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LEGAL SERVICES CORPORATION

OPERATIONS AND REGULATIONS COMMITTEE MEETING

Pages: 1 through 99

Washington, D.C.

March 7, 1985

Acme Reporting Company

Official Reporters
1220 L. Street, N.W.
Washington, D. C. 20005
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LEGAL SERVICES CORPORATION

OPERATIONS AND REGULATIONS COMMITTEE MEETING

New Hampshire Room 2
Ramada Renaissance Hotel
1143 New Hampshire Avenue, N.W.
Washington, D.C. 20037

Thursday
March 7, 1985

The above-entitled matter convened at 9:25 a.m.,
on Thursday, March 7, 1985.

BEFORE: MICHAEL B. WALLACE
Committee Chairman

APPEARANCES:

Committee Members Present:

LEANNE BERNSTEIN
LORAIN MILLER
THOMAS SMEGAL

Other Board Members Present:

ROBERT A. VALOIS
PAUL EAGLIN
W. CLARK DURANT, III
PEPE J. MENDEZ
CLAUDE G. SWAFFORD
HORTENCIA BENAVIDEZ

Also Present:

Other members of LSC Staff

Members of the Public

1 CHAIRMAN WALLACE: The Committee will come to
2 order. This is the March 7th Meeting of the Operations
3 and Regulations Committee, the Board of Directors, Legal
4 Services Corporation, as published in the Federal Register.

5 The first item of business is our agenda. I don't
6 think -- ah, here comes Mr. Smegal. I'm going to ask
7 the members of the board to look over the Agenda, and I'm
8 also going to ask them to look over the minutes if they
9 have not had an opportunity to do so yet.

10 I got mine yesterday, and I read them on the
11 plane, last night so, for the people who haven't had a
12 chance to look at our minutes, let's go ahead and do so.

13 While we're doing that, let me explain the Chair's
14 intention on the agenda. We have a fairly unusual meeting
15 situation today and tomorrow. We have promised to finish
16 up by noon today, because we've got another meeting at
17 1:00 o'clock this afternoon. And then after the Board
18 meets tomorrow, this committee will resume its deliberations
19 wherever we are in this agenda. Now, let me tell you the
20 Chair's intention on how we would go through this agenda.

21 What I want to do today is to work out the language
22 on the priorities section 1620, much as we did with the
23 Sunshine Act and the By-laws, at the last meeting. I want
24 to do -- I think we will be in a position to do Private
25 Attorney Involvement before the meeting is over, but I'd

1 like to do that in the second half of our meeting tomorrow
2 afternoon. The Board of Directors is going to hear a
3 panel discussion on private attorney involvement tomorrow
4 morning. And I think this committee would be much better
5 informed to offer to state its views on private attorney
6 involvement tomorrow afternoon after we've heard that
7 panel. I will say to people here today who want the oppor-
8 tunity to speak on private attorney involvement, we'll take
9 some testimony on that this morning, if we have time, after
10 priorities.

11 We'll also take some testimony on lobbying if
12 we have time after we're through with priorities, but I
13 would encourage people with a special interest in private
14 attorney involvement to come to the Board meeting
15 tomorrow morning to hear the panel discussion before the
16 Board, and then if the Board does not have time to hear
17 your response to that panel, when we reconvene this meeting
18 tomorrow afternoon, we will take general public comment
19 on the subjects raised by that panel discussion, and if
20 we feel, after hearing the panel discussion and the
21 comments we get tomorrow afternoon, that we're in a position
22 to vote on language on PAI, we'll do it.

23 And we'll also take some testimony tomorrow on
24 lobbying. I do not expect us to be able to work nuts and
25 bolts language on lobbying. We are expecting to get a

1 response from the General Accounting Office within the next
2 few weeks, we hope. The general counsel and I have talked
3 about when we would get that, so I would think that whenever
4 our next committee meeting turns out to be, that's when
5 we will get down to nuts and bolts on lobbying.

6 Now, that is the order in which the Chair intends
7 to move through this Agenda, given the unusual circumstances
8 in which we find ourselves, meeting sort of sandwiched
9 around the board meeting tomorrow morning. At this time,
10 the Agenda is before us. Let me ask if there are any
11 comments or any amendments that any members of this
12 committee want to make to the Agenda, or is there a motion
13 to adopt the agenda as printed in the Board Book?

14 MR. SMEGAL: I'll move the agenda.

15 CHAIRMAN WALLACE: All right, we have a motion
16 to accept the agenda as --

17 MS. MILLER: I second the motion.

18 CHAIRMAN WALLACE: Ms. Miller has seconded the
19 motion. Any more discussion of the agenda?

20 (No response.)

21 CHAIRMAN WALLACE: All in favor of adopting the
22 agenda as printed in the board book, please say aye.

23 (Chorus of ayes.)

24 CHAIRMAN WALLACE: Opposed?

25 (No response.)

1 CHAIRMAN WALLACE: The ayes have it and the
2 agenda is adopted. Next item is the minutes. I know people
3 are plowing through these 12 pages. Let me point out one
4 thing that Mr. Mendez noticed before he had to leave. On
5 page 8 of the minutes, line 5, where the Committee heard
6 from Jane Gill who works for the Colorado Bar Association,
7 the minutes reflect that she said "35 percent of the Members
8 of the Bar were currently involved doing pro bono cases."
9 Mr. Mendez points out that that should say the Bar Associa-
10 tion is not a mandatory Bar in Colorado, and there are
11 a lot of members of the bar who are not members of the
12 Bar Association.

13 Ms. Gill's testimony was that 35 percent of the
14 members of the Bar Association were involved; I'll ask
15 unanimous consent that the minutes be amended to reflect
16 that. Hearing no objection, the minutes are so amended.

17 MR. SMEGAL: I'm sorry, what's the amendment?

18 CHAIRMAN WALLACE: The amendment on line 5, page
19 8.

20 MR. SMEGAL: What is the actual amendment?

21 CHAIRMAN WALLACE: Just put for the word Bar
22 Association, put the word "association" after the Bar.

23 MR. SMEGAL: Oh, yes.

24 CHAIRMAN WALLACE: 35 percent of the Members of
25 the Bar Association. Hearing no objection, the minutes are

1 so amended.

2 MR. SMEGAL: There's one small matter at the top
3 of page two. I believe Ms. Miller seconded my motion to
4 adopt the agenda?

5 CHAIRMAN WALLACE: Yeah, I think that is probably
6 correct. Hearing no dissent, that correction will be made.

7 MS. BERNSTEIN: Mike, could we defer the adoption
8 in minutes until we've had a chance to read them?

9 CHAIRMAN WALLACE: Okay -- well --

10 MS. BERNSTEIN: Because I just got it this morning,
11 and I just really feel uncomfortable about --

12 CHAIRMAN WALLACE: Well, let me give you a little
13 more time to go through them. I want to clear up one
14 item left over from the previous meeting. It's not really
15 a correction of the minutes, because no announcement was
16 made on it. On page 6 we ask the general counsel to
17 tell us what the effect was whether or not the chairman
18 could vote on amendments and I think the general counsel
19 had an opinion before we adjourned that day but we didn't
20 get that into the record. I'll ask the general counsel
21 to announce his opinion at this time if he would?

22 MR. BAGENSTOS: The Committee Chairman is a full
23 voting member of the committee and is not prevented from
24 voting either to make or to break a tie.

25 CHAIRMAN WALLACE: All right. That's fine. Let's

1 I don't think we ought to move on to testimony while people
2 are still reading the minutes so what I'm going to do is
3 to just to break for a couple of minutes while the members
4 finish reading these minutes. They are about 12 pages long,
5 and when everybody's finished, please let me know, and
6 then we'll get on and deal with them.

7 (Committee is recessed at 9:33 briefly.)

8 CHAIRMAN WALLACE: Mr. Secretary, we've been
9 working our way through these minutes. On page 12, detailed
10 discussion of the minutes stopped after Mrs. Lardent's
11 testimony. Now, after her testimony was completed, we also
12 heard from Mr. Horsky and from Mr. Braude and from Ms. Bales.
13 And over on page 10, it reflects that we did hear those
14 comments, but the minutes don't reflect what they said, unless
15 the tape swallowed those comments, what I'd like somebody
16 on the staff to do during the course of the day is to try
17 to give us a couple paragraphs on what those folks said.

18 What I think I'd like to do is to defer the
19 adoption of these minutes until we resume our meeting
20 tomorrow, and maybe by that time, we can have a page 13
21 of these minutes and reflect the rest of the testimony
22 that was given to us. Is there any reason why that can't
23 be done?

24 MR. DAUGHTERY: No sir, there's no reason that
25 can't be done; it is difficult to do it prior to this day

1 because we only received the transcript late Saturday
2 afternoon, but we will complete that and have it available
3 for you for your meeting tomorrow.

4 CHAIRMAN WALLACE: I would like to do that because
5 we did hear that testimony and another few paragraphs we
6 can summarize what those folks said and we can adopt that
7 tomorrow. But before I ask for a motion to table these
8 minutes until tomorrow afternoon, the people who've had
9 a chance to go through them, are there any other corrections
10 that we need, see that need to be made now?

11 MR. SMEGAL: Mr. Wallace, page 2, the whole para-
12 graph, seems to me that there should be a few more words
13 there's a sentence in there that starts, "After a brief
14 colloquy between Mr. Smegal and Chairman Wallace and
15 Acting Secretary Dougherty," it might explain what was
16 going on there, and my concern about the fact that the
17 letter of September 23, 1983, one, had an attachment to it,
18 and two, may not have said what was being discussed above
19 in this paragraph.

20 CHAIRMAN WALLACE: Mr. Smegal, that is a little
21 on the brief side. What I would ask you to do, if we are
22 going to table these until tomorrow afternoon, can you
23 work out a sentence that explains --

24 MR. SMEGAL: I've got some language already.

25 CHAIRMAN WALLACE: Let me --

1 MR. SMEGAL: Maybe I can read just a few words,
2 and?

3 CHAIRMAN WALLACE: Why don't you go ahead.

4 MR. SMEGAL: "Following Acting Secretary Daugherty,
5 regarding the significance of the content of the GAO letter,"

6 CHAIRMAN WALLACE: Well, okay, and then period (.),
7 Ms. Bernstein -- well, that's right, we wouldn't have a
8 period regarding the significance of the letter.

9 MR. SMEGAL: Why don't we have a comma?

10 CHAIRMAN WALLACE: A comma, all right. If you'd
11 like, I'd ask unanimous consent that that change be adopted.
12 Hearing no dissent the last sentence of the second paragraph
13 on page 2 is amended as suggested by Mr. Smegal.

14 Were there any other corrections we see that need
15 to be made right now in these minutes? The Chair will
16 entertain a motion to table consideration of the minutes
17 until tomorrow, at which time, we should have some
18 additional language from the Secretary.

19 MS. BERNSTEIN: I just wondered, this is just
20 a question. Whenever we end up, whenever we have a particular
21 statement such as the letter from the Congressman, read
22 into the record, I'm just wondering whether or not it would
23 helpful for the members of the Committee, to have a copy
24 of that letter attached to the minutes, because I'm not sure
25 we ever received a total copy of that letter, and we don't

1 all get copies of the transcript. If it's made a part of
2 the record, it could be made a part of -- attached to
3 minutes, or is that just too cumbersome?

4 CHAIRMAN WALLACE: As I recall the witnesses read
5 that one into the record, so I never saw a copy of the letter
6 myself. Mr. Secretary did you?

7 MR. DAUGHTERY: The delivered a copy to me. I
8 can make copies available to you, and its your pleasure
9 as to whether or not you wish it formally appended to the
10 minutes?

11 CHAIRMAN WALLACE: I think we all ought to have
12 copies of the letter; I know we all heard it, but it might
13 be useful to have copies of it to refer to. Ms. Bernstein,
14 would you like to have that appended as an Exhibit to
15 the minutes?

16 MS. BERNSTEIN: Only because they read the whole
17 thing into the record, and I just, I don't want to be
18 in a situation where our minutes are 80 and 90 pages for
19 duplication with everybody coming to speak, you know, with
20 their statements, but it doesn't matter to me as long as
21 we get a -- it's in the transcript?

22 CHAIRMAN WALLACE: It is in the transcript.
23 I don't see any need to put the whole thing in the
24 minutes myself, because I think you're right. We get printed
25 statements before and after meetings that would jam things

1 up pretty thoroughly. Are there any other, if there are
2 no other suggestions for changes that need to be made now,
3 the Chair will entertain a motion to table further
4 consideration of the minutes until tomorrow afternoon. Is
5 there such a motion?

6 MR. SMEGAL: I move to table.

7 CHAIRMAN WALLACE: Is there a second?

8 MS. BERNSTEIN: Second.

9 CHAIRMAN WALLACE: No debate on a motion to table.
10 All in favor, say aye?

11 (Chorus of ayes.)

12 CHAIRMAN WALLACE: Opposed?

13 (No response.)

14 CHAIRMAN WALLACE: The consideration of the
15 minutes are tabled. Next item on the agenda is consideration
16 of the regulations before us. The Chair has announced its
17 intention to proceed in the first instance, to part 1620,
18 on Priorities. Now, in our Board Book we have several
19 different sets of options on Priorities. We have the
20 proposed rule, which is also the existing rule, we have
21 staff recommendations based upon some of the comments that
22 have been made by members of this committee throughout
23 these hearings, we have the original recommendations of
24 NLADA, which is in our Board Book, and Mr. Houseman has
25 come up with some alternative language on behalf of

1 NLADA. I've asked him to distribute it to members of the
2 committee. I think we all have it by now -- you have not,
3 okay. I have it. I'll ask you again to distribute it.

4 Now, as we did last time, I would like to try to
5 work through this Regulation section by section. But before
6 we do that, I'm going to ask members of the Committee whether
7 they've got any general comments or general thoughts to offer
8 for our guidance and consideration as we work through this
9 line by line.

10 Is there any debate or any discussion from members
11 of the Committee in general, on part 1620, before we get
12 down to marking up the regulations?

13 (No response.)

