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TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

In the Matter of:)
)
BOARD OF DIRECTORS' MEETING)

Pages: 21 through 155

Place: Anaheim, California

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LEGAL SERVICES CORPORATION

In the Matter of:

BOARD OF DIRECTORS MEETING

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President's Rooms A&B
Holiday Inn
1850 South Harbor Boulevard
Anaheim, California

Friday,
November 11, 1985

P R O C E E D I N G S

1
2 MR. VALOIS: This is a meeting of the Legal
3 Services Corporation Board of Directors.

4 Again, I'm chairing because Mr. Durant is not here.
5 I would like to introduce Rabbi Barry Buddoff of
6 the A Havatt (Ph.) Zion Synagogue of Beverly Hills, California
7 to invoke the Lord's Blessing.

8 RABBI BUDDOFF: Thank you.

9 Solomon says to us that the man with great
10 influence only seems to increase his influence, and a man
11 who has no influence has no one to speak for him. Lord God,
12 this Corporation seeks to address, at least in part, that
13 difficulty. To provide for someone to speak for those who
14 have no influence who have a need. Lord God, you address us
15 over and over again in the Torah. You say to us that we are
16 to care for those who have need: The widows and the orphans
17 and the poor amongst us. In the Phrophets you address us in
18 the same way when you say to us that there are three things
19 that you desire from us: That we do justice, that we love
20 mercy, and we walk humbly with the Lord our God. And, Father
21 God, we do come to you and we ask you to provide discernment
22 and wisdom and insight and a boldness, Lord God, to do that
23 which is correct and that which is pleasing in your sight.
24 All Mighty King, pour out your spirit upon this place and
25 upon those who would make decision, and I pray that all that

1 would be done, all that would be said, and all that would be
2 accomplished here, Lord God, would bring honor and glory to
3 your name. Amen.

4 VOICES: Amen.

5 MR. VALOIS: Thank you very much.

6 Items 1 and 3 of the agenda, personnel and personal
7 matters, were -- and were discussed in closed session
8 Wednesday night. Litigation and investigation matters have
9 also been covered at that one, too, and they were also
10 discussed in closed session on Wednesday night.

11 (Pause.)

12 The next item on the agenda is adoption of the
13 agenda. Do I hear a motion?

14 MR. SNEGAL: So moved.

15 MR. VALOIS: All those in favor of adopting the
16 agenda say, aye.

17 (Chorus of ayes.)

18 MR. VALOIS: The agenda is adopted.

19 Next item is adoption of the minutes of the meeting
20 of October 11, 1985. I have been advised of one addition to
21 page 10, at the bottom of the page after the sentence ending
22 with the word "programs." the following sentence:

23 "A vote was then taken on the motion and it
24 passed unanimously."

25 Without objection, that will be allowed.

1 Are there any other corrections or additions to the
2 minutes of October 11, 1985?

3 MR. SNEGAL: I move they are adopted.

4 MR. SWOFFORD: I second.

5 MR. VALOIS: All those in favor of adopting the
6 minutes of October 11, 1985 say, aye.

7 (Chorus of ayes.)

8 MR. UDDO: Mr. Chairman, may I ask. On page 11
9 the minutes reflect that Mr. Williams who testified before
10 us and was instructed to meet with Corporation staff, I'm
11 wondering if that happened, and also did he get a chance to
12 get together with --

13 MR. WENTZEL: He wrote a letter asking to -- and I
14 wrote a letter back and asked him specifics, and he's agreed
15 to that before the meeting takes place.

16 MR. VALOIS: Thank you.

17 The next item is the report of the President.

18 Mr. Wentzel.

19 MR. WENTZEL: Thank you, Mr. Chairman.

20 I just have two matters. A report on the status of
21 Corporation funding and, two, the announcement of new
22 personnel.

23 Under the first, Commerce, Justice, and State, the
24 Judiciary and related agencies appropriation bill for 1986
25 passed the Senate on Friday of last week by an 84 to 10 vote.

1 Two amendments were adopted. Senator Humphrey
2 offered an amendment identical to Congressman DeWine's
3 abortion amendment after it was modified to allow litigation
4 where the life of the mother would be endangered if the fetus
5 were carried to term. The amendment passed by close vote.

6 Also, Senator Rudman offered an amendment that
7 requires LSC grantees to expend all funds carried over from
8 previous fiscal years before spending fiscal year '86
9 funding. This amendment also carried by voice vote.

10 Aside from those two amendments, the LSC portion
11 of the bill was identical to that which was reported out of
12 the Senate Appropriations Committee. In other words, it was
13 \$306.4 million in lobbying, training alien and class action
14 restrictions in local board membership requirements that were
15 in the bill.

16 Board members received a copy of the committee
17 bill and report language in New Hampshire.

18 This bill is now before a conference committee
19 to work out the differences between the Senate and House
20 versions, and as of today, that conference committee has not
21 been scheduled.

22 One other matter, Mr. Chairman, Michael Coster has
23 been selected as the new comptroller of the Corporation. I
24 want to extend my congratulations to him and certainly of the
25 Board, and welcome him to the Corporation in that capacity.

1 Michael.

2 MR. COSTER: Thank you.

3 MR. WENTZEL: Thank you.

4 That's all, Mr. Chairman.

5 MR. VALOIS: Michael, would you stand. I think
6 most of us know you, but so people will know your face as
7 well as your name. Thank you very much.

8 MR. COSTER: Thank you.

9 MR. SNEGAL: Excuse me. I've a question on what
10 Mr. Wentzel just said.

11 At the New Hampshire board meeting I proposed in
12 one of our committee meetings that the language of the
13 Senate report that accompanied the appropriation bill be
14 adopted by this Board. I'm wondering, Mr. Wentzel, is that
15 -- is that Senate report still part of what's gone on to the
16 conference committee? I believe it was a 155 vote. There
17 was a number on it.

18 MR. WENTZEL: It is indeed.

19 MR. SNEGAL: And that has some language -- I
20 believe Senator Rudman chairs that subcommittee. There's some
21 language with respect to how this Board might distribute or
22 utilize the additional funding beyond \$305 million.

23 MR. WENTZEL: There is some language in the report
24 that would deal with how the Board would deal with funding.

25 MR. SNEGAL: That's still there?

1 MR. WENTZEL: Yes, it is.

2 (Pause.)

3 MR. VALOIS: What do we need, a motion?

4 MS. BERNSTEIN: Okay, I'd like to move that -- that
5 we -- that the Board take a roll call vote on the closure of
6 the portion of the next meeting in order to discuss personnel,
7 personal litigation, and investigatory matters under the government in
8 Sunshine Act, 5 U.S.C. 552 B.C. 2 679 B and 10 and 45 C.F.R.
9 1622.5(a)(e)(g) and (h).

10 MR. VALOIS: And that meeting is presently
11 scheduled to take place in El Paso on December the --
12 beginning on December 11.

13 MR. SNEGAL: LeAnne, you want to the LSC
14 regulations, as you did last month?

15 MS. BERNSTEIN: I just -- I think I did.

16 MR. SNEGAL: No, I was following along and I --

17 MS. BERNSTEIN: 1622.5, I think I mentioned. I'll
18 do them again.

19 MR. SNEGAL: Okay, no, that's fine.

20 MS. BERNSTEIN: 45 C.F.R. 1622.5(a)(e)(f)(g) and
21 (h).

22 MR. SNEGAL: No, I'm sorry. I misunderstood you.
23 You didn't say the words "LSC regulations," and now I
24 understand it. 45 C.F.R. is what you --

25 MR. BERNSTEIN: Okay.

1 MR. VALOIS: I'll second the motion. I guess we
2 can take a roll call.

3 MS. BERNSTEIN: Okay, and the understanding would
4 be that the meeting, as before, usually occurs on the first
5 night of our meeting.

6 MR. VALOIS: Yes.

7 Lorain?

8 MS. MILLER: Yes.

9 MR. VALOIS: LeAnne?

10 MS. BERNSTEIN: Yes.

11 (Chorus of "yes.")

12 MR. VALOIS: It's unanimous. The motion passes.

13 Before we go on to the next matter, as LeAnne was
14 doing that, I noticed there is one further correction in the
15 last minutes of the meeting of October 11 on page 2 in the
16 paragraph where that action was taken last month -- it was
17 subsection to the 1622.5 referred to included a "B" rather
18 than an "H".

19 So, maybe we could have that clear.

20 (Pause.)

21 MR. VALOIS: i know we have a number of speakers,
22 some of whom want to go promptly.

23 MR. BAKER: Mr. Daniel Loeffler from the World
24 Research is scheduled to talk at 11 o'clock.

25 MR. VALOIS: Mr. Snegal has asked that Mr. Olson,

1 the Chairman of State Bar Legal Services Committee, be asked
2 to go now.

3 Mr. Olson.

4 MR. SNEGAL: As Mr. Olson is coming up, I'd like
5 to advise the Board of Mr. Olson. I have the distinction
6 of serving on the Board of Governors of the State Bar of
7 California with Ronald Olson. There are 15 elected members
8 on that Board that handles the State Bar, the 100,000 lawyers
9 that are qualified to practice law in the State of
10 California.

