CHAIRMAN WALLACE: Opposed?

22 (No response.)

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1 CHAIRMAN WALLACE: It carries. Let me suggest the
2 language of grandfather clause which I am ready to propose, and
3 other members of the board may feel more or less liberal than I
4 do.

5 I am concerned about grandfathering in all contracts
6 that were entered into before 5:00 o'clock this afternoon, which
7 is when our regulation has taken effect. I do not know whether
8 there was a rush to sign up private contracts, but if there was
9 there should not have been, and I am not interested in
10 grandfathering in any of those contracts.

11 However, what I would suggest is that any contracts
12 that were entered into before the board adopted the 1986
13 regulations, they ought to be entitled to some time to wind up.

14 I believe ever since the date that the board adopted
15 1986 regulations people have been on notice as to this board's
16 policy. Now that the day has finally dawned that we can enforce
17 this board's policy, I do not see any reason to grandfather any
18 contracts entered into in the interim. Mr. Houseman told us
19 yesterday that he really does not know of any contracts longer
20 than two years, so presumably, anything that was entered into
21 before early 1986 will expire in early 1988 and that will give
22 folks time to work it out.

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MOTION

1
2 CHAIRMAN WALLACE: So, here is the language that I
3 propose in the form of grandfather clause: "A recipient may use
4 private funds to fulfill existing obligations under the grant or
5 contract from a private donor entered into prior to the date
6 when the 1986 regulations were approved by the corporation's
7 board of directors.

8 If the activities could be carried out consistent with
9 Sections 1007(a)(5) and 1010(c) of the LSC act. This authority
10 shall expire two years after the date of the board's approval of
11 the 1986 regulations." I do not remember the date but it was
12 January or February of '86.

13 MS. GLASOW: February 21, 1986 the 1986 regulations
14 were approved by the corporation.

15 CHAIRMAN WALLACE: Let's just -- instead of saying
16 "when the 1986 regulations were approved by the corporation",
17 let's do it this way -- just put the date in. That would be,
18 "contract from a private donor entered into prior to February
19 21, 1986 if the activities". Then the next sentence would be
20 "this authority shall expire on February 21, 1988". I think
21 that is over six months from now and I think that ought to give
22 people time to disentangle themselves from any holdover

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1 contracts they have got.

2 So, that is my proposal in the way of a grandfather
3 clause. I do not know whether it will meet with anybody else's
4 approval or not, but if there is a second this would be the time
5 to hear one.

6 MS. MILLER: I will second it.

7 CHAIRMAN WALLACE: Any discussion of the proposed
8 grandfather clause? This would become Section (e) -- Section
9 13(e). Any further debate?

10 (No response.)

11 If not, let's vote. All in favor say aye.

12 (Chorus of ayes.)

13 CHAIRMAN WALLACE: Opposed?

14 (No response.)

15 CHAIRMAN WALLACE: So ordered. I have no further
16 amendments to make. I would propose that this committee report
17 to the board that it is our determination that Section 1612.13
18 is not unconstitutional, that Section 1010(c) of the act is not
19 unconstitutional, that Congress has the authority to restrict
20 the use of private funds and that we have the same
21 constitutional authority to restrict the use of private funds,
22 and that, therefore, no further amendments to this regulation

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1 are warranted.

2 MOTION

3 CHAIRMAN WALLACE: That is my motion to make that
4 recommendation to the board. Is there a second?

5 MS. BERNSTEIN: Second.

6 CHAIRMAN WALLACE: Any discussion? Any other
7 recommendation that any -- before we vote on it, any amendments,
8 any discussion, any other recommendations that committee members
9 believe should be made to the board on this issue?

10 Hearing none, we shall go ahead and vote on that
11 particular report. All in favor say aye.

12 (Chorus of ayes.)

13 CHAIRMAN WALLACE: Opposed?

14 (No response.)

15 CHAIRMAN WALLACE: It is adopted. Are there any other
16 amendments, motions, provisions or anything else which members
17 of this committee want to do with regard to Section 1612.13?

18 Hearing none, the steps taken shall be reported to the
19 board at the appropriate time when the board reconvenes. Is
20 there any further business to come before the committee?

21 Hearing no further business, I ask unanimous consent
22 that this committee meeting stands adjourned. Hearing no

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1 dissent, so ordered. Mr. Chairman the table is yours.

2 (The meeting of the Operations and Regulations
3 Committee was concluded at 4:00 o'clock p.m.)

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