14 CHAIRMAN WALLACE: Hearing none, I would say that
15 we are ready to proceed on 1620. We have, at the beginning
16 1620.1 Purpose. We have the existing regulation, we have
17 some proposals made by the Staff, and we have two separate
18 sets of proposals made by NLADA on how to do this. Does
19 any member of the committee at this point have any amendments
20 to offer to 1620.1 as it now stands?

21 Let the Chair state my own views on this and
22 I will not make it in the form of a motion because I'm the
23 Chair. If anybody likes what I say, they can adopt it in
24 a motion, their motion.

25 Frankly, I would be inclined to end 1620.1

END T#1A

BEGIN T#1B

1 at the semicolon. Put a period there, and strike everything
2 after it. That second independent clause seems to me to
3 be an attempt to restate in shorthand form, what we state
4 in great detail in the next section, which is 1620.2.

5 We go on with in part (a) of that, we say
6 how you are to form your plans, and in part (b) we tell
7 you all the things you're supposed to take into con-
8 sideration. I think that part (b) of Section 2 states
9 what our purpose is and what our intent is in great
10 detail, and I think that trying to compress it into short-
11 hand form, using terms as substantially equal access,
12 types of services, levels in representation, that might
13 make a little sense if you refer back to 1620.2(b), but it
14 may also confuse what you mean by 1620.2(d) and frankly,
15 I think, in a purpose section, which is basically just
16 exhortatory, we can probably do without that second
17 clause and just put a period (.) after "federal law", and
18 then when we want to say what we want people to do
19 we ought to do it in detail under 1620.2(b).

20 And that would be the way I think we ought to
21 resolve some of the conflicts, just by getting rid of this
22 language that doesn't do anything except try to condense
23 what we've said in more detail elsewhere. If somebody
24 else has a different view, I'd be delighted to hear it?

25 MS. BERNSTEIN: Mike, is it a typographical error,

1 I'm going through all of these different forms and I really
2 don't know what the actual printed version of the reg is,
3 on line two, takes into account the view or views?

4 CHAIRMAN WALLACE: I don't know. Somewhere back
5 here, I've got the printed regulation.

6 MS. BERNSTEIN: It said view in the printed regula-
7 tion I've got, and I would simply state that I would doubt
8 that it's a unanimous view. And I would just ask if that
9 was a typographical error that was submitted to the Federal
10 Register if we're going to submit it this time, we might
11 want to correct it.

12 CHAIRMAN WALLACE: Well, the printed copy I have
13 said view, and I agree with Ms. Bernstein, that it ought
14 to say, "views" and I will ask unanimous consent and what
15 I'm working from in the Board Book is page 97, the
16 Regulations as Proposed; that's going to be the text that
17 I'm marking up as we go through here, so on page 97, 1620.1,
18 line 2, where it says view, I will ask unanimous consent
19 that we make that views. Hearing no dissent, it is so
20 ordered.

21 Now, there's more work to do on 1620.1. Does
22 anybody have a proposal to make?

23 MR. SMEGAL: I'd move we amend 1620.1 by striking
24 all the language after "Federal law;" and changing the
25 semicolon (;) to a period (.)

1 CHAIRMAN WALLACE: There is a motion on the floor
2 and before I restate the motion, Mr. Moen, did you have
3 something to say, or can't you hear us.

4 VOICE: Mr. Chairman, you've referred to the language
5 on page 96 of the Board Book, and our copies don't go that
6 far.

7 CHAIRMAN WALLACE: Well,

8 MS. BERNSTEIN: Do you mean the Committee Book?

9 CHAIRMAN WALLACE: Well, it's the Committee Book
10 but I don't know --

11 MR. BAGENSTOS: It's page 107.

12 CHAIRMAN WALLACE: Okay, Mr. Bagenstos may be able
13 to explain why we have a problem.

14 MR. BAGENSTOS: I don't know if I can but 97 is
15 the begins the actual language of the reg that's in existence
16 at the present time. 107 is the staff proposal. 97 is
17 the reg as it exists at the present time.

18 VOICE: We don't have those. It's not in the
19 General Public's register..

20 CHAIRMAN WALLACE: Well, I apologize then because
21 in the Board Book we got, there's

22 MS. BERNSTEIN: That's because our Board Book
23 combines you know all the various committee and I mean it's
24 like a total --

25 VOICE: 107's where it is.

1 CHAIRMAN WALLACE: Okay, if you all have found it,
2 what I'm working from is the text as it was published in
3 the Federal Register and what we've done is just changed
4 "view" to "views." Now, we have a motion which has been
5 made by Mr. Smegal.

6 To strike the semicolon after "federal law" and
7 replace it with a period (.) and strike all language after
8 that point from Section 1620.1. Is there a second to that
9 motion?

10 MS. BERNSTEIN: I'll second it.

11 CHAIRMAN WALLACE: All right. We have it has
12 been moved and seconded, as the chair stated the motion.
13 Is there any discussion on the motion?

14 (No response.)

15 CHAIRMAN WALLACE: Is the Committee ready to vote?
16 All in favor of the motion to strike the semicolon (;) after
17 "federal law" and replace it with a period (.), and strike
18 all language thereafter, say aye?

19 (Chorus of ayes.)

20 CHAIRMAN WALLACE: Opposed?

21 (No response.)

22 CHAIRMAN WALLACE: Hearing no one oppose, the amend-
23 ment is so made. Are there any other changes or amendments
24 that any member of the Committee has to make to 1620.1?

25 (No response.)

1 CHAIRMAN WALLACE: All right. What I think I'll do
2 is work maybe the most efficient way to do it is to just
3 ask for comments from the audience at this point. If anyone
4 else has any thoughts or comments or suggestions to make
5 on 1620.1 before we get on to point 2, speak now? Hearing
6 none, the committee will move on to 1620.2, which is
7 Procedure.

8 VOICE: Mike are you working from the Staff draft,
9 or another draft that we don't have?

10 CHAIRMAN WALLACE: I am working from the published
11 draft as published in the Federal Register. Now, I also
12 have the staff draft which I hope is in the Board Book, and
13 I have NLADA Marked 1, and NLADA Marked 2, and I'm going
14 to be referring to all of those, but what I'm marking up
15 is what was in the Federal Register.

16 Now, on subsection (a) of 1620.2, the Staff has
17 made some recommendations for changes in (a)(1) and (a)(2).
18 NLADA has not made any changes in (a)(1) and (a)(2) that I
19 can see.

20 Okay, let me ask the members of the staff that
21 worked on 1620.2 to come on up and explain the changes
22 that they have proposed in (a)(1) if you would be so kind.

23 The Chair recognizes Mr. John Meyer from the
24 General Counsel's Office.

25 MR. MEYER: Thank you, Chairman Wallace. The

1 purpose for the change in (a)(1) is that in the appraisal,
2 what we want to do is say, if you can get something in the
3 form of a questionnaire or a survey that will give you
4 that will make sure you have statistically valid input,
5 from the from the client population or a sample thereof,
6 what we're saying is that's the best way, so what we're
7 saying is where feasible, such appraisal should be based
8 on questionnaires or surveys of eligible clients, and
9 that's not meant exclusively.

10 They'd be one of the things it would be based on.
11 But the preference of the words "where feasible" is the
12 fact that surveys and questionnaires are often expensive
13 and if it's too burdensome, the words where feasible would
14 allow the recipients to use other methods. It would indicate
15 in the reg a preference for that kind of statistical
16 data being included in the appraisal where possible.

17 CHAIRMAN WALLACE: Okay, does the -- I'll get
18 to you in just a second, Mr. Houseman -- does the committee
19 have any comments or any thoughts on the recommendation made
20 by the Staff on (a)(1) at this point?

21 (No response.)

22 CHAIRMAN WALLACE: Let me ask for comments from
23 the floor on that comment, Mr. Houseman?

24 MR. HOUSEMAN: Let me first just correct something.
25 You keep referring to the NLADA draft, and it's actually

1 five organizations and I don't know what's the easiest
2 nomenclature to use, but I think it should be clear that--

3 CHAIRMAN WALLACE: I apologize, Mr. Houseman, that
4 the way it's marked in our book. You're quite right; I think
5 we all know it but we said NLADA for short.

6 MR. HOUSEMAN: That's fine, whatever nomenclature is,
7 I think, shorthand is okay.

8 First, let me address the problem that this raises.
9 Mr. Meyer, let me just start with the merits. Says the
10 best way is to do a questionnaire or surveys. That is
11 completely inconsistent with study after study after study
12 that has been done of priority setting by the corporation
13 beginning in 1978, and there, as anybody that's familiar
14 with Legal Services, knows, there has never been determined
15 by anybody what is the best way of setting priorities.

16 And secondly, you're making a fairly substantial
17 policy change if you are adopting this provision on the
18 basis of the best way to set priorities is questionnaires
19 or surveys. That is not necessarily the best way of setting
20 priorities. Local areas differ greatly in both the kinds
21 of client populations they have and the kinds of service
22 areas that local programs must serve.

23 When you're looking at how you set priorities,
24 there are a variety of different ways that have been
25 utilized, effectively by programs to set priorities.

1 Some involve a community meeting model where an
2 offset or some version of that. Some involve detailed
3 explorations of legal needs, that are not necessarily
4 in the form of a questionnaire or a survey; some involve
5 use of questionnaires or surveys, obviously. Some
6 involve staff meetings around areas with various client
7 organizations and reporting back, there's a variety
8 of different ways of setting priorities.

9 The Corporation has monitored this; there are
10 reports on this, and throughout the history, there has never
11 been a view that the most feasible and effective way of
12 setting priorities is questionnaires or surveys.

13 Now, it seems to me if what I say is correct,
14 and I believe it is, I believe on the merits, then putting
15 this in, is going to push people towards using
16 questionnaires or surveys. There are two problems with
17 that: the first problem, and the main problem, is -- not
18 the main -- but the first problem is its very costly to
19 do this, and I think we ought to have some understanding
20 that to do a serious valid survey, can run as high as
21 \$100 and \$150,000, and there are programs that are doing
22 that right now, and that's what it's costing them.

23 It's time consuming, and in both administrative
24 time and program staff time, and board time, and I don't
25 think just on that reason alone, you want to push people

1 in this direction at least without your hearing more about
2 priority setting.

3 Secondly, in many areas, questionnaires or surveys
4 may not be feasible, not because of cost factors, but just
5 because of the way the client population is set up. For
6 example, if you'll look at the State of Montana, and I'm
7 going to show you a chart in a second about this, you
8 will see that the eligible client population is very
9 sparse, and it's spread out over an incredibly huge area.

10 It is virtually impossible to do a valid sample
11 of clients in that state. And yet this is going to push
12 people towards that. There are a number of other situations
13 where sampling techniques or questionnaires, depending on
14 client population, because of their English speaking
15 abilities, because of their kind of population they are,
16 where that will not work.

17 And I think it's before moving in a direction, on
18 the basis of one staff position proposal to add something
19 that's entirely new, that I think you ought to pull back.
20 Finally, it is obviously implicit in the language without
21 adding this, that programs can do questionnaires or
22 surveys, and programs are doing questionnaires and surveys,
23 so you do not need this change in order to encourage
24 programs to do it. Numbers are and a number of other
25 programs aren't. I think it is wrong to push people and

1 in effect, to mandate the use of questionnaires or surveys,
2 in this regulation. And I urge you strongly not to adopt
3 this language. I don't think it's the best way to go.
4 I think it's inconsistent with past history; I think it
5 will create more problems than you realize; if you're
6 concerned about how we should do priorities, my view is
7 let's have, let's take a look at priorities.

8 It's a very difficult area, let's have a range
9 of information brought to this Board by staff, by people
10 in rural programs, by people in urban programs, by people
11 who have done the questionnaires and surveys. Let's under-
12 stand the cost that we're talking about here, and then
13 let's make some decisions for the future about how best
14 to do this.

15 But imposing this language now, I think would be
16 a disservice to what you're trying to accomplish in this
17 regulation and a disservice to the Legal Services Community,
18 so I urge you not to do so.

19 CHAIRMAN WALLACE: Well, let me ask you a couple
20 of factual questions, and then I'm going to let Mr. Meyer
21 respond, and let other members of the Board get in.

22 You said the local programs do detailed explora-
23 tions of legal needs, that may not be surveys. Well, what
24 might they be? How do you conduct a detailed exploration
25 of legal needs without a survey. I mean, I'm sure maybe

1 there are ways to do it, but I'd like to hear what some
2 of them are.

3 MR. HOUSEMAN: Well, you've got to remember you
4 are using -- when you say "legal needs" you may be using
5 a term of art, and that is --

6 CHAIRMAN WALLACE: We sure are.

7 MR. HOUSEMAN: And that is and maybe I shouldn't
8 have used it. There are a number of studies that have
9 been conducted in local areas that did not rely upon
10 detailed questionnaires or surveys to clients. They relied
11 instead upon discussions with clients, discussions of the
12 legal problems, that is looking at the problems that clients
13 had, analyzing the legal problems of those clients, and then
14 exploring those in some depth.

15 For example, if you'll look at the 1007.h study,
16 we used a survey in 1007.h to look at access; we primarily
17 relied upon analysis and discussions with key representatives
18 of the various communities to talk about the legal problems
19 of those communities. So when you talk about the term
20 "legal need" legal need is a term of art that grew up with
21 the ABF study. What I'm talking about is that there are
22 ways of determining priorities that focus on the legal
23 problems in an area, the access difficulties in an area,
24 that don't necessarily have to be based on questionnaires
25 or surveys, which this implies.

1 To anybody reading this, what you're saying to do
2 is to go out and do a legal needs study. That's how this
3 is going to be interpreted in the Legal Services Community,
4 when they read this language, and I don't think that's
5 what you want to do.

6 CHAIRMAN WALLACE: What I want to try to under-
7 stand is this: it seems to me, and I think we've all
8 heard Chairman Durant, muse from the podium a couple of
9 times, about the difference between legal wants and legal
10 needs, and I'm not sure I know that any better than he does.