11 Mr. Olson not only serves on that Board, but
12 previously served as the Chairman of the Litigation Section,
13 the largest section of the American Bar Association. He is
14 a distinguished lawyer, trial lawyer, here in Los Angeles.
15 I'm sorry, we're in Orange County. He practices primarily
16 in Los Angeles. And, a personal friend, and an awfully nice
17 person.

18 Ron, good to have you here.

19 MR. OLSON: Thank you, Tom.

20 Mr. Chairman, Members of the Board, ladies and
21 gentlemen, I appreciate this opportunity to be here and want
22 to again welcome you to Southern California. Your presence
23 indicates an interest in what we are doing here that is very
24 important, not just from a national perspective but from a
25 very local and state-wide perspective, and for that we are

1 highly appreciative.

2 Two things that I'd like to spend my time discussing
3 with you. One is to give you an overview of what we're doing
4 here in the State of California to further legal services for
5 the poor and near poor.

6 And, secondly, to share with you some of my
7 concerns regarding the issues that are currently before this
8 Board.

9 With respect to California, we lawyers here I
10 think for a good long time have taken legal services for
11 the poor very seriously. We believe that it is a very
12 important lawyer's issues, but more than that we believe it is
13 a people's issue.

14 As you well know, the make-up of the poor today
15 is over half female, mothers, children, and that makes it
16 a people issue at the most basic level.

17 Beyond that, at least my operating premise has
18 always been, is that it is a system issue. That is, our
19 whole system of government turns on the need to provide
20 adequate legal services for all people.

21 If our equal justice under law principle means
22 anything, it means that rights are secured and liabilities
23 determined in accord with the law, not with power, not with
24 influence, not with prestige. Certainly not with money or
25 lack of money. And, it is that operating premise that I

1 think we have to take seriously in order to give integrity to
2 that promise that has meant so much to all of us.

3 Well, let me say that in the State of California
4 we at the State Bar level have had an operating legal services
5 committee since 1928. Today the Board committee that I chair
6 initiates, and I would hope nourishes, and certainly monitors
7 a wide range of legal services activities.

8 Now, time is not going to permit me to review all
9 of those activities with you, but I have put together a
10 booklet of materials that I will submit for the record, and if
11 any of you care to have a personal booklet we would be more
12 than happy to supply you with that set of materials.

13 In short, I think you will see that these materials
14 reflect a very positive and a very important partnership
15 between the State Bar, local bars, programs that you fund,
16 and lawyers within those programs and without those programs
17 who are providing the legal services throughout the State of
18 California.

19 Your support for that partnership in very -- many
20 ways has been evident from the outset of the Legal Services
21 Corporation activities and is critically important to our
22 ability to continue to supply legal services at the level that
23 we are and to improve upon that in the future.

24 Now, if I may, I'd like to just give you an
25 oversight of some of the functions that come within the

1 Committee of the State Bar Legal Services Committee that I
2 chair and give you a little feel for what we're doing in a
3 more particular way.

4 Among other oversight functions is the oversight of
5 our legal services section of the State Bar. That section
6 has standing committees on a whole range of topics that you
7 are familiar with and, undoubtedly, have expertise in from
8 legal problems for the aging to criminal defendants, middle
9 income persons, prisoners, persons with special needs, victims,
10 so on and so forth.

11 It provides workshops and training up and down
12 the State. Always has an active set of programs at our State
13 Bar convention that includes meaningful seminars and
14 publications through the year. Among the kinds of publications
15 we put out includes publications regarding delivery of
16 legal services to criminal defendants, consumer advocacy, a
17 publication on Medicare-Medical training materials, a
18 senior citizens' handbook and I could go on. There are tons
19 of them.

20 I'm not going to dwell on our function with respect
21 to the Lawyer Referral Services Program. I assume that you
22 are well familiar with those activities.

23 I would like to mention again the highlights of our
24 legal services trust fund program which, I understand, you
25 heard a more complete report on yesterday. But, in very

1 summary form, we now have approximately 50,000 lawyers in
2 the State of California participating in that program. We
3 have approximately 21,000 individual accounts collecting
4 interest for the benefit of legal service programs.

5 We are averaging income at the rate of about
6 \$1 million a month. In 1984-'85 fiscal year we distributed
7 \$7.2 million; '85-'86 fiscal year over \$10 million.

8 That is a summary, the essence of our -- our
9 IOLTA (Ph.) program.

10 Another aspect of our supervision is -- another
11 part of our supervision is the voluntary legal services
12 programs. We spend a good deal of time trying to figure out
13 not just how we increase funding for lawyers being paid to
14 provide legal services to the poor, but how we can stimulate
15 people like myself to volunteer their services.

16 We have a very active volunteer legal services
17 program in the State of California, pursuant to a renewed --
18 a new program that was born in 1978. Last year we had about
19 80 programs respond to our survey. They reflect that over
20 8,500 lawyers in the State of California volunteered time for
21 legal services.

22 They amount to approximately 275,000 volunteer
23 hours, and if you placed a value of, say, \$75 an hour on that
24 time, it would amount to approximately \$20 million in
25 volunteered services.

1 We are looking to extend ways to increase volunteer
2 activities in the future. We have in Los Angeles and
3 Beverly Hills a program known as Public Counsel. It is
4 jointly funded by the Los Angeles and Beverly Hills Bar
5 Associations.

6 It has a purpose of trying to generate volunteers
7 from the private law firms throughout the City of Los Angeles
8 and Beverly Hills and to match those lawyers with services
9 and with expertise provided by not just public counsel
10 lawyers themselves, but by programs that you fund. Namely,
11 the Los Angeles Legal Aid Foundation, the Western Center on
12 Law and Poverty. And, through these organizations we are
13 able to obtain a screening of cases that can be sent to the
14 volunteer lawyers. We're able to obtain expertise. We're
15 able to obtain co-counsel assistance and we have, in effect,
16 leveraged the kinds of activities that you funded into a much
17 more active and broad-based program.

18 We would like to take that public counsel model
19 and move it up and down the State. That's one of the things
20 that I would like to turn my attention to as the year goes
21 on at the State Bar.

22 Well, I could mention other program like Volunteer
23 and Parole. I assume you have some familiarity with that.
24 Last year we had about 252 attorneys and parolees who were
25 matched and meeting together on a regular basis. In the ten

1 years since we've had that program there have been over
2 10,000 attorneys and parolees who have been matched.

3 We have a number of activities designed to give
4 recognition and honor to those lawyers who have distinguished
5 themselves in Legal Services activities. We have a number of
6 support organizations that are designed to support not just
7 private lawyers who are providing these services, but
8 organizations that you fund.

9 We, finally, are spending a good deal of time in
10 the last couple of years in the area of alternative dispute
11 resolution. We have sponsored at the State Bar level
12 legislation in the State of California to develop funding to
13 generate support for a variety of alternative methods of
14 providing legal services and dispute resolution. Ways that
15 we think might be particularly beneficial to the poor and
16 near poor who find the economic disadvantages of our
17 judicial system to be a much greater impediment than many of
18 the rest of us.

19 So, that's an area where we are working in the
20 future and would hope to see some real opportunities for
21 combining with programs you fund to extend services by making
22 our dispute resolution system more efficient.

23 Well, with that said, I think you have somewhat of
24 an overview of what we're doing here in the State of
25 California, and I would be happy to respond to questions that

1 you have of any particular nature.

2 What I would like to do next is turn to some of
3 my concerns, and as you might imagine, those are principally
4 funding concerns.

5 I'm not going to reiterate for this group what
6 has happened to funding for Legal Services since 1981.
7 Obviously it's -- it has been debated and reported ad
8 nauseam probably for this group. But, I think it is important
9 to take note of a few things, such as even though we were
10 able to provide some additional funding in the last year, I
11 understand that some 57 offices had to close between 1983
12 and 1984. I understand that some 46,000 fewer cases were
13 closed in that 1984 time period.

14 We have a critical need out there at a very basic
15 level. We in Los Angeles, the Los Angeles Legal Aid
16 Foundation, as a result of that 1981 funding cut, had to
17 cut back from seven offices throughout the City of
18 Los Angeles to four offices throughout the City of
19 Los Angeles.

20 We are in a position of needing to extend services
21 into areas that we are now wholly unable to service -- we've
22 had to cut back in Los Angeles the program I'm most familiar
23 with -- to the kinds of programs that are most basic to the
24 people in need. That is, housing, subsistence support and
25 so on.

1 There is in a very real way a need for increased
2 funding. Yet, as understand it, we have before the Board at
3 the present time a proposal to cut support center funding
4 by about 10 percent and even deeper cuts, as I understand it,
5 on the order of 21 percent for the special line item for
6 migrant legal services.

7 I further understand that the programs that would
8 be the beneficiaries of a reallocation of these funds, namely
9 the individual private -- the individual program such as the
10 Los Angeles Legal Aid Foundation -- are almost unanimously
11 opposed to this reallocation of funding. Why, because they
12 see the efficiency, they see the expertise that has been
13 made possible by that kind of support coming from places like
14 the California Legal Assistance Program from Western Center
15 on law and poverty, and a good number of the other support
16 centers up and down the State of California.

17 And, I also want to acknowledge how important it
18 is for us in California to have access to the national
19 support centers. When a migrant worker has a problem with a
20 pesticide it's very difficult for us in the State of
21 California to have ready access to the kinds of regulatory
22 expertise that the National Support Center in this area is
23 able to provide.

24 The same can be said with respect to some of the
25 national housing legislation, and some of the legislation

1 that pertains to the relationship between migrant workers and
2 those who redeploy migrant workers throughout the State.

3 As with any kind of practice, mine happens to be
4 involved more in securities practice anti-trust law, but if
5 I did not have access to the kind of expertise that I do in
6 Washington and at a national level, I would be a much less
7 effective lawyer than I am. I think that is equally true when
8 you're talking about providing legal services for the poor,
9 and I urge you to reconsider any of the thoughts that you may
10 have for taking away funding for these support services and
11 special funding for the migrant programs.

12 Now, I do know of your desire to be innovative.
13 It's admirable. I certainly would like to see us experiment
14 with judicare panels. I'd like to see us experiment with more
15 association with alternative programs. I'd like to see us
16 experiment with voucher systems and law school clinics and
17 so on.

18 But, I don't believe you can take away money from
19 a proven program which is right at the heart and center of
20 what you do and put that into experimental programs. I think
21 we've got to find experimental monies somewhere else, and
22 certainly we in the State of California are anxious to work
23 with you in finding some alternative means of approaching
24 these experimental programs without undercutting the heart of
25 what we believe we now have for our Legal Services programs.

1 Well, finally, I would like to say that I do know
2 that Congress is now considering an appropriation for the
3 current fiscal year, and as I understand it, at your request,
4 it contains no increase in funds. I think it is highly
5 regrettable that there was no request for an increase in
6 funds.

7 I recently had the opportunity to receive from
8 the current Attorney General, Meese, a speech that he gave to
9 the American College of Trial Lawyers, and in it he
10 acknowledged that it is a generally accepted goal, as he
11 says, to make sure that no persons are denied legal services
12 because of their economic situation.

13 Well, is that achievable? Probably not. Can we
14 do better? Definitely. How can we do better? First and
15 foremost, by increasing the funding that is made available.
16 That funding would enable us, if the federal government were
17 to come forward with increased funding for the Legal Services
18 program, it would enable us in the State of California to
19 leverage that increased funding into an even higher level of
20 State-wide participation.

21 On the other hand, what reduced federal funding
22 effectively does is negate our local efforts. In effect,
23 it's been taken away at one level and trying to be recovered
24 at another level.

25 It sends the wrong kind of message. The message

1 that increased State funding will only produce a smaller
2 federal budget. The inevitable result of all of that is a
3 constant downward spiral.

4 You're soon going to be considering a budget for
5 the subsequent fiscal year. When you do, I hope that you
6 will consider very carefully this agreed upon goal that
7 Attorney General Meese has defined. I hope that you will
8 look carefully at how you can in the first instance begin to
9 recover the purchasing power we've lost for Legal Services
10 programs since 1981, and then consider how we can expand
11 beyond that.

12 I assure you that if that is done the State of
13 California will do more than its share to carry out its part
14 of this partnership that you have forged.

15 Thank you very much for giving me the opportunity
16 to appear before you. Again, if I can be of assistance in
17 responding to any question, I would like to do it.

18 MR. VALOIS: Thank you, Mr. Olson, for --

19 (Appaluse.)

20 Will you provide Mr. Baker with the written copy
21 of your remarks?

22 MR. OLSON: I will, certainly.

23 MR. VALOIS: Are there any questions from members of
24 the Board?

25 There don't appear any.

1 Thank you very much.

2 MR. MENDEZ: By the way, Mr. Olson, we won't hold
3 it against you that you're from Tahoe.

4 MR. SNEGAL: Also, I promised him some questions --

5 MR. OLSON: His remarks reminded of something that
6 happened a couple of months ago with my wife. I was back to
7 receive an honor from my alma mater. On the way home that
8 night, Janie was saying to me that, "Did you see your
9 children's faces when the President was making those kind
10 remarks about you?" She said, "They were obviously very
11 please." I thought that was nice. Then she said, "Did you
12 see your Mother? She obviously believed them."

13 (Laughter.)

14 MR. VALOIS: Mr. Loeffler, if you will tell us
15 who you are for the record and why you're here.

16 MR. LOEFFLER: Yes, sir.

17 Dan Loeffler, President of World Research,
18 Incorporated, WRI Films. We produce educational films that
19 are distributed primarily to junior highs, high schools, and
20 colleges. And, I'm here on your invitation. I thank you for
21 that invitation and I'm a little bit surprised.

22 I am not an official of any sort, just work with
23 a number of college students researching issues of our day
24 and presenting controversial films on the subjects.

25 And, what I've prepared for you today -- the

1 questions -- one, was our research into government programs
2 and what, if any, results. Rather than comment on that, we
3 have a film -- it's a 28 minute film -- called the Poverty
4 Trap. I'm not showing it today, but I'd be happy to leave
5 copies with you if you'd like me to.

6 It basically, in a dramatic fashion, shows the
7 results of our research.

8 I was asked a second question regarding what
9 programs that are being done today that we've done research
10 into and has the dignity of someone in the state of poverty.
11 We have answered that in a 20 minute film called Dignity.
12 I'd be happy to also leave that with you today.

13 Then we also have available a 56 minute debate
14 between Dr. Walter Williams and Dr. Joseph Lowery, to
15 opposing viewpoints, two black leaders, on this subject of
16 poverty. I'd be happy to leave that with you here today
17 also.

18 What I have prepared for you here today regarding
19 the third question was any suggestions or recommendations
20 regarding legal services to the poor. And, what I would like
21 to show you here today -- I had originally prepared a 25
22 minute segment and I need -- just found out I need to cut
23 that way down. So, I'm going to try to give this to you
24 in about five to ten minutes.

25 What it is is just -- this is not a -- this is just

1 home video camera. It's never been before in public. It has
2 only been seen in our staff -- it was one of our research
3 projects when we were putting together the poverty trap film
4 in which we were interviewing an individual family in
5 Tennessee in rural poverty, and I'd just like to play some
6 clips of that for you and then maybe make 30-seconds worth
7 of remarks after that and I'm finished.

end T-3A

8 MR. VALOIS: Thank you very much.

begin T-4A

9 MR. LOEFFLER: Let me explain a little bit
10 about this. I was traveling with my family in a motor home --
11 this in 1982. We were showing our films in ten different
12 cities across the country, and we visited the World's Fair
13 and we had then gone out with about 45 minutes out of
14 Knoxville, if I remember correctly, and we were taking
15 photographs of poverty situations. And, we happened upon
16 this family and we just got very friendly with them and just
17 on the spot started asking questions and interviewing her
18 with our little home video camera.

19 It ended up being a very interesting interview.
20 It was a new experience personally for me and maybe for some
21 of you. I will -- I'm stopping this at certain points and
22 then going on. Just -- if you don't want me to stop at some
23 point, just boo me or something. I just tried to pick out
24 the best that I could, that I thought would be of interest
25 in a short period of time.

1 (Film clip.)

2 MR. LOEFFLER: This was originally about a
3 two-hour interview.

4 (Film clip.)

5 MR. LOEFFLER: Okay. To keep it short. I just
6 wanted to -- wanted you to see the comments of this lady.
7 At the time I interviewed her she was 29-30 years old.

8 And, I would just like us to think about a couple
9 of things. One, the thing that I went away from this meeting
10 with us was asking myself, you know, is poverty a financial
11 condition or is it a mental condition or is a condition of
12 your attitude, and I went away asking myself that. I think
13 it's something to be thought about in these areas.

14 When we come to what -- can Legal Services be
15 done for someone in a situation of poverty. I've passed out
16 a number of pieces of literature here. If you at that
17 Club Politico Menu, which is an intellectual approach from
18 some of our college students. In many cases tongue-in-cheek,
19 making fun of something, and please don't misunderstand our
20 literature. We're good at pointing out facts and problems
21 but we're very much Americans and believe in our system and
22 our government, and our objectives are to try to get people
23 to think about possible solutions.

24 And, in that brochure, on the back there is
25 something called "The History of Club Politico," and what

1 we're going through right now Rome went through centuries
2 ago. And, history is, you know, in many aspects repeating
3 itself and I think we should take time to look at what
4 history tells us.

5 Now, as far as legal services for the poor, what
6 they need is freedom. Our parents, immigrants coming to
7 America -- it was freedom here in America that allowed them
8 to pick themselves up and get themselves in a better spot or
9 place of advantage.