11 Seems to me there are about -- there are three
12 ways that you can set your priorities. Now, one is to
13 do a semi-scientific survey, and that's what we're trying
14 to talk about here, with all the limitations that social
15 science and survey techniques have, we're saying, if feasible,
16 try to go out and see not what you think the problems are,
17 but what the people you can find tell you the problems are.

18 The second is almost free market technique, and
19 it's something I think Chairman Durant's also discussed.
20 See who walks in the door, see who cares enough about
21 particular legal problems to come in and ask you to help
22 them. There are certainly limitations with that problem
23 because in many respects, people who are most likely to walk
24 in are the people who are least likely to need help. They
25 don't have the access problems or the language problems

1 that other people have.

2 But the community meeting model which you've
3 discussed is almost a free market technique except it only
4 works once a year, or twice a year, whenever you have
5 committee meetings. The people who are going to be there
6 are the people who are most able to get out and say what
7 their needs are so that almost seems like it has all the,
8 or at least many of the difficulties inherent in the free
9 market model.

10 The third way is for people who are experienced
11 in the area to sit around a table once a year and talk
12 about what they think the problems are. I mean, almost
13 everything else seems to be a variation of that third
14 model. It's a bunch of people who are experienced in the
15 the area trying to figure out what's going on, and that may
16 be the best you can do, because it may not be feasible
17 to do anything else.

18 But I don't think this language requires people
19 to do things that aren't feasible. Now maybe there are
20 other ways to set priorities. I'm going to ask Mr. Meyer
21 and anybody from OFS that's hear to --

22 MS. BERNSTEIN: Before you do that, can I just
23 differ with you just a little bit about this community
24 meeting kind of thing as a good way to set priorities
25 because I really feel that this way, more than the other

1 ways that were mentioned, is very biased, and against the
2 persons that maybe most in need of legal services. And
3 its for this reason. Those individuals who are not in
4 a position to travel to community meetings, who are not
5 politically tied in with the infrastructure of the community
6 that are without means or without the proper amount of
7 education, the proper amount of independence in their own
8 life and control over their own life, that may be the very
9 most in need of legal services.

10 And therefore I think when you have community
11 meetings and you have individuals who have become competent
12 at somewhat managing their environment purporting to speak
13 for others who are not in that situation, I think that you
14 lose a lot of input, and that's why I'm really very
15 interested in this whole concept of why trying to talk
16 to a scientific sampling of the clients in a given community
17 does not comport with just common sense.

18 CHAIRMAN WALLACE: I'm not disagreeing with you
19 at all. I think that's what I was trying to say.

20 MS. BERNSTEIN: Well, but I have to completely
21 disagree with your attitude about this being you know the
22 kind of free market approach to it from the community
23 meeting because it may have been that this is a subsidized
24 group that has already gotten into a kind of spokesman
25 attitude which may or may not have any relationship at all

1 to the clients that actually we should be serving.

2 CHAIRMAN WALLACE: What I meant to say, Mrs.
3 Bernstein, and I'll say it more clearly, is that it has the
4 disadvantages that a free market system has is that the
5 people who are most likely to be there are exactly what
6 you say, the ones that are least that have the least the
7 problems.

8 MS. BERNSTEIN: That have other access. They have
9 the ability to manage their lives at least enough to get
10 there.

11 CHAIRMAN WALLACE: Let me ask the members of the
12 staff, Mr. Houseman has said we have done studies on how
13 priorities are set, what are the most efficient ways to do
14 it. Mr. Houseman's been around longer than -- yeah, I'd
15 like to know if we have such studies, who did them, what
16 they show, and I see Mr. Brooks has joined Mr. Meyer at
17 the table. Mr. Brooks is with OFS. If you all can tell us
18 what the Staff knows and what the Corporation knows about
19 priorities? Studies on priorities?

20 MR. MEYER: I'll defer to Mr. Brooks on this one.

21 MR. BROOKS: Mr. Chairman, I'm not personally
22 aware of any studies as such that have been done with regard
23 do what is the most effective way of setting priorities.
24 I think I would tend to agree with the way Mr. Houseman
25 characterized it to this extent. That traditionally it has

1 been done in a variety of ways at the local level. I think
2 in that regard, he's certainly correct.

3 I don't it would be a guess on my part -- as I
4 say, I'm not personally aware of the existence of any studies
5 that have pinpointed one way as being any more effective than
6 another. I think my experience has indicated to me that
7 clearly, as has been stated and I think what common sense
8 would show, is that what is effective in one community may
9 not be effective in another.

10 But I think that this language here is certainly
11 expansive enough to allow for that.

12 CHAIRMAN WALLACE: Mr. Meyer, do you have some
13 response to make?

14 MR. MEYER: Yes. The first thing is, I think we
15 carefully put two levels of language in to make sure it
16 wasn't a mandate in the sense of something you must do.
17 "Where feasible" covers anything like Montana that's too
18 big, too expensive, the programs too poor, the any kind
19 of problem where it really isn't feasible it's also intended
20 to cover problems of expense.

21 Also, we didn't say "where feasible, shall be" we
22 said where feasible, should be, just to make it clear that
23 it wasn't mandatory.

24 A second point I have is -- okay, we used the
25 words I think actually Ms. Bernstein also said this, survey

1 or questionnaire, exactly so. We didn't say if he can't do
2 a 100,000 gold-plated study, don't do anything. You know,
3 questionnaire from your people as they come in or as they
4 leave would be would fall inside this language, so this
5 was not meant to be a narrow thing.

6 Now, the idea is, and I'm not sure this will show
7 up in any studies because -- and is to reach what I call
8 the non-activist majority, the people that are out there
9 until they have a problem, they never turn up, they never
10 even think about legal services, maybe they don't know what
11 it is. And I do have experience in another program which
12 where I came from Community Services Administration and
13 one of our problems often was was our grantee organizations
14 were dominated by a group that was a minority of the
15 community, now, not necessarily in a bad fashion. They were
16 there and the others weren't.

17 We're trying to reach eligible clients as a whole
18 large set of individuals, many of whom, until they got a
19 problem, have never heard of us, and anything we can do,
20 even on a not-gold-plated basis, to find out what problems
21 some of these others may have that we don't really hear
22 about that much, would be a good thing, and I think that
23 some mix of these at least, and obviously since they are
24 sort of more difficult than the others, would be I think
25 just inherently and clearly a good thing, so we're trying

1 to give them a push in this direction.

2 But having it interpreted as a mandate for a
3 major study I think is completely wrong. If we can further
4 change the language to do that, I think it would be a good
5 thing. We can put it in the preamble whatever. We just
6 mean that this is something you should really look to,
7 not that you have to do it in all cases.

8 CHAIRMAN WALLACE: Mr. Houseman, you've been
9 grabbing books out of a suitcase, so I'm going to ask
10 you if you can tell us what studies you were talking
11 about and I'll give you an opportunity to respond to the
12 other things that have been said.

13 MR. HOUSEMAN: Well, first, a 1007.H study on
14 rural areas had a lengthy discussion priority setting and
15 problems with it. And that's an official corporation
16 study submitted to Congress in 1980. What it indicated
17 in terms of conclusions -- it didn't try to reach a
18 conclusion what was the best method -- was that, in a number
19 of rural areas it is very difficult to effectively do priority
20 setting and that programs have adopted a variety of
21 different techniques to do them.

22 And some of those techniques, which did not
23 include surveys or questionnaires, worked quite well; other
24 times, they didn't. Programs were experimenting with this.
25 The Corporation in 1979, in the Office of Field Services,

1 did an extensive memo, January 23, 1979, which I pulled out
2 of my file cabinet as I ran over here today, which had
3 a lengthy discussion on priority setting and planning,
4 and reached the conclusion that it was inappropriate to
5 mandate one particular method over another.

6 In 1980, the Corporation set up a staff and
7 field working group on priority setting standards which
8 ultimately came up with a set of standards. These were
9 never promulgated for a variety of reasons that had to do
10 with just internal problems and because of the 1981 shift
11 in the work of the corporation in 1981.

12 But there were a set of standards and these
13 standards also reached the conclusion that it was inappropri-
14 ate to mandate or even to encourage one
15 specific method over another. Now, what I'm concerned about
16 here is that you're highlighting one method. I have no
17 problems if what this would be changed to including
18 questionnaires or surveys of eligible clients where feasible,
19 or appropriate, something like that. But the problem is
20 should be based, you're making judgments about what is the
21 most effective method; I don't think you have the information
22 to make it.

23 Now, I understand the concerns that you raised
24 about the various methods of priority setting and I under-
25 stand your unease at one of my answers. Let me try to go

1 back and say a couple of things about surveys.

2 First of all, what a survey gets is what questions
3 it asks. And I don't think we should kid ourselves that
4 somehow the survey isn't any more scientifically valid than
5 anything else. Because the first question is what are the
6 questions you're going to ask. Because the answers you're
7 going to get back are going to depend upon that.

8 Secondly, I think you really have to be concerned
9 about the cost of these things, and I think it's a mistake
10 to push programs into questionnaires or into surveys, without
11 fully understanding the costs of these things and I think
12 you ought to go slow on this. Which is I think why I'm more
13 concerned about the way the language is written, than any
14 specific reference to a particular technique.

15 Finally, there are other models besides -- I mean,
16 finally, what we're dealing with in this community meeting
17 dialog is really a strawman. Now program sets priorities
18 solely on the basis of that community meeting. No one is
19 silly enough or stupid enough to do that. And if they
20 ever did it in the past, they certainly don't do it anymore.
21 What programs do is they are acutely aware of the problems
22 of clients with access difficulties, with English speaking
23 difficulties, and they attempt to find out what the needs
24 of those clients are through a variety of techniques.

25 What bothers me here is the simple notion that

1 a questionnaire or a survey is the preferred method of
2 setting priorities, as I said, which has not been the re-
3 sponse of every past effort in this area, and there's no
4 arguments, there's no discussion of the way programs are
5 setting priorities for you to understand how they're
6 setting priorities.

7 I'm three or four years away of this. I'm not
8 I haven't seen the latest data; I haven't looked at the
9 latest monitor reports, but my point is, if you're going to
10 move in a direction other than saying a simple sort of
11 including questionnaires and surveys kind of reference, I
12 think you ought to go much slower and explore the whole
13 area in a little bit greater detail before making a move
14 that I think has implicit within it assumptions that are
15 open to some question. That's my major objection to this.

16 CHAIRMAN WALLACE: Okay, I understand your
17 objection. I must say I'm surprised by it only because I
18 don't read the language as being as strong as as all that.
19 Mr. Meyer has described it as an outreach amendment. And
20 I think that's what it is. I think outreach is very
21 important. Otherwise you could just, you know, one of the
22 things I would like to take into consideration is who actually
23 comes through the door.

24 Who is interested enough in their problems to
25 get up and come through the door. And some people can't do

1 that, so you have to have outreach in some form. I am as
2 skeptical of survey data as anybody can be, because, having
3 spent a few years on the Hill, I've seen a lot of surveys
4 that were obviously designed to get one particular purpose
5 and they got it.

6 But I don't think the survey data isn't always
7 awful and I don't think we're telling people that they
8 have to do it. And we're not telling people that they
9 have to get out a distorted survey. I guess I don't want
10 to elevate that above all other things, but I certainly
11 do want to say that it's a good idea to have outreach
12 to the community.

13 Now, if there's language we can get that can
14 satisfy your fears and nevertheless emphasize what I think
15 the Staff quite properly wants to emphasize and what I
16 want to emphasize is, let's get some input you know, and
17 again, the second sentence, "The appraisal shall also
18 include input from the employees, governing body member,
19 private bar and other interested persons.

20 I'd like to get input from disinterested persons,
21 people who don't know about the program because they
22 are not being reached, but people who need it. People who
23 you know, people who have problems that we ought to be
24 solving that we have the capacity to solve, but we don't
25 know about them, and they don't know about us, and they

1 can't get to us. If a survey isn't the way to get input
2 from those people, then I want to know what it is because
3 our mandate extends to them as well as it does to everybody
4 else that's already listed here. That's my concern.

5 MR. HOUSEMAN: I don't think there's any dis-
6 agreement about outreach, but a questionnaire or survey
7 is not the only method of outreach. And I think if you
8 want to say using such methods of outreach including
9 questionnaires or surveys and other methods of outreach,
10 that doesn't pose a problem.

11 For example we have the largest institutionalized
12 population in this country is in nursing homes. It is very
13 difficult because of the age and because of the way nursing
14 homes are run, to conduct surveys of nursing home recipients.
15 You can't do it; it doesn't work; I've tried it.

16 Organizations in Detroit, Citizens for Better
17 Care, who work on Nursing Homes, have tried it. You cannot
18 do that. Now how are you going to use a questionnaire
19 or survey. You have to use other techniques to find
20 out what the legal needs of those people are and that's
21 what my concern is. You're assuming that a questionnaire
22 or a survey is, and I think it's a very simplistic
23 notion, is the way to do this.

24 I agree with you, let's write in something
25 about outreach. That's not a problem.

1 CHAIRMAN WALLACE: All right, well let's --

2 MR. HOUSEMAN: My concern is focusing solely
3 on on these words, and I think you can deal with it by
4 some minor changes in this language that make reference
5 to those things.

6 CHAIRMAN WALLACE: I am dominating the discussion
7 from the Committee, and I apologize for so doing. We've
8 got several people at the witness table. I'll ask other
9 members of the committee if they've got questions for
10 these witnesses, and any comments on the issue that's
11 on the floor at the moment.

12 MR. SMEGAL: Well, I think there is some inter-
13 mediate language that might solve everybody's problem,
14 Mr. Wallace.

15 CHAIRMAN WALLACE: I'd be delighted to hear it,
16 Mr. Smegal.

17 MR. SMEGAL: If we were to change the order of
18 the insertions and just some wording slightly, so that
19 it would read, after the client population, semicolon,
20 which is already there, where it starts off "Where feasible,"
21 skip down and include after "where feasible" the appraisal
22 shall also include the items listed there, plus between
23 maybe private bar and other interested persons, the
24 phrase eligible clients through questionnaires or surveys,
25 so that would group it all, it wouldn't give it the

1 special emphasis that Mr. Houseman is concerned with; it
2 would put it in there; it would leave it as an alternative
3 way of gathering information. I'll do that again, if you'd
4 like.