10 And, the poor in our country today are down the
11 road of dependency and do not have those same freedoms, and so
12 I'm going to make a very wild and maybe kooky suggestion.
13 The best legal services or legal help that I can see for
14 the poor -- since everybody else in our country today -- now,
15 I'm saying -- now this makes two wrongs and I don't mean
16 that, but maybe this is a direction for right now.

17 Since so many others are getting special favors
18 from the government, maybe it's time for the poor to get
19 special favors and maybe we can get some law on the books
20 that would say that the poor -- and we'd have to define at
21 what level -- are free of licensing, are free of taxes, and
22 give them true freedom to enter into the market place for
23 themselves.

24 And, I'll leave that wild thought with all of you,
25 and thank you for allowing me to be here.

1 MR. VALOIS: Thank you very much.

2 (Applause.)

3 The next agenda item is Item 6, Discussion and
4 Action on the REcommendations on the Audit and Appropriations
5 Committee.

6 Mr. Mendez.

7 MR. MENDEZ: Mr. Chairman, I have several items.

8 First, the Audit and Appropriations Committee has
9 adopted both the audit and accounting guide and has -- and as
10 well has adopted and approved Appendix 6, and has sent the --
11 both items up to the Board for approval and for the Board
12 adoption.

13 And, as Chairman of the Audit and Appropriations
14 Committee, I, therefore, move that we adopt the audit and
15 accounting guide, as amended, and adopt Appendix 6, as
16 amended.

17 Now, of course, this is subject to the actions
18 that we will or may later take with regard to C.F.R. 1630,
19 the question of cost regulation and what we're going to do
20 with that.

21 I would request that one of my fellow Board
22 members second my motion.

23 MS. BENAVIDEZ: I second.

24 MR. VALOIS: Okay, the motion's been made and
25 seconded. Is there any discussion?

1 MR. MENDEZ: Mr. Chairman, I have -- at this
2 time I would like to bring forward Mr. Thimell and
3 Mr. Coster. We have a couple of technical corrections that
4 we need to take care of and there is a couple of items that
5 have come to my attention subsequently that I would like to
6 clarify and obtain the Board's opinion.

7 First, can we take the technical corrections
8 with regard to the -- that Mr. Singen raised on I think it's
9 page 59 of the Guide yesterday. I told him it was out and
10 not to be considered. It was out of order since it was
11 essentially been set up and we weren't going to take
12 activities.

13 Page 59, Functional Budget versus Actual -- it
14 says on the column, Caption Criteria. At the bottom it
15 says, The monthly reporting package, and I would request
16 that we substitute periodic reporting package --

17 MR. VALOIS: This is on page 59 opposite
18 Functional Budget versus Actual. In the first column you
19 want to change the word "monthly" to "periodic?"

20 MR. MENDEZ: That's correct.

21 And, I would request that unless there's an objection
22 that the Board do that. This is in the nature of a clerical
23 correction. We did this when we split those out, and just a
24 typo.

25 MR. VALOIS: How about the paragraph above?

1 MR. MENDEZ: No, that's --

2 MR. VALOIS: Why don't we do this -- try to do it
3 peacemeal and hopefully, therefore, orderly. Does any
4 Board member have any problem with changing the word "monthly"
5 to "period" on the recommendation of Mr. Mendez?

6 (Pause.)

7 None appearing, we'll accept that as an
8 amendment to the motion.

9 Now, are there any other technical-type amendments?
10 There are and I can't remember them, but --

11 MR. THIMELL: Yes, there are.

12 In Section 2-1.9 --

13 MR. VALOIS: Tell us what page.

14 MR. THIMELL: In the guide -- that's page 18,
15 numbered page 18 -- that's correct; okay -- actually of the
16 Guide itself.

17 The new paragraph at the top of that page that
18 starts with "Carryover LSC funds and required expended prior
19 to the expenditure of current grant funds on a first-in,
20 first-out basis."

21 The next sentence goes on to state that "All LSC
22 funds, including income derived therefrom and those funds
23 held by separate entities. . ." and it goes to say, ". . . are
24 required to be expended on a first-in, first-out basis," and
25 the point has been raised that those funds in that clause

1 might be interpreted to mean any funds held by a recipient or
2 a subrecipient rather than strictly they're LSC funds and
3 therefore recommending that we insert LSC funds there on that
4 line, and those LSC funds held by separate entities.

5 MR. VALOIS: Okay. Any member of the Board want
6 to address that or have any objection to it?

7 Okay, proceed.

8 MR. THIMELL: In Appendix 6, which is back on
9 page 120 --

10 MR. MENDEZ: Appendix 6, the appropriate
11 Appendix 6 should be in my guide from my committee because
12 we made various modifications.

13 MR. THIMELL: That's correct. A number of
14 amendments have been made to Appendix 6.

15 MR. VALOIS: All right, that's page 120 of the
16 Board book?

17 MR. MENDEZ: That's page 19 -- well, it would be
18 page 120 of the Board book. If we use the Board book, I'll
19 have to go through and tell you what corrections the
20 committee made, and I will do that.

21 MR. VALOIS: You have to do that anyhow, don't
22 you?

23 MR. MENDEZ: Okay. I will go through those.

24 MR. VALOIS: The first page is Board book page 120.

25 MR. MENDEZ: 120. Under "purpose," the committee

1 -- the committee amended various items, and under the "purpose"
2 -- second -- third line down, it should read, "This statement
3 provides meaningful information to third parties such as
4 the general public," elimination of general public.

5 Now --

6 MR. VALOIS: That's it?

7 MR. MENDEZ: No, excuse me.

8 On the last paragraph -- second to the last
9 complete line, the committee changed and put interlineation
10 of two words after "beginning." "Beginning on or after
11 January 1, 1986," and Mr. Coster and Mr. Thimell have addressed
12 some questions to me about that.

13 MR. VALOIS: Let's see, let me make sure -- this
14 is on the next to the last complete line. So, it should now
15 read, "For all financial reports for periods beginning on or
16 after" --

17 MR. MENDEZ: January 1, 1986.

18 All right, now committee reported that out and
19 Mr. Coster and Mr. Thimell wish to address us and perhaps
20 clarify that line a little bit more.

21 MR. COSTER: Over and above -- it's come from
22 the committee yesterday, we'd like to change that language
23 to say, "Financial reports for periods ending on or after
24 December 31, 1986," which speaks to the same periods but
25 contains the language.

1 MR. MENDEZ: '85, not '86.

2 MR. THIMELL: Ending on or after December 31, 1986.

3 MR. VALOIS: Well, I mean, what does that do? I
4 mean, that makes the 1985 reports which are due on
5 December 31 subject to this? Is that --

6 MR. COSTER: No, it does not. It addresses the
7 same four-year reports for periods not yet begun. We're
8 talking about the reports that are generated from January 1,
9 through December 31 of this coming year, 1986.

10 MR. MENDEZ: Mr. Coster has advised me that that's
11 a more common accounting term and it's more likely to be
12 understood by accountants. It does not change anything
13 really. Just December --

14 MR. SNEGAL: Same financial reports either way?

15 MR. COSTER: Same periods are being discussed.
16 We're just referring to them as they typically are in the
17 industry by the ending date.

18 MR. SNEGAL: So, it wouldn't on or after then. It
19 would be ending on.

20 So, what Mr. Mendez mentioned is not in at all
21 then?

22 MR. THIMELL: No, it would be in the on or after
23 December 31, 1986. So, that period, plus any subsequent
24 periods.

25 MR. MENDEZ: All right, our PAG representative on

1 this, Mr. Singesen, just nodded his head no objection. Is that
2 fair? I think it makes just a little bit more sense.

3 MR. VALOIS: This is at variance with what the
4 committee reported out, though. I want to make sure that
5 the group was aware of that. I mean, this is what you're
6 asking us to vote on?

7 MR. MENDEZ: Right.

8 MR. THIMELL: The committee on page 121 --

9 MR. MENDEZ: No, it's on page --

10 Yeah, it's on page 121 -- second

11 line from the bottom, "Amended"-- it's the -- excuse me.

12 Not second line. Second paragraph from the bottom. The

13 paragraph that starts with "Client service subcategory

14 headings are based on a determination of the areas of law

15 in which the program provides significant levels of service

16 and delete most of its -- interlineate significant levels of."

17 The next paragraph -- the sentence that starts,

18 "The corporation has determined" -- it's the third line

19 down -- "that administrative" --

20 MR. VALOIS: Excuse me, what page are you on?

21 MR. MENDEZ: Still on page 121 -- on 120.

22 MR. VALOIS: 120, okay.

23 MR. MENDEZ: No, excuse me, 121.

24 MR. THIMELL: 121, the last paragraph.

25 MR. MENDEZ: Last paragraph. I have to go through

1 my other --

2 The last paragraph, "The supportive services
3 subcategories are descriptive of those actions not specifically
4 regularly tied to client services. The Corporation has
5 determined that administrative unallocated -- administrative
6 (unallocated management and general) --

7 MR. VALOIS: Unallocated and general?

8 MR. MENDEZ: Management and general. There's
9 an interlineation after administration (unallocated
10 management and general). That's the interlineation.

11 MR. VALOIS: Management and general, and it's
12 the end of the parenthesis?

13 MR. MENDEZ: End of parenthesis, and that's the
14 end of the interlineation on that line.

15 The next line, after "Dual purposes of --
16 interlineation -- in an internal management and disclosure
17 to third parties, such as" -- after third parties,
18 interlineation again -- "such as the general public, the
19 Corporation, Congress, and funding sources."

20 MR. SNEGAL: "And other funding sources"?

21 MR. MENDEZ: I'm sorry?

22 MR. SNEGAL: Not other -- you've got similar
23 language over on page 120 which includes the word "other
24 funding sources," or are you leaving out the word "other?"

25 MR. MENDEZ: That's fine. No problem. We've

1 negotiated all this out and I want to make sure -- I'm just
2 reporting what we've done out, but if there's no objection
3 I think we ought to --

4 MR. SNEGAL: Well, then you can out -- "and
5 internal management" is going to come out, then, isn't it?

6 MR. MENDEZ: Internal management --

7 MR. VALOIS: So it comes out there?

8 MR. MENDEZ: Yeah, it comes out. That's -- "and
9 internal management" is deleted.

10 Then on page 122, second to the last paragraph,
11 "Programs are referred to the AICPA statement position, the
12 relevant FASB pronouncements and their outside auditor
13 for assistance."

14 Delete the remaining portion of that sentence.

15 Next sentence, "Further guidelines, interlineation
16 training, and technical assistance it's" -- is is stricken
17 and interlineation are. And, that is all of -- that is what
18 the committee agreed to.

19 MR. VALOIS: Is there any member of the Board that
20 desire to discuss any of the amendments that Mr. Mendez has
21 just made to the proposed accounting guide or Appendix 6?
22 If not --

23 MR. THIMELL: The committee made one additional
24 change to the financial statement example which appears on
25 123 of the Board books.

1 MR. MENDEZ: I indicated to you gentlemen to
2 prepare -- you have a statement that -- corrected?

3 MR. THIMELL: Well, the change was to combine
4 the PIA reporting from the two columns into one breakout.
5 So, it's just one single column for PIA on that statement.
6 Instead of breaking it up I --

7 MR. MENDEZ: Under applied services -- that's
8 correct. I'm sorry.

9 MR. VALOIS: Under client service PAI, what is it
10 that you want us to do to this illustration?

11 MR. MENDEZ: It's judicare program are to be
12 deleted.

13 MR. VALOIS: Those words are to be deleted?

14 MR. MENDEZ: And, that column is to be combined
15 into one.

16 MR. VALOIS: By adding them or --

17 MR. MENDEZ: Yes, adding them --

18 MR. VALOIS: So, you have -- do you want to take
19 out the words "Judicare prevental program?"

20 MR. THIMELL: Correct.

21 MR. MENDEZ: Right.

22 MR. VALOIS: And, add these figures, whatever they
23 turn out to be, is that it is.

24 MR. MENDEZ: Yes. This is an example. We've made
25 a determination that that wasn't correct.

1 At the base of the example -- the accompanying
2 footnotes are an integral part of those statements, and just
3 as a clarification, we -- it's intended that the footnotes,
4 the auditor's footnotes are always intended that they should
5 be included, and they are not presented in this example.

6 MR. THIMELL: We were going to add a parenthetical
7 explanation following that to inform the auditors and the
8 recipients that footnotes are always required as standard
9 practice and they simply weren't added for this purpose of
10 illustration.

11 MR. MENDEZ: That's not a substantive area. It's
12 just further explanation of -- that the footnotes are
13 required and --

14 MR. VALOIS: Okay.

15 MR. MENDEZ: Now, that's -- are there any -- did
16 I miss any?

17 MR. COSTER: There is a proposed change that did
18 not come out of the committee regarding breaking out one
19 additional object class item, depreciation. If you'd like
20 to entertain that now.

21 MR. VALOIS: What page are we on?

22 MR. COSTER: Page 122. That financial statement
23 that we were just looking at.

24 MR. VALOIS: 122?

25 MR. COSTER: It's on there. Now what do you think?

1 MR. MENDEZ: I think it's 122.

2 MR. COSTER: 123. Depreciation is on there.

3 To make this statement more immediately and
4 precisely comparable to the financial statements that have --
5 are otherwise required of our recipients, the changes
6 proposed to take the depreciation line item in the whole
7 string of data across the the right and bring that down
8 below that total in all caps --

9 MR. MENDEZ: Below the subtotal.

10 MR. MENDEZ: Below the subtotal or the total?

11 MR. COSTER: Below the subtotal and above the
12 total would effectively accomplish it as well.

13 MR. VALOIS: So, just move the depreciation
14 below -- between subtotal and total?

15 MR. THIMELL: Correct.

16 MR. COSTER: Yes, sir.

17 The way the -- Appendix 1 breaks out, the fund
18 balance statements, that make it more readily -- the figures
19 more readily comparable to an auditor or to the monitor --
20 to the internal program managers as well.

21 MR. MENDEZ: There's nothing else on --

22 MR. VALOIS: Anything further?

23 MR. COSTER: No, sir.

24 MR. SINGSEN: All of those changes are agreeable.

25 MR. VALOIS: For the record, that Mr. Gary

1 Singsen.

2 Does any member of the Board, once again, desire
3 to discuss or -- any of these before we act on the motion for
4 adoption?

5 MR. MENDEZ: Gary, do you want to have comments
6 about this Appendix?

7 MR. SINGSEN: I have no further comments from
8 those that we dicussed yesterday, and I think yesterday we
9 completed -- with regard to Appendix 6. I have comments
10 with regard to the rest of the document.

11 MR. MENDEZ: Yes, I understand that, but nothing
12 with regard to --

13 MR. VALOIS: All right, I guess we're going to
14 hear from Mr. Singsen now on the Audit Guide.

15 MR. THIMELL: One further amendment for the body
16 of the Audit Guide. It's on page 20, on 2-1.12, "Allocation
17 of Expenses Among the Funds." The proposed amendment reads --

18 MR. MENDEZ: Now, I have asked -- just to make
19 sure that this clear, this is not coming from the
20 committee. This is a -- in reviewing this after the
21 committee acted, I had some difficulties and I've asked these
22 gentlemen to prepare a proposed amendment.

23 MR. VALOIS: All right, now, just so we stay
24 straight here procedurally, we're finished with Item --
25 Appendix 6. We're apparently in agreement with everybody on

1 that. Your motion goes to what is printed and what has
2 been amended. This is now not part of your motion, but
3 discussion concerning it.

4 MR. MENDEZ: That's correct.

5 MR. VALOIS: 2.1.12, which is on page 20.

6 MS. BERNSTEIN: Bob, can we take a formal vote
7 to adopt Appendix 6 first and then go back to the whole
8 audit?

9 MR. MENDEZ: I split the motion up.

10 MR. VALOIS: We could do that --

11 MR. MENDEZ: I will consider that a friendly
12 motion and will split my motion if the Board agrees to adopt
13 Appendix 6 apart from the remainder of Audit Guide.

14 MR. VALOIS: Okay, if there's no --

15 MR. SNEGAL: Well, why would we want to do that?
16 If we defeat the Audit Guide then we've got an Appendix 6
17 that we approved to what? That makes sense.

18 MS. BERNSTEIN: Well, it just seems to me that
19 we're dealing with a whole new set of comment. We've just
20 now gotten to the place where there's going to be no public
21 comment on Appendix 6. Now it just seems to me it's
22 reasonable to go on and get that, you know, out of the way.
23 I -- since the committee dealt with Appendix 6 separately.

24 MR. SNEGAL: I think the Chair should rule any
25 comments on Appendix 6 out of order and refuse to let anybody

1 speak to it. If everybody's in agreement let's go on to
2 this other one. We can't vote on an appendix before we vote
3 on the main document.

4 MR. MENDEZ: I think we'll just go on and get it
5 taken care of.

6 MR. VALOIS: With Mr. Mendez' consent, let's go
7 to 2-1.12, which is on page 20.

8 MR. COSTER: I the section entitled, "Allocation
9 of Expenses -- Funds," paragraph two, sentence two
10 commencing with "In this case," the proposed amendment would
11 begin there with language, "In this case, 30 days written
12 notice must be given to the director of" --

13 MR. MENDEZ: Wait a minute.

14 MR. COSTER: I'll read it very slowly so you
15 can all write it down.

16 --"30 days written notice must be given to the
17 director of monitoring audit and compliance. If no
18 objection is raised by the Corporation, allocation of costs
19 is not necessary," and then we would continue in the sentence
20 as it's printed on page 20 with the words, "As long as."
21 The printed words following the comma and before "as long as"
22 would be deleted.