5 CHAIRMAN WALLACE: Okay, well, I'll tell you, I
6 don't have any real objection to that except putting the
7 "where feasible" before the appraisal. I think we ought
8 to say the appraisal shall include input from recipient
9 employees, governing body members, private bar, other
10 interested persons and --

11 MR. SMEGAL: And/or feasible?

12 CHAIRMAN WALLACE: -- and, well that ought to
13 be mandatory up to that point, and to the extent feasible,
14 should involve outreach to other eligible clients, and
15 I don't know whether we want to say, well, let's say
16 outreach to other eligible clients --

17 MR. SMEGAL: Through questionnaires or surveys.

18 CHAIRMAN WALLACE: -- which may include such
19 techniques as questionnaires and surveys. I didn't write
20 any of that down. I was just talking. I hope somebody
21 is taking notes on what we said. All right, what we would
22 do is to strike the semicolon after "client population" and
23 put a period (.). And then we'll strike all of that under-
24 lying language and begin, "The appraisal shall also include
25 input from the recipient's employees, governing body members,

1 the private bar, and other interested persons, and to the
2 extent feasible, shall"-- ah, here we go --"should include
3 outreach to eligible clients which may include the use
4 of such techniques as questionnaires or surveys." That's it.

5 Now, as we work through that language, Mr. Smegal,
6 is that acceptable to you?

7 MR. SMEGAL: That's certainly acceptable to me.

8 CHAIRMAN WALLACE: Would you like to move the
9 adoption of that language?

10 MR. SMEGAL: That's the motion.

11 CHAIRMAN WALLACE: All right, there is a motion
12 to amend Section 1620.2(a)(1), as follows, and I'll restate
13 it again for everybody's benefit.

14 Maybe I better go back to the text, because that
15 is where we were. After "client population" and I said
16 we were going to work from the public text, so we will.
17 After "client population" in the published text, strike
18 the comma (,), and put a period (.). Change the language
19 -- add the following language after that. "The appraisal
20 shall also include" and then we'll go to "input from the
21 recipient's employees" so we'll be striking "as well as" from
22 the published text, the appraisal shall also include input
23 from the recipient's employees, governing body members,
24 the private bar and other interested persons. Strike the
25 period (.), and put comma" (,) and to the extent feasible,

1 should include outreach to eligible clients which may include
2 the use of such techniques as questionnaires or surveys."

3 All right, and then the rest of (a) (1) would be
4 the same. "In addition to substantive legal problems, the
5 appraisal shall address the need for outreach, training
6 of the recipient's employees, and support services;

7 Now that's Mr. Smegal's amendment, and restating
8 it, I'm not sure if I asked for a second. Let me ask again,
9 is there a second to Mr. Smegal's amendment?

10 MS. MILLER: I second it.

11 MS. BERNSTEIN: Would you read the exact wording
12 after "to the extent feasible" just the next six words
13 or so?

14 CHAIRMAN WALLACE: Okay. "To the extent feasible
15 should include outreach to eligible clients which may
16 include the use of such techniques as questionnaires or
17 surveys."

18 (Continued on following page.)

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END T#1B

1 CHAIRMAN WALLACE: Now, that is the motion by
2 Mr. Smegal, it has been seconded by Ms. Miller, the motion
3 is on the floor for debate from members of the Committee.

4 MS. BERNSTEIN: Could I just ask whether or not
5 staff believes that this would meet the problems in terms
6 of the enforceability. Would this cause problems or
7 alleviate problems in helping to make this reg meaningful
8 as an entity.

9 MR. MEYER: Well, I don't know. This is just
10 my opinion. I think that you know, shifting it down
11 there and saying "where feasible" down at the end so
12 that it isn't elevated totally above everything else still
13 preserves the thrust. I think we have so many qualifiers
14 in there that anybody that doesn't that isn't interested
15 and even thinking about this can ignore it with a clean
16 conscience and this could never be enforced under any
17 circumstances. We've got too many qualifiers in my opinion.

18 MS. BERNSTEIN: Well, that was my reading of
19 it and I'm just wondering why we're here wasting our time.
20 Either we're going to have a priority regulation if we don't
21 intend to have something with teeth in it to enforce it,
22 if that is our intention.

23 If we are sending a letter of good wishes out
24 to the programs, instead, then let's send a letter, let's not
25 pass regulations on it.

1 CHAIRMAN WALLACE: I would say, Ms. Bernstein,
2 that's always been my concern about this whole regulation.
3 Either we've got -- and I'm not sure that I would have
4 a priority regulation if the statute didn't require something
5 about priority setting, but because unless we're going to
6 use something, unless we're going to say here's how we
7 want you to set priorities, here is a scientific method,
8 here is the plan, it's been developed by the Office of
9 Field Services, and it will fit your situation and you
10 ought to use it, and that might not be a bad thing to do
11 if we could develop such a situation, but we haven't got
12 one.

13 In the meantime, I think if we're going to have
14 a regulation, it ought to encourage people to do the
15 sort of things that we think ought to be done. I don't
16 know how we can mandate them to do something that we can't
17 tell them how to do. That's the whole problem with this
18 priority regulation is what it is we really think we're
19 going to accomplish here.

20 MS. BERNSTEIN: Well, would general counsel's
21 office have the same reaction regarding the teeth in the
22 current regulation?

23 MR. MEYER: I was talking about this particular
24 thing. The current regulation simply says nothing
25 about questionnaires or surveys, and essentially this part

1 as it's written, can be enforced if people don't go through
2 an serious priority setting process of any type, and
3 otherwise it can't be enforced. What I was thinking is
4 you know, if we shifted this down but not also included
5 the other qualifying language along the lines of just
6 saying, "to extent feasible, should include such techniques
7 as questionnaires or surveys" without the other language,
8 while we'd rarely enforce it, we could encourage people
9 who do not have any of the problems that have been talked
10 about to use questionnaires or surveys.

11 I don't expect we could enforce it, but I think
12 we could significantly encourage people who don't have
13 a problem to use questionnaires or surveys. Also we could
14 say if you do, and made a serious use of them in your
15 process, that certainly shows us you've been working on
16 the process. I would feel that that way the regulation
17 would be effective to the extent that it would actually
18 mean something to actual conduct. It would not be enforce-
19 albe in the iron fist sense, but that we weren't intending
20 anyway.

21 MS. BERNSEIN: Okay, I am not positive but I
22 don't believe that I have received any sort of information
23 from the Office of Compliance and Review or Office of
24 Field Services regarding the extent to which priorities
25 is a source of concern with program compliance.

1 MR. MEYER: Well, no I'm not from OCR, I'm from
2 Field Services, even though I'm in this case presenting
3 this in a way under the general counsel report. Last time
4 Paul Reddick was here and said we had to work two programs,
5 that we had moved against in a serious compliance way, and
6 one of the major headings was a failure to do their
7 priority setting, and they've probably done very little at
8 all.

9 I mean, other than that, because of the nature of
10 this regulation, we usually are compliance would be more
11 in the nature of encouraging them to do it, or in their
12 monitoring report, saying their compliance isn't very good
13 and then we'd write them letters and talk to them. It
14 would have to be pretty blatant that we would go to the
15 more iron fist measures over this regulation.

16 It's much easier to find that somebody lobbied
17 or didn't lobby although that's hard enough, then whether
18 somebody set their priorities adequately.

19 CHAIRMAN WALLACE: Let me say this, Ms. Bernstein,
20 doing it in the regulation has this difference from doing
21 it in a letter. It is an encouragement; it is not really
22 an iron fist requirement, and we could send them a letter
23 saying we think you ought to do more with questionnaires.

24 I think the difference here is that this is a
25 matter on which we've taken public debate; it's a matter

1 that has been carefully considered by the Board, and it
2 carries whatever weight and notice and comment under the
3 Administrative Procedures Act or the rules set up by that Act,
4 if anything.

5 I think it's a good idea and as far as if we're
6 going to have priority regulations, I think they ought
7 to look something like this. If we're not going to have
8 priority regulations, I don't know what our committee
9 procedure is but when you finish walking through a bill
10 section by section, in the House of Representatives, when
11 you're done with it, you can move to strike everything after
12 the enacting clause and get rid of it.

13 And you can move to strike the enacting clause
14 and get rid of it. And after we've walked through this and
15 we don't like what we've got, and we don't think it's
16 says anything, it might make sense to strike the enacting
17 clause, and just be done with it. But if we're going to have
18 priority regulations, I think the language we've come up
19 with makes as much sense as anything we're capable of doing
20 at this point.

21 I keep an open mind on a motion to strike the
22 enacting clause, if we can get to lunch time.

23 MS. BERNSTEIN: I have heard this morning, from
24 Mr. Houseman, who says that various studies that have been
25 done in the past have okayed various ways of doing it,

1 those studies may or may not have been conducted with the
2 same kind of concerns that we currently have regarding the
3 priority setting. My general inclination is to think that
4 the most reliable way of finding out what clients in any
5 geographical area feel about their relationship with the
6 legal system and their needs, is to conduct a survey.

7 I heard you say that you thought that might be
8 the proper way too. My concern about this regulation is
9 that if we make this a permissive regulation and we decide
10 to provide a survey instrument, and we as a corporation
11 decide to develop a survey instrument, and make the
12 utilization of this survey instrument a part of the
13 grant conditions, does the existence of this regulation
14 in a permissive fashion block the acceptance of such a
15 survey instrument for the next grant year?

16 CHAIRMAN: Okay, let me ask the General Counsel
17 because I'm not familiar with how we put in grant conditions.
18 What you are asking is assuming the regulations are on the
19 books as we're about to do them if this motion passes,
20 over the next six months, could we develop a survey
21 instrument and could we stick it in to the grant saying
22 as a condition of your grant, everybody has to use it.
23 And if we did that, would this regulation render that grant
24 construction invalid.

25 I will ask general counsel for a curbstone opinion

1 on the question as restated by the Chair.

2 MR. BAGENSTOS: I'm not entirely clear as to
3 what the purpose is. Let me ask a question. Is the
4 purpose to say that this questionnaire must be
5 administered, and on the basis of that, the priority must
6 then be made by each program. Is that the intention?

7 CHAIRMAN WALLACE: That would be the grant
8 condition.

9 MS. BERNSTEIN: Yes, yes.

10 MR. BAGENSTOS: I'm not really sure. It would
11 appear to me that the regulation would be in contradiction
12 to that. Because the regulation would be stated in
13 permissive terms, that section of the regulation. However,
14 if such an instrument were developed by the Corporation,
15 its administration could be coupled with an amendment
16 or revision to the regulations.

17 MS. BERNSTEIN: And would that amendment to
18 the regulation have to go through the regular process
19 which is essentially a 90-day process, published for 30
20 days, comments reviewed, committee and board action, and
21 published as final for 30 days prior to the time it becomes
22 effective. So we would have to have a regulation published
23 no later than the end of September in order to change this
24 if we develop such an instrument.

25 CHAIRMAN WALLACE: Let me ask the general counsel

1 another question. We don't have a priority setting regula-
2 tion at all. Do we have the power to do that grant condition,
3 the same grant condition that Ms. Bernstein has described
4 and no regulation on priorities, could we just write that
5 grant condition into the grant and make it enforceable.

6 I realize that we've got appropriations acts out
7 there that call all of that into question right now, but
8 on the basis of our ordinary powers under the Act, would we
9 do that?

10 MR. BAGENSTOS: I would think so. The relevant
11 section of the Act reads, 1007(a)(2)(c), the Corporation
12 shall insure that recipients consistent with the goals
13 established by the Corporation of Docket Procedures for
14 determining and implementing priorities for the provision
15 of such assistance, taking into account the relative needs
16 of eligible clients for such assistance and so on.

17 So that the Act has language which, in my opinion,
18 could be enforced.

19 CHAIRMAN WALLACE: Okay. I think we understand
20 the legal circumstances in which we find ourselves.

21 Go ahead, Mr. Houseman.

22 MR. HOUSEMAN: I just want you to realize that
23 this language was never posted; was never noticed for
24 comment; this is staff language, and secondly there's not
25 one comment in the record that supports this staff proposal.

1 Now, I think we're willing to buy the kind of
2 approach that we've worked out here, but to the degree you
3 are moving on something where there was no opportunity for
4 programs to comment about what some people are describing
5 as a major shift in policy, I think that's wrong.

6 And if you adopt the language that has sort of
7 been worked out here, I think you get around those problems,
8 and yet you meet some of the concerns about encouraging
9 people to include effective outreach techniques.

10 CHAIRMAN WALLACE: Okay, there is a motion on
11 the floor, it has been seconded, and we've had substantial
12 debate and legal opinions as best we can manage on the spur
13 of the moment. Can we -- is there any further debate before
14 I bring this thing to a vote? I'm going to let Ms. Miller
15 get her coffee, and get back up here.

16 All right, there appearing to be no further debate
17 on the motion, the Committee is now ready to vote on Mr.
18 Smegal's motion, as seconded by Mrs. Miller, to amend section
19 1620.2(a)(1), as I have restated on several times, and that
20 I'll not restate here.

21 Would all members in favor of Mr. Smegal's motion
22 say aye?

23 (Chorus of ayes.)

24 CHAIRMAN WALLACE: Those opposed?

25 MS. BERNSTEIN: No.

1 CHAIRMAN WALLACE: All right. The amendment
2 carries. I will vote aye on that one. Let the record
3 reflect.

4 Are there any more suggestions with regard to
5 2(a)(1)?

6 All right, now the staff has recommended an
7 amendment, tell you what, let's finish 2(a)(2) and then
8 let's give the Court Reporter and everybody else about 5
9 minute break.

10 The staff has recommended a change in 2(a)(2)
11 which is evidently dependent upon the change it has recommended
12 in 4(b) which is to strike 4(b). So maybe this will be
13 more complicated than I thought.

14 Let me ask the Staff to explain briefly why it
15 wanted to strike 4(b)? And what we may do is postpone dealing
16 with (a)(2) until we decide what we want to do with 4(b).