23 MR. SNEGAL: You've a redundancy then. Allocation
24 of costs, it's already there.

25 MR. COSTER: Yes, sir. In this case would appear

1 once.

2 MR. SNEGAL: But, after allocation of costs you
3 would strike "is not necessary because LSC will absorb the
4 indirect costs associated with this grant."

5 MR. MENDEZ: There's another provision, too, by
6 another party --

7 MR. COSTER: At the end of that paragraph which
8 ends with a citation to 45 C.F.R. 1628. The proposed
9 amendment would have the language as follows: "If objection
10 is raised then allocation of costs is required."

11 MR. MENDEZ: Okay. Do you want -- I don't know
12 how you want to do it.

13 MR. VALOIS: Well, what is -- you're chairman of
14 that committee. What is the Chair's position on this --

15 MR. MENDEZ: I requested this.

16 MR. VALOIS: You requested it; okay. Is this the
17 only part that Mr. Singesen wishes to address?

18 MR. SINGSEN: No, this is the first time I've
19 ever heard of this one.

20 MR. MENDEZ: I know.

21 MR. SINGSEN: I have some others to address.

22 MR. VALOIS: Can you address this one first?

23 MR. SINGSEN: Yes.

24 MR. VALOIS: Are you for it or against it?

25 MR. SINGSEN: I have some questions about why it's

1 being done and it seems to me redundant.

2 MR. VALOIS: Okay, well, why don't you -- let's
3 speak to this first and then if we agree on this, we'll have
4 it out of the way.

5 MR. SINGSEN: For the record, I'm Gary Singesen,
6 appearing on behalf of the project advisory group, and in
7 case I couldn't be heard a moment ago, this is the first
8 time --

9 MR. VALOIS: It's the first time everybody else
10 has seen it, too.

11 MR. SINGSEN: Right.

12 If I understand it, and I should start by asking
13 if I understand it, so I don't argue something that's --

14 MR. VALOIS: Yeah, why don't we do that.

15 Mr. Coster, if you're the proponent of this
16 change why don't you tell us why we need it and what it's
17 all about, and then --

18 MR. MENDEZ: He's not the proponent. I am.
19 But, you can ask him to explain it.

20 MR. COSTER: This amendment is proposed to shift
21 a burden on allocation of overhead expenses. The original
22 version, which the amendment seeks to modify, would allow
23 the program if the opportunity arose to take funds from
24 another grantor to allocate the overhead of that grant against
25 the LSC basic field grant, presumably on request of that

1 additional grantor but, nevertheless, requiring LSC to pay
2 the overhead of that new grant.

3 MR. MENDEZ: An example, let's say they wish to
4 fund only another employee to do some type of activity.
5 Under the regulation as it presently stands, LSC would have to
6 pay the rent, would have to pay secretarial services, or
7 whatever.

8 Under the proposed regulation, LSC would have the
9 opportunity of saying, look, you have to allocate those
10 expenses. You have to pay part of the, for example, rent,
11 part of the secretarial. As part of that, we have an
12 opportunity to at least respond to it.

13 In the vast majority of the time it's anticipated
14 that we would not object to it, but there are occasions
15 when there is some question about what the grant will be used
16 for -- then may wish to object to it.

17 MR. COSTER: This language has been discussed on
18 the record before and the -- requiring that all grants share
19 overhead cost was objected to on the basis that it would
20 and quite rightly could discourage all -- scare off other
21 money, particularly smaller grants that don't want to carry
22 their -- the burden of the overhead. For that reason, it was
23 toned down completely.

24 This modification we think would allow the
25 corporation to get notice and review those grants and the

1 purpose of those special grants that are seeking that
2 special treatment. I'd make sure that they were compatible
3 with the program priorities and the other interests over
4 which the Corporation has oversight of the program.

5 As you'll see, it has a default. Should the
6 Corporation not act, it's not going to hold up that grant.
7 It just asks 30 days' notice for monitoring on it and
8 compliance to review the purpose and to see if there would
9 in fact be a reason to stop the non-allocation of overhead
10 expenses in that case.

end T-4A
begin T-4B
11 MR. SINGSEN: There are several points I'd like to
12 make with regard to this.

13 The first is that I would suggest that you turn
14 to page 88 in the Audit Guide for a moment, in the red
15 covered version of the Audit Guide, which is a part of
16 Appendix 1 to the Guide, just so that we're clear on what
17 we're talking about.

18 In the middle of this Appendix you'll see that there
19 is a United Way grant that's been made to this program. If
20 you go across here you'll see United Way; okay? And, what you
21 see under United Way is that there is a grant of \$25,000 at
22 the top of the page, and \$14,000 of it has been spent during
23 the fiscal year reported on in this statement.

24 If you go down below the \$14,000 for personnel
25 expenses, you'll see that there's nothing entered in for

1 the non-personnel expenses. That's an example of a grant
2 in which the grantor said, we can give you a limited amount
3 of money and we'll give it to you so you can hire a staff
4 person, but we don't have enough money to pay for all of
5 the indirect costs of that staff person being joined to your
6 organization. We can't give you enough, so what we'll fund
7 is the staff person costs.

8 That's the issue that we're talking about.

9 There are, I think, four problems with this
10 language that I would suggest, that I can see in this quick
11 look. The first is it clearly works against the principle
12 this Board has spoken about repeatedly, which is leveraging
13 non-LSC funds, particularly private funds.

14 The small grantor is in a position of perhaps being
15 able to add a staff person, but if the non-personnel has to
16 be borne, may not be able to make a grant of sufficient size
17 to carry the whole operation. This process, obviously if it
18 led to a disapproval, would lead to a rejection of the grant,
19 taking away the other source of funds.

20 The second problem that I see is that under our
21 general concepts of use of LSC funds, clearly any time the
22 money was being used an illegal purpose, an unnecessary or
23 unreasonable purpose, it was being used in violation of any
24 regulation, et cetera. Any of the things for which a cost --
25 can now be questioned.

1 It makes no difference whether you have an approval
2 or not. If it's ineligible you have the right to deny the
3 use of the LSC funds. In other words, if the program
4 allocates LSC funds to the non-personnel but the activity is
5 a wrong activity, you're going to knock it out in review.

6 So, you're got control over this situation at the
7 back end.

8 MR. MENDEZ: Let's -- it's on the back end, but
9 it's not on the front end.

10 MR. SINGSEN: I agree. It is not on the front end.

11 The next issue is what standards would be used to
12 say "no" if there are no standards in this proposal. It seems
13 to me the standards ought to be the same standards that
14 we're proposing in 1630. That is, that if it would be an
15 ineligible cost you won't give approval. If it would be
16 an eligible cost you will.

17 Now, if you put the standards here, that would be
18 one way to deal with it. The other way to deal with it would
19 be to do with this new approval process what's been done with
20 some others and put them in the questioned cross-regulation
21 so that you have a parallel structure for all the issues.

22 The last question is what process is to be followed
23 in this objection statement. For example, suppose there is
24 an objection, and I don't know what the grounds will be for
25 the objection other than an illegal or unnecessary or

1 unreasonable activity. Is there to be no process for
2 reviewing that decision? That is, if the monitoring office
3 and compliance director for some reason thinks this is a bad
4 thing to do, will there be no way to question that
5 conclusion. Are we simply to have the leveraging affect
6 lost instantly.

7 Again, the questioned cost procedure speaks to
8 that issue, and so perhaps this ought to be there.

9 I guess the final thing that I would say is that
10 there are a lot of these grants. A lot of small private
11 sources of funds. We recognize that. We're not -- we don't
12 want to do those, but we want to have the right to look at
13 them going in.

14 I think this is, of course, a piece of the
15 micromanagement issue we speak about from time to time. You
16 have full control in terms of ineligible costs. This
17 approval process where you're dealing with ineligible costs,
18 doesn't seem to me to add anything and the programs ought
19 to be in a position to make judgments about the allocation of
20 their grant to perfectly eligible activities.

21 MR. MENDEZ: Do you have any comments to that?

22 MR. COSTER: I can envision where state bar money
23 might be granted to a program or to a number of programs in
24 a state where there might be -- well, not illegal or
25 unreasonable activities. There might be activities at odds

1 with our basic field monies, or more importantly, working
2 with our basic field direction, but in which the state
3 refuses to share the overhead costs.

4 The distinctions that might arise in the
5 regulation surrounding that money, fund raising for starters,
6 migrant support. Other areas might be pursued at the expense
7 of shifting over that overhead on that money to -- our
8 money, and it seems that when you have another state
9 agency, for example, it is quite reasonable to expect that.

10 Now, we don't anticipate losing those grants or
11 strong-arming the program inot losing the opportunity to take
12 money from third-party sources. But, an opportunity for
13 review seems reasonable. I cannot cite any current
14 abuses.

15 MR. MENDEZ: Well, let me just ask Gary a -- to
16 go through this hypothetical -- or -- hypothetical with me.

17 Let's say you have -- we give a grant of \$400,000.
18 Let's say a state bar gives a grant for \$400,000 and in that
19 grant they say you can use these funds for illegal aliens.
20 You cannot use these funds for rent. If we are to fund that
21 and we have a prohibition against funding illegal aliens and
22 working on illegal aliens, and we are yet to fund all of the
23 rent and all of that for that grant?