17 MR. MEYER: Yes, Mr. Wallace. The reason for
18 striking 4(b) is that 4(b) requires something by June 30,
19 1984, it was a one-time requirement. Therefore, at this
20 point, it's surplusage, and in addition, it by striking
21 that, people had the feeling there were more reports
22 required under this Reg than there really are and so in
23 addition to getting rid of surplusage, you'll make people
24 realize there's only one report a year required under this.

25 CHAIRMAN WALLACE: Now, as I look at 1620.5, there

1 will still be some sort of an annual report summarizing the
2 review of priorities, the date of most recent appraisal and
3 so on. So there will be an annual report?

4 MR. MEYER: There will be one, yes.

5 CHAIRMAN WALLACE: Okay, that's fine. So if
6 we're going to strike 4(b) we would strike this language,
7 and I see why. We would still involve people in the
8 annual review required by 1620.5 and 1620(4)(b) really is
9 obsolete at this point. Is there any comment from members
10 of the committee on the staff's recommendation on striking
11 that language.

12 Okay, at the risk of being dictatorial, the chair
13 will ask unanimous consent to strike "in the development
14 of the report required by Section 1620.4(b)."

15 MR. SMEGAL: Does that carry with it, 1620.4(b)?

16 CHAIRMAN WALLACE: We'll get to that when we get
17 there. All right, lets to ahead and be brutal. The chair
18 will ask unanimous consent at the same time, to strike
19 1620.4(b). Hearing no dissent, the regulations are amended
20 as stated. 4(b) is stricken and the reference to 4(b) in
21 2.(a)(2) is stricken. And the committee will not take about
22 a five-minute break, and reconvene at 5 or 10 minutes of 11:00.

23 (Brief recess is taken.)

24 CHAIRMAN WALLACE: The Staff has no proposed
25 amendments to 1620.2(b). Now, I know that the study that

1 we're referring to in shorthand as the NLADA proposal,
2 the five organization proposal, has several changes that
3 they would like to make to 2(b). Since the committee's
4 not here -- half the committee isn't here at this point,
5 what I'm going to do is ask Mr. Houseman briefly, Mr.
6 Houseman, I'll let you talk and they can listen, and if
7 you'll tell us what changes you would propose in 2(b),
8 I'd appreciate it.

9 MR. HOUSEMAN: Yes. The changes we propose in
10 2(b) are two, and they both track either the statements
11 of findings, or statutory language. The change, the first
12 is to add to the factors that programs, in setting priorities
13 take into account. They take into account those cases
14 or matters which would assist in improving opportunities
15 for low-income persons.

16 CHAIRMAN WALLACE: What's the Section of the Act?

17 MR. HOUSEMAN: That is the Statement of
18 Findings, is is 1001.3, the second clause of that says,
19 assist in improving opportunities for lower income persons.
20 That is the first change.

21 And the second change is to add as a factor,
22 whether the legal efforts will result in efficient
23 and economic delivery of legal services. That comes
24 from Section 1007.a(3) of the Legal Services Corporation
25 Act, the Economical and Effective Delivery of Legal

1 Services.

2 CHAIRMAN WALLACE: As I remember your comment,
3 7 is not exactly the language that used to be in the
4 regulations before, and I don't remember exactly what
5 the language was.

6 MR. HOUSEMAN: I have it right here.

7 CHAIRMAN WALLACE: If you'd tell us why you want
8 to go back to the statutory language as opposed to the
9 previous language, that would be useful.

10 MR. HOUSEMAN: Okay, the previous language stated,
11 as a factor, that programs should take into account the
12 general effect of the resolutions of a particular category
13 of cases or matters, on eligible clients in the area served.
14 We have no objection to that language. But because concerns
15 have been raised about that language, what I was --
16 that it gave too much emphasis to so-called impact work,
17 what I was trying to do was to go back and and and use
18 language that came from the Act that conveyed the underlying
19 intent of the original language.

20 And I think in some sense it conveys it better
21 than the original language and that's I return to the two
22 sections of the Act where the two notions of improving
23 opportunities and economic and effective which underlie
24 the original language where those two notions came from,
25 and went back to the language in the Act itself.

1 CHAIRMAN WALLACE: Did economic and effective
2 used to be in the Regulations before?

3 MR. HOUSEMAN: No. I think there's two notions
4 buried in the original language general effect, and I'm
5 trying to sort those two notions out and make them implicit.

6 Also, just for information, this original language,
7 was drafted in 1976, based on a draft that was submitted
8 by ABA, the National Legal Aid and Defender Association,
9 and the Project Advisory Group, and the language that was
10 in the previous drafts of that, was the two provisions that
11 I have here, for whatever it's worth.

12 CHAIRMAN WALLACE: I'll ask staff, before I open
13 it up to members of the committee, for their comments on
14 the effect of the two amendments that Mr. Houseman has
15 suggested on behalf of the folks he represents. That's
16 7 and 10, on his draft.

17 Mr. Meyer?

18 MR. MEYER: Okay, I'll take it in reverse order.
19 Because I see no reason why there would be any objection
20 to 10. It wasn't there; it isn't in a special category,
21 but there's no reason why it shouldn't be there since
22 that's something we all agree on.

23 Economic and effective.

24 On 7, I think that the statute language is general
25 purpose language, and I don't think it means that the wording

1 here is required. The category of cases or matters which
2 would assist in improving options for low-income persons.
3 It is a perfectly reasonable interpretation of the statute
4 that making legal assistance available to individual clients
5 when they have legal problems, as a general overall category,
6 improves the opportunities for low income persons.

7 And I think this is a policy matter deciding
8 I think that this language is better in that view, it's
9 somewhere inbetween that of what we had before, and what
10 we have now, but what you have is a decision of what degree
11 you want to focus on serving individual clients with their
12 specific problems, and to what degree you will allow other
13 criteria to affect the selection of cases.

14 Let me add one other point. This does not
15 as I've read some comments say, the striking of the old
16 impact language, and not substituting anything, does not
17 mean the program has to just do first come first serve
18 without any discrimination at all, I mean discrimination
19 in the favorable sense of making a reasonable choice.

20 Because 6, the Relative Importance of Particular
21 Legal Problems of the Clients of the Recipient, means that
22 if someone's being evicted tomorrow and somebody else
23 has a long-term problem or something, you can make a lot
24 of choices under 6. In fact you can probably get a certain
25 amount of the old 7 in under 6 if a program really wants to.

1 I think what this does is focus more on the
2 individual needs of individual clients if we don't put
3 7 back in.

4 CHAIRMAN WALLACE: Let me ask members of the
5 committee if they've got comments or questions for these
6 witnesses on these two particular proposals we've had
7 and their comments.

8 MS. BERNSTEIN: I don't disagree with what John
9 is said. I am concerned because the Legal Services
10 Corporation Act, in the Statement of Findings and Declaration
11 of Purpose, the first purpose as stated in the Act, is
12 that there is a need to provide equal access to the system
13 of justice in our nation for individuals who seek redress
14 of grievances.

15 And that was listed as number one. Now, it is
16 the case that in describing the purpose and the reason
17 for having a Legal Services Corporation, Congress in its
18 wisdom detailed that by saying that one of the end effects
19 of this will be to assist in improving opportunities for
20 low income persons consistent with the purposes of the Act.
21 However, that particular provision is not really a purpose.
22 It's more of an explanation. I think to take it out and
23 put it in here as 7, as one of the considerations to be
24 used and to attach to it, to the category of cases or matters
25 which would assist in improving opportunities for low income

1 persons, I think that that is an extrapolation that does
2 not relate specifically to the wording in the Act.

3 In other words, by attaching the category of
4 cases or matters, then you're suddenly putting low income
5 persons in an everybody's the same situation. I think,
6 personally, that the first purpose of the act was for
7 individuals who seek redress of grievances should have
8 equal access to the system of justice.

9 And I think that that is subrogated when you
10 start talking about cateogries of cases relating to low-
11 income persons.

12 CHAIRMAN WALLACE: Mr. Houseman would you care
13 to respond?

14 MR. HOUSEMAN: Well, it's almost impossible in
15 some sense, but when you set priorities, you make decisions
16 between various kinds of subject areas. That's what
17 priority setting is all about. And every program represents
18 individuals, this dichotomy that's growing up is a trap
19 and a very false dichotomy that we have to get around.
20 What this proposes to do is to explicitly encourage in
21 setting priorities, the programs take into account those
22 cases or matters which will have some effect on assisting
23 or expanding, or improving the oppourtunities for low income
24 people.

25 I find it hard to understand what's wrong with that.

1 I assume that what we're all trying to do in providing
2 legal services, is to redress grievances and to try to help
3 people better themselves. And this is designed to encourage
4 exactly that kind of conduct.

5 MS. BERNSTEIN: How would you suggest that we
6 get the information about which matters would actually
7 improve the opportunities for low-income persons?

8 In other words, if we support a situation in
9 a community in which we take cases that would be in support
10 of rent control laws, then the effect of that might be
11 that there would be a decrease in the amount of low-income
12 housing available, and therefore there are low income persons
13 who will have suffered and their lot will have worsened
14 because of that decision.

15 I'm not saying that that decision should never
16 be made but I am saying that putting this in here is un-
17 workable because it is not humanly possible to decide how
18 all low-income persons are going to improve their lot by
19 an individual program decision making.

20 MR. HOUSEMAN: Of course not. But there are
21 many areas where focusing a program on improvements of
22 individuals is a worthwhile thing to do, that doesn't
23 raise these kind of conflicts that you're talking about.
24 Every program deals with these conflict issues; whether
25 you have this in or not, it's going to deal with conflict

1 issues.

2 Either the abstract conflict issue that you
3 raise, or the more direct conflict issue between two
4 individuals, and I don't think what you said has anything
5 to do with what we're trying to do here.

6 MS. BERNSTEIN: But without it, the opportunity
7 would still be there. You don't disagree that that oppor-
8 tunity is not negated --

9 MR. HOUSEMAN: No, of course not. But I don't
10 think -- we're trying to list various factors the program
11 should take into account; it's not an all-inclusive list,
12 and the last time something was deleted -- frankly, without
13 very much discussion -- I'm trying to make sure that some
14 of the underlying notions of what was deleted are back in
15 here. Doesn't have to be back in here. I think this is
16 an improvement in the language. It's not the biggest issue.

17 CHAIRMAN WALLACE: Let me reveal my concern,
18 especially as it reflects the previous language. I think
19 I heard the word "general effect" in the previous language.
20 I agree with Ms. Bernstein that I don't see anything about
21 general effect in the Act. I don't think it's a general
22 blanket authorization to go around and do things that we
23 think would be a nice thing for changing the world for the
24 benefit of the poor.

25 What sub 3 says is improving opportunities for low

1 income persons, consistent with the purposes of the Act.
2 And the purposes of the Act I think are largely to insure
3 equal access for individuals to the system of justice.
4 And individuals who want access to the system of justice
5 may have broad goals in mind when they come in the door.
6 That's fine.

7 But the main focus has to be on the clients. I
8 see why we got rid of the old language. I don't know whether
9 it would help or hurt to adopt this language. If we adopted
10 this language, I would certainly want to add to it the
11 rest of that section, which says "consistent with the
12 purposes of the Act."

13 But the --

14 MS. BERNSTEIN: I think it's surplusage because
15 we have the Act.

16 CHAIRMAN WALLACE: Well, to a large extent,
17 regulations are surplusage anyway. I'm of several minds
18 on number 7; I'm not quite sure. Are there any further
19 comments from the Committee? Ms. Bernstein, Ms. Miller,
20 Mr. Smegal?

21 MR. SMEGAL: Yes. Mr. Houseman, what danger do
22 you see or what disadvantage do you see if it's not there?
23 I mean this section is entitled "The following factors
24 shall be among those considered." And the fact that it's
25 not in the laundry list of 10, if the laundry list is only

1 9, does not eliminate many other items that could be factors?

2 MR. HOUSEMAN: That's absolutely correct; I don't
3 think there is a great downside to it. Not being there,
4 I think it would consistent with the overall purposes of the
5 Act, and I don't really disagree with this dialogue here,
6 wanting to be clear, but I think that those purposes have
7 more breadth than I think is intended by this dialogues, and
8 I'm trying to make sure that the factors that are taken
9 into account are consistent with the overall statements of
10 what the purposes of the Act are, that's all it is.

11 I agree, it's not in there, it doesn't preclude it.
12 Neither does it preclude any of the other factors since
13 we are laundry listing factors, I think to list this is
14 helpful and helpful to programs and I think rounds out the
15 various factors that we have here.

16 CHAIRMAN WALLACE: Okay, I'm going to ask --

17 MR. SMEGAL: I have a motion.

18 CHAIRMAN WALLACE: All right, Mr. Smegal has a
19 motion.

20 MR. SMEGAL: I would move that we amend the
21 1620.2(b) by adding an additional section which I would
22 propose numbering 9, because there are 8 in the existing
23 proposed regulations. That I would number 9, and it would
24 be the one that is numbered 10 in Mr. Houseman's materials,
25 whether legal efforts will result in efficient and

1 economic delivery of legal services.

2 CHAIRMAN WALLACE: Okay, there's a motion to add
3 the language which is in the NLADA and various organizations'
4 draft as number 10, to take that language and make it number
5 9, as 1620.2(b)(9), about efficient economic delivery of
6 legal services. Is there a second to Mr. Smegal's motion?

7 Is there a second?

8 MS. BERNSTEIN: I'll second it. I would propose
9 another amendment to go with it, just to save time. That
10 at 6, we put individual clients of the recipient to have
11 as another consideration since we're reflecting the purposes
12 of the Act in the efficient and economic delivery of legal
13 services. And if Mr. Smegal doesn't consider that to
14 be a friendly amendment so we can take all our votes all
15 at once, then I'll withdraw that for now and still second
16 his motion.

17 MR. SMEGAL: I just have a question. Does the
18 word "individual" appear anywhere else or is this going
19 to be a new word we're putting in?

20 MS. BERNSTEIN: It would be a new word, and my
21 theory would be that we're giving some reference to the
22 considerations, and I would just like to get the individual
23 in there someplace.

24 MR. HOUSEMAN: Where are you, on 6?

25 MR. SMEGAL: 6.

1 MS. BERNSTEIN: I'm on 6, and I would put
2 "individual" in before "clients"; or replacing the or in
3 addition to "the" before "clients". I don't care.

4 MR. HOUSEMAN: Sure, no problem, okay.

5 MR. SMEGAL: Unless there's some problem with the
6 definition of individual, I have no problem with it.

7 CHAIRMAN WALLACE: I think we know what "individual"
8 means. All right, there is a motion on the floor, friendly
9 amendment and second at the same time, by Ms. Bernstein.
10 We will add 10 from the NLADA draft to be number 9 and we
11 will amend 6, to add before the word "clients" the words
12 "individual". Now that is the two-part motion on the floor.
13 Is there any discussion?

14 MR. SMEGAL: Mr. Wallace, there is a slight
15 addition to it. We're going to have to move the semicolon
16 and the "and"?

17 CHAIRMAN WALLACE: That's right. We would --
18 the Committee on Style strikes "and" at the end of 7,
19 replaces the period at the end of 8 with a semicolon, and
20 the word "and". Okay, now having rewritten the grammar,
21 is there any further discussion on Mr. Smegal's motion?

22 If not, we're ready to vote. All in favor, say
23 aye.

24 (Chorus of ayes.)

25 CHAIRMAN WALLACE: Opposed?

1 (No response.)

2 CHAIRMAN WALLACE: All right, the amendment carries.
3 Does anyone on the committee have any further discussion,
4 debate or amendments to offer with regard to 1620.2(b)?

5 Hearing none, we will move onto 1620.3, the Staff
6 has some amendments that they've proposed to 1620.3 and I
7 will ask the Staff to describe their amendment proposals
8 at this time.

9 MR. MEYER: Thank you, Mr. Wallace. Since there's
10 about three of them, I just want to explain that the basic
11 idea of this is that this regulation has been partly
12 correctly interpreted and partly misinterpreted to be much
13 more rigid than I believe it was intended when it was
14 first passed.

15 The language lent itself to that somewhat and I
16 think to some extent was interpreted beyond its meaning.
17 The aim of this is to make it clear that this is not
18 a rigid numerical type requirement on access.

19 Okay, now, with that preamble, first in the
20 fourth line of 1620.3, well actually it begins on the
21 third line in my book, you strike "so as to substantially"
22 and you add "and shall make a reasonable effort to".

23 CHAIRMAN WALLACE: Let me mention at this point
24 that exactly that same change is made by the latest proposal
25 that we have from Mr. Houseman on behalf of various

1 organizations that was distributed this morning. So far,
2 those proposals are identical.

3 MR. MEYER: And then we go on down to where we
4 have "reasonably equal access" we go "substantially equal
5 access" which actually was to be consistent with 1620.1
6 which has just gotten struck, nonetheless, I think that
7 the words okay. Actually, having struck it, I don't care
8 which word we have now.

9 CHAIRMAN WALLACE: Well, I think reasonably
10 is better than substantially. But I understand your reasoning.
11 Let's pass that for a second and keep going.

12 MR. MEYER: And then we go on down and this is
13 a different one in the next sentence, talking about types
14 of services may vary as required to meet different priorities
15 in different parts of recipient service area, and we have,
16 "if the governing body of the recipients so desires --

17 CHAIRMAN WALLACE: Whoa, whoa, whoa, whoa. Let
18 me stop you right there. We were going to change after
19 substantially or reasonably equal access to "similar types
20 of services and levels of representation." Similar is
21 no problem. I called the general counsel yesterday and
22 asked if somebody could tell me more or less what levels
23 of representation means, because we've got it in here twice,
24 I realize it has been in the Act and in the proposed regula-
25 tion before, and we've gotten a lot of comments about what it

1 means, and before we get down to the next sentence, maybe
2 we ought to deal with "levels of representation" right here.
3 Can you tell me what the Board had in mind when it adopted
4 that language last year?

5 MR. MEYER: I believe the idea was when that
6 language was adopted, that in addition to saying the services
7 should be the same, we think that similar is feasible
8 whereas the same isn't, the idea was that if you were going
9 to pursue one client's case, you shouldn't not pursue another
10 because he lives in a different area or something like that.

11 Obviously, there are a lot of valid reasons why
12 one case is pursued and another is not, but those have to do
13 with the interest of the client, the feasibility of the
14 case and so on. And we we --

15 CHAIRMAN WALLACE: Isn't all that subsumed in
16 similar types of services, we're saying that all potentially
17 eligible clients and the recipient service area have reason-
18 ably equal access to similar types of services, that you
19 shouldn't that to the extent you can manage it, you shouldn't
20 exclude people in the country from services that you would
21 give to people in the city.

22 Or handicapped people from services to people who
23 can get on a bus and come in. That I understand, but then
24 we go on to say, and levels of representation. Once you
25 are serving people, what different levels of representation

1 are there? You've either got a client or you don't.

2 MR. MEYER: I think there was an idea in that,
3 my own view is, I would not believe that there would be
4 a substantial change in the regulation if we struck it and
5 it seems to be causing a lot of confusion, so I would not
6 advocate for that language.

7 CHAIRMAN WALLACE: Ms. Bernstein?

8 MS. BERNSTEIN: I don't know whether this is a
9 concern or not, but would types of services possibly be
10 misinterpreted to mean case types, meaning social security
11 versus housing, or family law versus something else, and
12 levels of representation have to do with advice only as
13 opposed to full litigation or telephone answering versus
14 seeing a person in an office, or pursuing their case
15 to it's conclusion?

16 CHAIRMAN WALLACE: So types of services would be
17 substantive, and levels of representation would be you
18 shouldn't deal with rural people simply by talking to them
19 on the phone, where you would have --

20 MS. BERNSTEIN: Or having somebody available one
21 time a month or you know that you really have two different
22 problems here.

23 CHAIRMAN WALLACE: I think both substantive nature
24 of the case, and how you deal with the case, should be
25 subsumed in types of services, I think. But I understand

1 the distinction you are drawing. I'm not sure the
2 regulation as it exists emphasizes that we mean you ought
3 to look at both things.

4 MS. BERNSTEIN: As long as we're looking at both
5 things, I don't care what words we use to do that.

6 CHAIRMAN WALLACE: Okay.

7 MR. HOUSEMAN: I think everybody understands that
8 both things are included in the phrase "types of services".
9 That is a broader phrase than category of cases.

10 There's a further problem of levels of represen-
11 tation once she gets into ethical concerns. If you have
12 a case, you just can't -- I mean there's certain limits
13 on how much, once you've accepted a client, you have to do
14 certain things.

15 CHAIRMAN WALLACE: All right, that's what I just
16 said. I think you've either got a client or you don't.
17 If you don't take them, you don't take them. But if you've
18 got them, you've got them.

19 MS. BERNSTEIN: Well, but we're talking about
20 setting priorities here and so that if we're talking about
21 the threshold issue of whether you're going to take the
22 client, then you don't make distinctions between taking
23 the client because you're not going to be able to or you
24 don't want to expend the funds to provide full level service
25 for him, and if that's going to be part of your consideration

1 in taking the client, then I think that's wrong.

2 CHAIRMAN WALLACE: Well let me -- I think I under-
3 stand what you're saying. I mean you are saying that in
4 determining whether or not to take a client, you shouldn't
5 take into consideration whether or not you're going to have
6 to take him all the way to the Supreme Court or whether
7 you can handle it with a phone call?

8 MS. BERNSTEIN: There is if the client is 200
9 miles out in the mountains, and you have to consider whether
10 or not you have to put that client in the same position
11 regarding your decision as to whether or not you're
12 going to take that case, as you would if the client was
13 next door.

14 CHAIRMAN WALLACE: Okay, what you're saying is that
15 you can consider in taking any case, how much work the
16 case is going to involve, but what you can't do is say if the
17 fellow was next door, we'd do a lot of work, and if he's
18 handicapped or speaks Vietnamese or is 100 miles away, we
19 won't take him.

20 MS. BERNSTEIN: I believe that people that live
21 in a geographical area that are supposed to be funded by
22 this Corporation for its services are to be funded, that
23 geographical area has to be covered and that that cannot
24 be a consideration.

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CHAIRMAN WALLACE: I understand and I think all

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1 of that concern, I still think its all subsumed in similar
2 types of services when we're saying that they should have
3 substantially equal access. And we'd almost have to
4 add a whole sentence here which I'm not necessarily opposed
5 to doing, to say that by types of services, we mean that
6 the things you take into account in deciding whether or not
7 to take the case shall not discriminate somebody with an
8 access problem and refuse to take his case, whereas you
9 would take it for somebody who didn't have an access problem.

10 I think that's what you're saying, and I don't
11 know what language we could put on it, but I'm kind of
12 inclined to think that's a good thing to say.

13 MR. HOUSEMAN: It may say it in common. We could
14 say it in a supplement or a preamble.

15 CHAIRMAN WALLACE: Let me ask the general counsel,
16 is that something we could say in the preamble?

17 MR. MEYER: Actually I'll answer for the general
18 counsel and if he wants to correct me, I will accept that.
19 That's exactly the sort of thing, the preamble is if the
20 language is clear, you can't do something else with the
21 preamble.

22 To the extent that the language isn't clear,
23 or to the extent that even though it seems clear to us,
24 we want to make sure it's clear to everybody, if we have
25 that in the preamble, then a case comes up that the preamble

1 is exactly like the legislative history in that sense,
2 and I personally think that would be a very appropriate
3 place to put it. Because it seems we're in agreement on
4 what it is, and we just want to make sure it gets down,
5 this is what this means and it doesn't mean something else.

6 CHAIRMAN WALLACE: Does the preamble have to
7 be approved by the Board or do we just approve the regs,
8 and then you all go out and write preambles?

9 MR. MEYER: The staff has usually written the
10 preamble. However, of course, if the Board indicates in
11 the record that it wouldlike us to say a certain thing,
12 we say it.

13 CHAIRMAN WALLACE: Well, I thnk at least two of
14 us have indicated what we want you to do. Mr. Smegal,
15 was your hand on the floor?

16 MR. SMEGAL: Yes, I've been listening to you and
17 Ms. Bernstein very carefully, and it seems to me we solved
18 both of your concerns by striking everything after the
19 word "services" in that sentence. We eliminate levels
20 of representation that you're concerned about and we elimi-
21 nate the economical aspect that Leanne has raised, and
22 why don't we just get rid of that language.

23 CHAIRMAN WALLACE: Yeah, I don't have --

24 MS. BERNSTEIN: I don't have an objection as
25 long as we make clear that types of services does not

1 relate to case kinds.

2 CHAIRMAN WALLACE: Well, I think we can handle that
3 in the preamble. Now, Mr. Meyer, do you have some problem
4 with Mr. Smegal's suggestion?

5 MR. MEYER: I would like to point out that there
6 are simply some situations where some recipients just don't
7 have the money to do certain things, however desirable
8 they might be, and that's why I believe the underlying
9 language on the maximum extent economically practical, which
10 should state which was meant to make it clear that we can't
11 take a bunch of numbers, although we say it again down
12 below. But I want to hammer that home because that has been
13 the number one concern about this reg in comments and so
14 on is that we're imposing something rigid and we're trying
15 to make people do things that they can't actually do so I
16 would really favor keeping that amendment -- I mean, it
17 isn't in now -- for that reason.

18 CHAIRMAN WALLACE: Okay, so Mr. Smegal?

19 MR. SMEGAL: I was just going to say that it
20 seems to me what Ms. Bernstein is saying, and I agree with
21 her, is if Field Program does custody cases and they can't
22 say, okay, we're going to do custody matters only if you
23 live within five blocks of the office; if you live across
24 town or out in the country somewhere -- if you're going
25 to do custody cases, do custody cases.

1 MR. MEYER: I think there's a misunderstanding
2 because, to the maximum extent economically practical,
3 modifies similar types of services as well, what it means
4 is if you simply don't have the money you may not be able
5 to reach some people in some areas as well.

6 What we're saying is you should try. We're not
7 saying you must and we can nail you if we can demonstrate
8 a disparity and that's the reason for this language.
9 That doesn't have to do with stopping in the middle; that's
10 a professional ethics problem and we don't have to address
11 that here.

12 MS. BERNSTEIN: Well, I'm confused again. I don't
13 understand how we can say we don't have to represent some-
14 body in the mountains, if they've got the same kind of case.

15 CHAIRMAN WALLACE: Mr. Meyer?

16 MR. MEYER: We're not exactly saying that. What
17 we're saying is that if you adopt a set of priorities and
18 your numbers don't come out fairly even, and one of the
19 reasons they don't is that simply you had to cut back and
20 you had to cut out an office or something, you're not
21 subject to sanctions for that reason. You can't do what
22 isn't economically practical; that is impossible, and what
23 we're saying here is your guide. This is what you ought
24 to do, but if it isn't economically practical, you do your
25 best, but we're not going to do anything to you.

1 CHAIRMAN WALLACE: The general counsel wants to
2 take a shot at this.

3 MR. BAGENSTOS: In discussions with some of
4 the Staff who drafted this initially, one of the items that
5 arose was -- let's say we have a program that is rural and
6 urban. And further complicating the matter, there are
7 different priorities in the urban area than there are in
8 the rural area. So for the sake of this discussion, priority
9 one rural is different from priority one urban. And so on
10 down. If what you have, just to take an example, is a
11 priority one rural 250 miles away from your nearest office,
12 and a priority 3 urban, that you've got to make the
13 decision between, the original intent of this language was
14 to say you've got to take priority one rural.

15 But I don't make that statement to contradict
16 what John is saying because I agree with that, but the
17 idea was that if you've got a high priority case where there
18 are access problems, you've got to do your very best to
19 take that high priority case, even though you've got access
20 problems, rather than taking a lower priority case where
21 the access is easier. I'm only giving you that as an
22 example of the intent of the original drafters.