24 MR. SINGSEN: I think the portion of rent
25 allocable whether -- the portion of rent that went to the

1 support of representation of illegal aliens would be an
2 illegal charge, and that you would question it and
3 disallow it.

4 MR. MENDEZ: We can do it, but that's after the
5 fact.

6 MR. SINGSEN: It is certainly after the fact, but --

7 MR. MENDEZ: Why don't we just do it -- why don't
8 we stop it right at the beginning?

9 MR. SINGSEN: Well, (a) I don't think it's
10 happening. I think that when somebody's going to undertake
11 an activity that's prohibited with their LSC funds, they are
12 in fact allocating cause they know that they can't charge
13 LSC funds for the --

14 MR. MENDEZ: Yes, but when you a really massive
15 grant -- when you have a small grant that's a different
16 story, but when you have a really massive grant where it's
17 close to or a fair percentage of what your overall grant
18 is from us, then I think that the chances of allocation
19 really increase.

20 MR. SINGSEN: You mean a misallocation?

21 MR. MENDEZ: Excuse me, a misallocation.

22 MR. SINGSEN: Well, that's why we have audits,
23 and why you've got a set of rules about the use of the funds.
24 I don't think this is going to solve that problem. I think
25 that the programs have to have allocation systems anytime

1 they're doing an activity that's prohibited.

2 Now, I know the second thing -- you said state
3 bar funds. There would obviously be an initial question
4 of whether those were public or private funds. If they're
5 public funds then you could do the illegal alien
6 representation, but you couldn't use LSC funds for it. IF
7 they're private funds, they couldn't be given for that
8 purpose anyway.

9 MR. MENDEZ: Well, let's say -- if they're public
10 funds can they -- can we allocate rent to them?

11 MR. SINGSEN: You can require your recipient not
12 to use any of your grant funds for rent, for supplies, for
13 travel, for telephone, for any activity that supports the
14 use of those state funds or, say, bar funds, public funds,
15 for an illegal purpose, and I think you do now say that and
16 I think programs comply with it.

17 MR. THIMELL: I think there's one additional point
18 to be made here. It's not just a question of whether or
19 not programs might use LSC funds to pay the overhead on
20 illegal activities arising from other grants, but there's
21 also a question of the fact that we give monies to programs
22 for a variety of purposes. This is very similar to the cost
23 reimburseable question, and we give a program, say, half
24 a million dollars for basic field representation. We may
25 also give that same program \$80,000 to do computer-assisted

1 legal research.

2 Now, that's clearly an illegal activity and
3 something that would be eligible for a cost, but we may decide
4 we don't want to pay additional overhead for more computer
5 activity out of our basic field grant. Suppose they get
6 another \$20,000 from somebody to assist them in this
7 computer operation. We may not want them to divert an
8 additional \$10,000 out of basic field representation
9 activities for computer research even though it's very good
10 and very wise, but we have decided that the basic field
11 needs are the priority and this would allow us to review those
12 situations up front and decide whether they're going to
13 impact on the primary purposes for which we gave them the
14 funds.

15 MR. SINGSEN: I do need to respond to that
16 briefly. The choice of words is illicitus. The Act makes
17 it clear that the priority judgments about the use of your
18 grant are to be made by the local Board. It would be an
19 inappropriate conclusion to decide that your priority on
20 basic field funds would take precedence in an individual
21 instance over the determination of the priority of the
22 program.

23 Now, obviously, in a cost-reimbursable grant
24 you completely control the situation, and you could even
25 ask the program to enter into an agreement with you as part

1 of a cost reimburseable grant not to exceed the amount of
2 the grant for that purpose, and then in the cost
3 reimburseable area, where I think we'll talk shortly, I
4 think that's a full and appropriate remedy.

5 But, I think the situations that's just been
6 described is an example precisely of a corporation feeling
7 that there's something about a local priority judgment
8 that they want to question and that that kind of question is
9 really not the appropriate level for a management organization
10 like the corporation.

11 Now, let me make -- I need to make one
12 procedural point as well. Obviously this is a new matter,
13 and while I represent the project advisory group here, it is
14 possible that others would have comments on this as new
15 matter. So, I would request the draw for that opportunity.
16 I don't know if anybody has a comment.

17 MS. BERNSTEIN: I just have a question as to the
18 terms of the --

19 MR. VALOIS: Are you on the same -- this same --

20 MS. BERNSTEIN: Yeah, the same subject.

21 You said that you don't question the propriety
22 of our being able to do it. You just don't think we ought
23 to be able to determine it up front, but the fact -- you
24 know, that that kind of avoids the question of who's using
25 their money during the period.

1 MR. SINGSEN: No, let me be more specific.

2 I mean, I think that if you want an approval
3 process on this, you have a right to an approval process
4 up front on the question of illegal, unreasonable,
5 undesirable kinds of things. You know, if it's going to be
6 an illegal use.

7 It seems to me you are fully protected, however,
8 already by the question cost procedures. That there will be
9 an anti-leveraging affect of an up-front approval and that
10 it raises serious questions if you go beyond the terms that
11 you deny costs for -- the ineligible or illegal or
12 unreasonable expense -- about the appropriateness of making
13 judgments that conflict with the priorities.

14 I don't think there's a power question here,
15 although I think the exercise of the power will be more
16 appropriate in 1630 if you make the decision to exercise.

17 MR. MENDEZ: Mr. Chairman, I -- some of your
18 arguments are very persuasive and, as a result of your
19 arguments, I'll tell you what I think I would like to do is
20 state if those are not -- put the provisos in that
21 ineligible and illegal costs in the language. I still want
22 the language in. I think that's -- that argument is
23 persuasive and I would agree with that, but I think it's --
24 I want the language in. I want to have prior approval.
25 And, this will not delay any of these matters, and the

1 Corporation can live with 30 days. I've asked them.

2 MR. SINGSEN: My own guess is that 30 days is a
3 short enough time so that it won't have by itself a severe
4 detrimental affect on moving towards the grant. Grants take
5 time no matter who is giving them.

6 I am not sure it won't have ultimately the
7 anti-leveraging affect if there is a denial. I think the
8 inclusion of the standards is a useful step.

9 The other question is the procedural one. If the
10 director of MAC decides to disapprove or to object -- I mean,
11 word here isn't even disapprove. It's object -- what happens
12 then? Is there any appeal process? Is there any way to
13 review the situation?

14 Since then, whenever it happens, if it ever
15 happens, we're obviously into a very direct situation where
16 the corporation has thrust itself into the negotiations
17 about the grant coming from a third party.

18 If the Corporation objects would they become a
19 bargaining party in the grant negotiations?

20 MS. BERNSTEIN: I don't -- this is the first
21 I'm -- with it, too, but I don't read it the same way you do,
22 I don't think, in terms of the procedural problems being
23 there because I think it's implicit that the idea is for us
24 to have a chance to look at it up front. If the -- if no
25 objection is raised by the Corporation, allocation of cost

1 is not necessary as long as it's legal. That just preserves
2 our rights to go back later and, you know, if we find out
3 that there was something illegal going on.

4 But, if the objection is raised the allocation of
5 costs is required, that simply set out a safeguard for
6 knowing exactly where --

7 MR. SINGSEN: Well, I understand. That's fine if
8 somebody's giving you \$400,000, but if somebody's giving
9 you \$12,000 to hire a paralegal, it isn't fine at all because
10 the money won't be there.

11 MR. VALOIS: Let's -- review -- I'm going to
12 restate where I think we're on the motion.

13 There's been a motion made to adopt the Audit
14 and Accounting Guide, including Appendix 7.

15 MR. COSTER: 6.

16 MR. VALOIS: Excuse me, 6.

17 There have been several minor amendments made
18 with Mr. Singesen's consent and with no objection by
19 members of the committee. We are now dealing with the
20 proposed further amendment to the motion to include the
21 language on page 20, which has now been added.

22 I think what we need to do procedurally is to
23 vote or down on this amendment to 2-1.12, and then proceed
24 with the remainder.

25 MR. MENDEZ: Mr. Chairman, based on Mr. Singesen's

1 statements, I would like to add some additional -- I would
2 just like to raise -- objection is raised to the last line.
3 It must be based on -- I'd like to put the additional
4 language. It must be based on the LSC. Mr. Singesen, you've
5 made your point. Give me the language on the LSC Act --

6 MR. SINGSEN: I think the way that I would
7 probably suggest you would do it is by direct reference to
8 the standards in 1630 for disallowance.

9 MR. MENDEZ: All right. It must be based on the
10 standards in 1630.

11 MS. BERNSTEIN: I think that's confusing the issue
12 myself, and, Mike, you can correct me if -- if I'm confused
13 about the issue, but I -- we're not talking about
14 disallowing, you know, costs necessarily. We're simply
15 saying that the costs have to allocated in terms of making
16 it clear in the beginning as to where the costs are and if
17 the costs -- if the costs would not be allowable under our
18 Act, it is a question that could be determined even later, as
19 I understand it.