23 CHAIRMAN WALLACE: All right. I want to ask
24 before we try to get to a resolution of this, Mr. Houseman's
25 been nodding and shaking his head alternatively throughout

1 this matter, and Mr. Houseman, your latest draft leaves
2 to the maximum extent practical in and strikes "economically".
3 Now maybe you'd like to tell us what why you did that
4 and what you have in mind?

5 MR. HOUSEMAN: Yes, first I'm going to answer the
6 question. I think it's real important in considering
7 this regulation to have a little opportunity to make an
8 overview presentation about a very issue we haven't heard
9 about which is and which this is the heart of which is
10 rural access problems.

11 And as you know, I had Sara Bales last time, and
12 she could not come today, and none of the other rural access
13 people could, and before going too much further, I think it
14 would be useful, I don't mind going to the language, but
15 before we get down to understanding the difference that
16 I propose, and the differences from the Staff draft, which
17 are not very far apart at this point in time, I think that
18 would be useful.

19 Now, originally I didn't strike that language,
20 and I don't think striking "economically" is a major issue.
21 I struck it because it seemed to me there may be other situa-
22 tions besides economically that would make you unable to
23 provide equal access to similar types of services. Some
24 of those might be language barriers, which you just don't
25 have staff that can accomplish it, and you have a very --

1 in Vermont, there's a very small French speaking population
2 in the far northern part of the State, and at times, you
3 may not have a translator. And you may try all you want, but
4 there may be some other reasons which would make that
5 impractical. I'm just trying not to lock it solely into
6 economic, but I don't think that's not a big issue. I
7 want to make it clear. That was why I struck it; that was
8 an intellectual reason, but we're comfortable with that
9 the language as it was.

10 Should understand the intellectual concern that
11 I raised there and I think it is a real concern, but
12 I think in the real world, it'll be taken into account
13 in a monitoring kind of effort, so I think it's not a real
14 worry, put it that way.

15 CHAIRMAN WALLACE. Okay. Mr. Smegal, this was
16 originally your suggestion and you heard all the discussion.
17 I'm going to turn to you to ask you what you think about
18 keeping or retiring the use of the language "to the
19 maximum extent economically practical"?

20 MR. SMEGAL: Well, I was merely trying to short
21 cut our discussions and I thought both you and Leanne saying
22 something that was consistent. I have no strong feeling
23 one way or another. I will see if I can get a second,
24 I will propose the motion which I suggested which was to
25 strike everything after "services."

1 MS. BERNSTEIN: In that sentence?

2 MR. SMEGAL: Oh, no no, just that sentence.

3 CHAIRMAN WALLACE: Let me ask you then, lets'
4 deal with this sentence as a whole, and maybe I can get
5 a consensus here. You want to end the sentence at services
6 and --

7 MR. SMEGAL: And I want to change "same" to similar
8 and I want to change "substantially" in the staff draft
9 to reasonably.

10 CHAIRMAN WALLACE: Well, you don't need to change
11 that's so we will not use substantially, and we'll keep
12 "reasonably" and add "make a reasonable effort" that's
13 the staff's language and it's also Mr. Houseman's language?

14 t MR. SMEGAL: Right.

15 CHAIRMAN WALLACE: Ms. Bernstein, did I hear
16 a second?

17 MS. BERNSTEIN: Yes.

18 CHAIRMAN WALLACE: All right, so we will end
19 that first sentence at "services" period (.). We will
20 change "same" to "similar"; we will strike "so as to
21 substantially" and add to that "shall make reasonable effort to"
22 and then go on to provide. And that's Mr. Smegal's motion
23 as seconded by Ms. Bernstein. Is there any discussion from
24 the Committee?

25 Hearing none, all in favor say aye.

1 (Chorus of ayes.)

2 CHAIRMAN WALLACE: Opposed?

3 (No response.)

4 CHAIRMAN WALLACE: All right, that motion is
5 carried. That sentence 1 I will ask the Staff if you've
6 got any ideas on what to do with sentence 2 because
7 I think we all know that levels of representation is
8 pulling out after that last vote and I don't quite know
9 what's going in but we certainly do you know, the
10 staff has not recommended that we delete differences
11 in Client financial resources. If the staff thinks
12 we ought to continue to have client financial resources
13 in there, how would that sentence read to get the
14 point across, without using the terms "levels of
15 representation."?

16 Ms. Bernstein, do you have a suggestion?

17 MS. BERNSTEIN: If we're going to put in the
18 preamble something about types of services, that we could
19 take client financial resources those three words
20 up to after type of services may vary as required to
21 meet different priorities in different parts of the
22 recipient's serviced area and individual client financial
23 resources.

24 CHAIRMAN WALLACE: Okay, types of services
25 may vary, this is permissive language. Types of services

1 may vary as required to meet different priorities in dif-
2 ferent parts of the recipients service area, and --

3 MS. BERNSTEIN: Individual client financial
4 resources, if the govnering body of the recipient so desires.
5 And I think I can accept that.

6 CHARIMAN WALLACE: I think maybe the word
7 "differences" probably ought to stay in as required to
8 meet different priorities in different parts of the
9 service recipient service area, and differences in client
10 financial resources.

11 MS. BERNSTEIN: And I would say individual so that
12 we don't look at "client" as some sort of group.

13 CHAIRMAN WALLACE: Okay, I understand what you're
14 motion is going to be when you make it. I realize it's
15 a suggestion at this point. I know there's some dispute
16 about whether client financial resources ought to be in
17 here at all. I'll first ask the staff to tell us why
18 that's in here in the form that it is, and then I'll ask
19 Mr. Houseman to tell us why the groups he represents have
20 proposed to delete it.

21 MR. MEYER: Okay, the first thing was originally,
22 and we've cured that with the "if the governing body of
23 the recipient so desires," this may have been interpreted
24 to be some kind of a mandate to take such differences
25 into account which was never intended. This is a matter of

1 somebody telling the recipient that we generally set the goal
2 of equality. We've made some -- and then we've added some
3 qualifiers, and what we're saying if they do decide to
4 put together their priorities and consider differences in
5 individual client resources, they are free locally to do so.

6 It was added because when we were doing this
7 access section back when we originally did it, we realized
8 that we had mandated that you could not consider anything
9 about individual client resources at all. And it was intended
10 always to be permissive, but I think it is very important
11 to clarify that it is only if the governing body of
12 the recipients so desires. And so that is why the language
13 is as it is.

14 CHAIRMAN WALLACE: All right, Mr. Houseman?

15 MR. HOUSEMAN: Well, let me respond and then
16 I'm getting concerned because what we're doing is we're
17 addressing piecemeal what I think is an overall problem.

18 Let me respond to Client Financial Resources. I
19 don't think it's an appropriate factor, and I want to come
20 back, maybe right after this and talk about what I think
21 the appropriate factors are or at some point soon. I don't
22 think it's an appropriate factor for several reasons.

23 First, Congress in 1977 amended the LC Act,
24 a fact everybody seems to forget, and deleted references
25 to client financial resources, and in so doing, both

1 houses unanimous, no difference, no contrary views on this,
2 it said that the reason it was doing it was because it
3 was doing it so so that the priorities of a local community
4 could not be upset by requiring a less urgent legal
5 problem to be given greater consideration merely because
6 the client had a lower income.

7 I think we should honor that.

8 Practical, aside from whether that's something
9 that mandates the delineation of this language, and I don't
10 think it does, but I think that this is inconsistent
11 with Congressional interests. It's also by the way
12 inconsistent with Congressman Kastenmeyer's statement, points
13 this out, I might add.

14 Secondly, practically it is a problem. The fact
15 that a client has a little more money, or income, than
16 another client, may have no bearing on whether the client's
17 legal problems should be addressed, whether the client has
18 the ability to act independently on their own, or with
19 merely advice and some limited assistance, it has no
20 effect on the kind of representation that attorneys
21 must ethically provide to that client, and I don't
22 understand why given those situations, that you want this
23 in here. I think it raises practical problems for
24 programs. I think you're saying something you don't want
25 to say, and I don't think that you want to be saying that

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1 you should look into an individual client's financial
 2 resources, if they are eligible, and determine after you
 3 determine they are financially eligible, then look again
 4 to see what kind of representation they are going to get
 5 or what kind of cases you're going to get. I think that
 6 is wrong, I think that is inconsistent with every notion
 7 of individual representation that we have talked about
 8 earlier, and I frankly don't understand why you would want
 9 to do it.

10 And that is the main objection that we have to
 11 this. Again, I agree that the way it's now phrased, the
 12 way it's qualified, is helpful; it eliminates some of our
 13 problems, but frankly, I don't see any reason for this
 14 language to be in there. I think it's confusing and I
 15 think it's going to cause trouble.

16 CHAIRMAN WALLACE: Well, let me make a practical
 17 comment, Ron, from my own experience and practice. And
 18 maybe it's not similar to the way field programs actually
 19 work. I mean I certainly take difference in client financial
 20 resources into consideration both in setting fees for
 21 people who can pay and in deciding which people to take
 22 who can't pay me at all. I take that into consideration
 23 all the time. I had one divorce case come to me
 24 that I took, and one that I didn't within the last year.
 25 The one that I didn't, the fella had a job, he could get

1 a lawyer that would handle the case that charged less
2 than my employers charged for my time. I mean he could get
3 representation. On the other hand, I had another one come
4 in who wasn't working, had no money, couldn't hire any
5 lawyer and she certainly wasn't going to be able to get
6 somebody who charges less because he's gotten less leeway
7 to play with; he's gotten less a lawyer in that position
8 has less time to give away.

9 That client I took, and the difference was based
10 on one had a little money, might get some lawyer. The other
11 one didn't have any money, wasn't going to get any lawyer,
12 unless the lawyer was willing to work for free, and I took
13 her. And still got her.

14 Now, that's the kind of consideration that I take
15 into account in private practice. I don't know whether
16 programs face the same kind of concerns that I do on that,
17 but I would think that even though somebody's technically
18 eligible, they might be able to scrape up enough money
19 to pay for a divorce, whereas somebody whose another persons
20 whose eligible but can't scrape up the money to pay for a
21 divorce, probably ought to be taken.

22 I would think as a permissive factor, that something
23 that makes sense in administering a program.

24 Ms. Bernstein?

25 MS. BERNSTEIN: Mike, I'm not disagreeing with you.

1 But my concern in leaving this language in is to support
2 local governing body's ability to have some flexibility
3 regarding the taking of cases which may be emergency
4 type cases but do not fall into the priorities that have
5 been set by the programs. The priorities are set annually,
6 and let's have a hypothetical example of a program that
7 does not have as one of its high priorities a certain type
8 of case.

9 An individual comes in with absolutely no
10 resources, that is an immediate problem for them. However,
11 the priorities of the program would say, we can't take
12 you. That's not one of our priorities. Now, it may be
13 and I think in some programs, they have an allowance for
14 emergency situations, but this is a permissive language,
15 it is more supportive of the individual programs than
16 somehow taking away their ability to assess in individual
17 circumstances.

18 MR. HOUSEMAN: But if you eliminate it, it doesn't
19 preclude it. You do not hear -- the problem with this
20 section is that you're talking about access, you're not
21 talking about the situation, you're talking about access.

22 And you're trying to differentiate access
23 on the basis of client financial resources which is a totally
24 different thing then deciding that we're going to set
25 priorities, you're going part of your priorities are going

1 to be emergency cases, part of your priorities are going to
2 be some other factors. That's fine, but that's not what we're
3 dealing with here. What bothers me is a) the juxtaposition
4 of this and the access section, and 2), more importantly,
5 you're not taking into account all the kinds of factors that
6 you have to take into account, and by listing one, one that
7 Congress disapproves of, one that raises other problems,
8 I think it's a mistake, but if you could cut it out and
9 you can the programs can still do it.

10 CHAIRMAN WALLACE: That's one reason to do it
11 because I guess I disagree with your interpretation of the
12 effect of what Congress did. And I'll ask the general
13 counsel to correct me if I'm wrong, but in the old Act, what
14 Congress was saying is that you ought to take differences
15 in individual client resources into account. When they
16 struck that, they're not saying that you can't although a lot
17 of people may think that they are. If this Board thinks
18 that they can, if this Board thinks that they may, and
19 I do think that they may; I do not think that Congress has
20 precluded anybody from taking differences in client resources
21 into account, then it may be appropriate to say so to clear
22 the air on the issue.

23 Now, I agree, it may not belong here. When I
24 was going over this, I thought it belonged perhaps over in
25 two because we've said here are the following factors that

1 you shall consider. And maybe we ought to have a (c) and
2 say here's a factor that among others that you can consider.

3 Maybe it doesn't belong here, but I kind of think
4 that especially in light of the legislative history argument,
5 which I don't agree with, it's something that belongs in
6 the regulations somewhere.

7 MS. BERNSTEIN: I agree. I don't care where it's
8 put. I'm not hung up on which section it belongs in unless
9 it poses a problem for General counsel in some way in terms
10 of their relationships, but I don't --

11 CHAIRMAN WALLACE: Let me, before we do that,
12 I want to move on and I want to ask the same question about
13 the last sentence because I've got a similar problem in
14 here with why it's in access. If we're not going to have
15 a rigid standard, I don't see why we need to say it at all.

16 I don't think we should have a rigid standard.
17 Because I think everything we say in the last two sentences
18 is subsumed in 2(b)(2) where it says, "You shall consider"
19 you shall mandatorily consider the population of eligible
20 clients in geographic areas including all significant
21 segments of that population with special legal problems or
22 special difficulties of access.

23 Now, having said that you have to consider that,
24 what do we add by saying it again in 3 unless we're going
25 to set up a rigid standard. And we're not setting up a

1 rigid standard so why should we say it over again?

2 This may be more of an organizational question
3 than a substantive question but since it's related to
4 the previous sentence, I want to ask the general counsel
5 why we need to say this?

6 MR. MEYER: Okay, as I see it, and if I mis-
7 understand it, correct me, in 2(b)(2), says these are some
8 of the things that shall be among those considered. So
9 the recipient considers them and he gives whatever weight
10 he does. Some recipients give more weight to one, some to
11 another.

12 This one here says, here, we're setting a standard
13 and trying to keep things to get to reasonably equal access
14 is what we have now, and what we're doing here is laying
15 out what I guess we're basically saying, okay, reasonably
16 equal access, but we've changed the language but we're
17 making it clear, it doesn't mean the following. Nobody
18 can take out a computer printout and nail you because
19 you're 22 percent below what you ought to be.

20 And given the amount of concern on this, I think
21 maybe in a way it's surplusage, but it's more surplus to
22 the rest of 3 than to 2(b)(2). It may be the same barriers
23 being discussed but one is the recipients of setting
24 priorities and the other is what do we mean by the general
25 rule of what we're giving people, and we're making it clear

1 we don't mean something rigid. And I would really think that
2 is appropriate where it is, and probably ought to stay
3 as it is. Maybe we're saying it twice, in extent, but
4 we're specifically stating something that a lot of people
5 thought were being pushed, including some people in OFS
6 at one point. I think they misinterpreted the regulations
7 at the time, but this was actually in existence, and we're
8 saying, no, this doesn't mean this. And I think we should
9 keep it.

10 CHAIRMAN WALLACE: All right.

11 MR. SMEGAL: Mr. Wallace, I think I tend to
12 agree with you but it's already, maybe I'm repeating some-
13 thing that's been said but 1620.2(b)(3) already says it.
14 The following factors shall be considered. The resources
15 of the recipient.

16 CHAIRMAN WALLACE: The recipient, the recipient
17 there is going to be the resources of the organization.

18 MR. SMEGAL: You're right. I misunderstood that.

19 CHAIRMAN WALLACE: Now, Mr. Houseman, I think
20 you were nodding your head on Mr. Meyer's argument about
21 clearing up misunderstanding with this sentence. Do you
22 think we need something like this and this is the
23 appropriate place to put it?

24 I know you've got different language but on
25 the general question?

1 MR. HOUSEMAN: Well, I'm not quite sure what
2 you're asking me. I would prefer that you strike everything
3 after what you've already struck. But I would agree that
4 if you're going to leave in "availability of services"
5 in this county or parish business, you've got to have
6 in there additionally. I would prefer that you strike it
7 all but let me just step back a second if I may.

8 I don't know how to deal with this, but there
9 are problems with this approach that nobody is addressing
10 and I think my language attempted to, maybe bad language,
11 but we can throw it out and start over again. And I think
12 I want to make it quite clear that we share virtually
13 the same goals.

14 I don't think we're arguing about different goals
15 and to the extent that there's some underlying tension
16 about that, I want to clear that up. We agree that we must
17 make sure that in setting priorities, that the access of
18 all people within geographic areas that they have as
19 reasonable equal access as is possible. Now, when you
20 realistically think about that, in the real world of delivery
21 of legal services, and the way you set priorities, you have
22 to there are some factors that you should take into account
23 when you're making those priorities.

24 First, you're going to have different subject area
25 priorities that are going to differ within the program,

1 depending on the nature of the substantive problems of people
2 in one area of a program have versus another. They're going
3 to differ by the populations you have in an area. You may
4 be in an area where part of the population is farmers,
5 that are facing farmers' home problems, debt problems right
6 now. And in another part of your service area, the farmers
7 either aren't facing it, or that's not a heavy population
8 that is eligible.

9 You may have in some parts of your service area,
10 Hispanics that have certain kinds of problems, you may have
11 in other parts of that area, other kinds of limited English
12 people with different problems. You can go on and on and on.
13 Now, obviously, when you set priorities, you take into account
14 those factors. I think you must be, if you're going to
15 get into equal access, you're going to try to impose some
16 access requirement over what you already have.

17 This is all new language mind you. That and if
18 you're not going to do it by just working within the factors
19 that we already have in (b), then you have to realistically
20 look at the kinds of subject area priorities that I'm talking
21 about.

22 Secondly, you're going to have a higher incidence
23 of a particular legal problem in certain parts of an area,
24 and I think that's a relevant consideration. Third,
25 the cost for various methods of delivery differ and you've

1 got to take that into account. Some programs use circuit
2 riding to reach rural areas. Some programs have small
3 offices; some programs use telephone intake, and follow
4 that up, then, with representation. Other programs use
5 what's known as a blitz approach.

6 There's a variety of approaches. They are dis-
7 cussed at some length in something none of you've read,
8 I guess, the 1007H report on rural access. Now let me
9 just say this about that --

10 MS. BERNSTEIN: Mr. Houseman, could I interrupt
11 you just a minute? I am interested in your comments, and
12 I'm really pleased that you're taking the time to come
13 to the meetings, but I think it is demeaning to you and
14 certainly offensive to me as a Board member for you to
15 make such statements. Because I have read it.

16 MR. HOUSEMAN: Okay, this was written by a person
17 who ran a rural program for five years, this part of it.
18 And it talks about these practical problems. In 1007H,
19 as well as other things the Corporation's done, has
20 raised serious concerns about some of the techniques that
21 have been used. Like circuit riding. And the concerns
22 related to its quality, the costs, the burnout of
23 attorneys, etcetera.

24 Now, the point I'm trying to make is when you
25 get into the issue of equal access, and you're trying to

1 impose language on top of priorities, you have to take into
2 account, the kinds of factors that I'm talking about in
3 the kinds of language that we use, or a) you're leaving
4 things out; and b) you're giving people the wrong signals.

5 Now, I think the staff draft meets this part way.
6 The current problems I have with the latest Staff draft on
7 this section are 1) it does not refer to allocation of
8 resources, which I think, which by the way it did refer
9 to in 1620.1, which you struck, and I think we should
10 try to get that back in here, the concept that we're talking
11 about is how you allocate resources effectively, and it does
12 not deal with some of the other factors that I talked about.
13 Which my language attempted to do.

14 Again, we could improve upon the language that
15 we drafted but the problem I have is that the language
16 that we have now, does not take into account all the
17 factors, seems to limit the factors to only a few, when
18 they're in fact more that you have to realistically look
19 at. That is the concern.

20 And we share the concern of trying to meet equal
21 access.

22 CHAIRMAN WALLACE: Tell you what I'm going to do.
23 I have made a commitment to everybody that we're going to
24 adjourn by about noon, or recess at noon, because we're
25 going to be back here tomorrow. We have got your language

1 that we have got this morning, and you've seen the Staff
2 draft, maybe not before this morning, but you've seen it.
3 You've seen the kinds of both staff and committee and public
4 commentators have seen the way this direction's going on
5 3.

6 What I want to do is pretermit further discussion
7 on 3 and take it up first thing tomorrow, because I think
8 we all ought to be reading these various languages and
9 thinking hard on where we're going. I think it's going
10 to be more than we can do in the next five minutes.

11 There is something I think we can do in the next
12 five minutes, unless I'm mistaken, and that's on 1620.5
13 under the Annual Review. One of the concerns that everybody
14 seems to have with these regulations is what a case
15 acceptance schedule is, and the staff has proposed getting
16 rid of schedule and adding the word "guidelines" and I
17 don't know if that helps me very much either.

18 I'll tell you what does help me, and somebody can
19 tell me if I'm wrong about this. But under 1620.4, which
20 used to be (a) and is now just (4) because we omitted (b),
21 it says that the governing body shall establish policies
22 and procedures that assure clients in the corporation that
23 cases are accepted for representation of eligible clients
24 which substantially comply with the priorities. I think
25 what we're talking about there is case acceptance, policies

1 and procedures. What I'd like to do, unless somebody tells
2 me why this is confusing too, is that we ought to strike
3 "schedule" strike "guidelines" and put in, "copy of the
4 case acceptance policies and procedures adopted under
5 section 1620.4." I think it tells everybody what we're
6 talking about if you're going to have policies and procedures,
7 no reason they shouldn't be available, I think that may
8 clear up some confusion.

9 Okay, has anybody got any objection to that
10 particular suggestion?

11 All right, what we would do, is in the next-to-last
12 sentence on 1620.5, we're going to strike the word
13 "schedule"; we're going to add the words "policies and
14 procedures" and then after "adopted" we're going to put
15 "under Section 1620.4 of these regulations." That refers
16 back to something with substance that we can look at and
17 see what it means.

18 MR. SMEGAL: Would you say that again, Mr. Wallace?

19 CHAIRMAN WALLACE: Yes sir. The next-to-last
20 sentence on 1620.5, reads "The report shall also include
21 a copy of the case acceptance schedule adopted as a result
22 of the priority review." The Board the staff has suggested
23 scratching "schedule" and putting in guidelines. My amend-
24 ment would scratch "schedule" and put in "case acceptance
25 policies and procedures adopted under Section 1620.4 of these

1 regulations as a result of the priority review and assess-
2 ment." I think that tells everybody what we're talking about.
3 Does anybody have a problem with that clarifying amendment?

4 MS. BERNSTEIN: Okay, are we working from the
5 Staff suggested page?

6 CHAIRMAN WALLACE: It's not the next-to-last
7 sentence, you're right. Because there's a whole bunch of
8 stuff underneath it, but if you'll at the the text, the
9 report shall also include a copy of the case acceptance
10 schedule, strike schedule --

11 MS. BERNSTEIN: No, I've got all that but I'm
12 wondering whether or not your motion incorporates the
13 changes were added by the staff by saying "each recipient"
14 and --

15 CHAIRMAN WALLACE: No, I'm not dealing with that
16 yet. I'm not dealing with that yet. Maybe I can't deal
17 with this until we deal with that? Do you?

18 MS. BERNSTEIN: I don't have any problems with
19 that language. I just think if we'd just accept the
20 staff's recommendations regarding this, your recommendations
21 and dispense with this section.

22 CHAIRMAN WALLACE: Well, Mr. Houseman's has in
23 his proposal, has stricken more, Mr. Houseman, and the
24 proposal for the people he represents, has stricken more
25 in 5 than the Staff has done. He struck the whole thing

1 about annual reports.

2 And I think annual reports are a good idea and
3 making them available to the public is a good idea, and I
4 was not going to get into that right now.

5 MS. BERNSTEIN: We can deal with it.

6 CHAIRMAN WALLACE: Okay, deal with it quickly.

7 MR. HOUSEMAN: I think most of our concerns are
8 met by the changes that you propose. There's only one
9 concern that's not met; I'm not sure it was completely
10 met by my redraft. And that is that some people are
11 taking this to mean that they must set priorities; that
12 there's supposed to be a complete priority setting process
13 each year. And I do not think that that's the intent,
14 but I think it would be helpful for that to be clarified
15 either in the Preamble or here.

16 That it could be clarified easily by saying,
17 "Priorities shall be set periodically and must be reviewed
18 by the governing body at least annually."

19 CHAIRMAN WALLACE: I think that's reasonable
20 language. Ms. Bernstein, do you have any problem with --

21 MS. BERNSTEIN: I don't have any problems with
22 it in a theoretical sense. I'm wondering whether what the
23 as long as its the idea that if the government body reviews
24 it they don't seen any reason or they notice nothing
25 in their community to make them believe that the priorities

1 would have changed since the time that they were set
2 that that review would be something that the governing
3 body signs off on. My concern would be that we would be
4 by saying that they are to be reviewed periodically or that
5 they are to be set periodically, that that allows a kind
6 of inertia that maybe is not as strongly supported keeping
7 in touch with the clients in the service area.

8 MR. HOUSEMAN: If in fact, there's no requirement
9 of a complete priority setting process annually, 1) all
10 my language doesn't clarify it, and I don't think it --
11 the governing body still has to review the priorities
12 annually and make a decision about what needs to be done
13 and they can --

14 MS. BERNSTEIN: Well, it depends on what you
15 mean by review.

16 MR. HOUSEMAN: Well, that's the language that's
17 in there now.

18 CHAIRMAN WALLACE: Yeah, that is the language that
19 is in there now, and we're not going to tell everybody to
20 do it every time, and I agree that there's an inertia, and
21 that may be a problem that we'll have to deal with a couple
22 years down the road, nobody's reset priorities since 1976,
23 but all right, now Mr. Smegal?

24 MR. SMEGAL: I've got a friendly amendment,
25 Mr. Wallace, if that's what you had. I believe you used

1 the word "adopted" under 1620.4. I think the language
2 would require us to use the word "establish". You can
3 establish policies and procedures, so --

4 CHAIRMAN WALLACE: Okay, I think that's a friendly
5 amendment because that's the language used under 1620.4.

6 MR. SMEGAL: What you do with that adopted that
7 comes after guidelines that we've ruled -- I don't think
8 we need that.

9 CHAIRMAN WALLACE: All right, let me review the
10 total proposal. Starting with the first sentence, it would
11 be "Priorities shall be set periodically and shall be
12 reviewed by the governing body of the recipient at least
13 annually. Then we would strike "after the initial report"
14 described in 1602.4(b); that's struck. And the next
15 sentence will begin with "Each."

16 "Each recipient shall submit to the Corporation,
17 and make available to the public, an annual report." We've
18 also done a grammatical change, striking an excess "and"
19 before the word "mechanism". All right, and then the
20 next sentence would be, "The report shall also include
21 a copy of the case acceptance policies and procedures
22 established under Section 1620.4 of these regulations as
23 a result of the priority review and assessment." And then
24 it's the same all the way down to the end of the regulation.

25 Now, I think that incorporates all the changes

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1 we talked about. I'm going to ask you unanimous consent
2 that that change be adopted. Is there any dissent from
3 the request for unanimous consent?

4 Hearing none, 1620.5 is amended as stated.

5 Now, having promised to recess at 12:00, and it
6 being 12:02, we will be back tomorrow. Mr. Secretary?

7 MR. DAUGHTERY: The Presidential Search Committee
8 has moved into the Conference Room B on the lower level

9 --

10 (Whereupon, at 12:02, the committee was recessed,
11 to reconvene, the following day, Friday, March 8, 1985,
12 at 12:00 p.m., in the same place.)

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REPORTER'S CERTIFICATE

DOCKET NUMBER:

CASE TITLE: LEGAL SERVICES CORP., OPER. & REG. COMMITTEE MTG.

HEARING DATE: MARCH 7, 1985

LOCATION: WASHINGTON, D.C.

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

Date: MARCH 19, 1985

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