20 MR. SINGSEN: Certainly, I've been saying that
21 you can determine it later.

22 MR. COSTER: Paragraph two of this section is a
23 permissive section. If it were to be struck or if this whole
24 section was read without that paragraph -- it says that, "All
25 money that comes to a grantee must share and share alike and

1 that cost -- the overhead cost of the organization of the
2 recipient." That's typical accounting practice, however, it's
3 also very typical to provide exceptions to that in certain
4 circumstances.

5 The way the section reads without amendment, and
6 has read for sometime, as far back as I know, is that, however,
7 if someone walks to your door with money and says we want
8 this for a specific purpose, to hire one person or to buy
9 a computer, you can -- or that grantor further says but you
10 cannot charge it with anyone of your rent or long distance
11 phone bills or other overhead, travel, you can accept that
12 grant and use it for the specific very narrowly defined
13 purposes as specified by the grantor.

14 What we're saying by this amendment is we don't
15 want to discourage those sorts of grants. We want to seek
16 that leverage, as it's termed by Mr. Singen. However, in
17 doing that, we want to know in advance do I have the
18 opportunity to stop that should there be a problem with a
19 particular grant. Would there be an abusive situation,
20 possibly a control situation. A number of different items
21 that are -- opportunities that might arise would cause the
22 Corporation through the office of MAC -- I don't know
23 Modern Audit Compliance would necessarily make the only -- be
24 the only person to receive that, but they are the best
25 interface with the recipient -- would give the Corporation

1 an opportunity to know several weeks in advance if they
2 were about to accept those sort of terms on a grant, and if
3 to see if there was something objectionable, as you say, on
4 the front end.

5 I think that's important.

6 MR. MENDEZ: Mr. Chairman, I request that we table
7 this portion of it for about 10 or 15 minutes, and let me
8 work on some language to help -- based on what Mr. Singesen's
9 comments were, and come back to it in about 10 or 15
10 minutes because by then I should be able to have some
11 language that I feel is in his -- some of his input.

12 MR. VALOIS: Mr. Singesen, can you address the
13 other parts of that?

14 MR. SINGSEN: Certainly. It will take me -- I'm
15 sorry, I didn't bring the rest of the --

16 (Pause.)

17 MR. SNEGAL: I don't see where it goes.

18 MR. THIMELL: That's a typo. It's on the
19 previous page.

20 MR. SNEGAL: Oh, it's the following page.

21 MR. SINGSEN: It's the following page. On the
22 end of the third paragraph on page 21.

23 MR. SNEGAL: Okay.

24 MR. COSTER: We'll seek permission later on for
25 technical corrections. You can see, we've already built

1 quite a pile of them. WE've substantially revised --

2 MR. MENDEZ: I think the best way for me to
3 state the -- that Mr. Singesen and Mr. Coster and Mr. Thimell
4 have been working on getting all the typos out as quickly
5 as possible, and a lot of these things -- the substantive
6 issues were being addressed, all the technical issues were
7 just going to have spellings and movements of footnotes and
8 that sort of that -- will have done.

9 MR. VALOIS: Okay.

10 MR. SINGSEN: Two preliminary things.

11 First, I believe everybody has a copy of my
12 November 2 memo to the committee and the Board, and if
13 anyone does not, I have a couple more here. I'll be working
14 with this during the presentation. So, if anyone doesn't
15 have it, please let me make sure I get it to you.

16 It says November 2 --

17 MR. SNEGAL: I've got one that says October 30.

18 (Pause.)

19 MR. MENDEZ: I didn't bring mine down this
20 morning.

21 MR. SINGSEN: Anybody else need one? This is
22 going to be easier probably if -- there are probably some
23 in the audience because I did bring some for them, but I
24 think they've been taken.

25 (Pause.)

1 MR. SINGSEN: Do we have an extra here?

2 MR. SNEGAL: I got that one --

3 MR. SINGSEN: The second preliminary matter is just
4 that I'd like to echo what I think Mr. Mendez was just
5 saying. I think it's important to note that in the process
6 -- somewhat rushed though it has been -- over the last four
7 weeks that a great deal has been done by the staff in
8 listening to and responding to the comments that we've had
9 to make and I just want to commend the staff for the work that
10 they have done, and the work began, of course, with
11 Mr. Nussbaum and has been continued particularly by
12 Mr. Coster.

13 While we still probably have some differences, the
14 process has certainly been much improved and I think the
15 final document reflects the work that they've done. So, I
16 want to commend them on behalf of my group for the work
17 that they've done.

18 There are I think at this point eight areas of
19 the guide that I wish to address. I will try to address them
20 briefly in the interest of being able to move to a decision
21 this morning, but I think each of them is important enough
22 to spend a few minutes thinking about them before final
23 decision.

24 A couple of them are quite minor. They will take
25 us no time at all today.

1 The first is found in Section 1-6 of the Audit
2 Guide. That's in the red book on page 6 of the Guide. It's
3 entitled "Responsibilities of Auditors." In my memorandum of
4 November 2 you'll find it discussed on 13 to 15, and I have
5 a couple of changes in the language on page 15 where I've
6 got a proposed amendment to the text.

7 These two points are pretty straightforward I
8 think. The first is very straightforward. The current Audit
9 Guide says that when an auditor discovers a serious problem
10 of internal control, the auditor should immediately notify
11 the Corporation because the Corporations money may be at
12 risk because of inadequate accounting procedures.

13 The proposed Guide deletes the concept of
14 seriousness and says that whenever the auditor discovers any
15 matter related to internal control --

16 MR. VALOIS: Where does it say that on page 6?
17 Let's work on the draft since that's what's before us.

18 MR. SINGSEN: Okay. Down at the bottom of page 6
19 the full paragraph there. The first sentence reads, "While
20 the auditor will contract directly with the recipient, it is
21 emphasized that any items required by generally accepted
22 auditing standards were considered by the auditor to justify
23 reporting of the recipients program, director or board of
24 directors, should also be included in the supplemental letter
25 for LSC's consideration."

1 And, now the language I'm addressing. "If such
2 items relate to the recipient's capabilities to safeguard and
3 account for LSC funds or weaknesses in the integrity of
4 management, the facts and circumstances must be brought
5 immediately to the attention of the director of LSC's office
6 of monitoring, audit and compliance."

7 That's the concept that I'm addressing here.

8 MR. VALOIS: Tell me about what words you would
9 change, and --

10 MR. SINGSEN: I would add the phrase, "If such
11 items are of a serious nature and relate to the recipient's
12 capabilities," et cetera, which is the current language
13 of the Guide that's now in force.

14 The problem here is essentially that there will
15 be in supplemental letters for many audits --

16 MR. MENDEZ: All you want to have -- you want to do
17 is put the additional language "are of a serious nature."

18 MR. SINGSEN: That's -- of the two changes
19 proposed here, that is the first of the two. The other
20 doesn't -- is a separate subject.

21 MR. MENDEZ: Tell me.

22 MR. COSTER: Is the second related?

23 MR. SINGSEN: Yeah, the second has to do with
24 work not done during the course of the audit, whether this
25 provision should apply during such work and --

1 MR. MENDEZ: Unless you can give me a good reason
2 why it shouldn't be -- how do we define serious nature? Let's
3 talk about that --

4 MR. THIMELL: This whole question is the auditor's
5 judgment and as it's currently written, if the auditor makes
6 a judgment that there is a problem relating to the recipient's
7 ability to safeguard our funds he's got to call us. Now, if
8 it's not serious, it probably won't be called because it's
9 not going to really relate.

10 In other words, he's going to make that distinction,
11 and it's really -- relates to that, I think it is serious.

12 MR. MENDEZ: You're saying it's redundant.

13 MR. THIMELL: Yes, I think it's --

14 MR. MENDEZ: Do you agree with that?

15 MR. SINGSEN: I don't. I think that you don't
16 relate by phone call every time the auditor is going to note
17 in the supplemental letter that the wrong person is receiving
18 cash.

19 MR. VALOIS: Whose judgment avails when we decide
20 whether or not it's serious?

21 MR. SINGSEN: The auditor would need to make
22 the judgment.

23 MR. VALOIS: Would you agree then that if we
24 said, "Are of a serious nature in the judgment of the auditor."

25 MR. SINGSEN: That would be fine.

1 MR. VALOIS: Is that --

2 MR. COSTER: That's current reading or that is the
3 old version. When the serious language was there, and it
4 was certainly serious in the eyes of the auditor, and the
5 problem is not whether the program considers it serious
6 because that would only double the problem.

7 MR. VALOIS: Are you agreeing, Mr. Coster, that
8 "Are of a serious nature in the judgment of the auditor"
9 would --

10 MR. COSTER: Yes, it's important to note back that
11 this refers to first sentence, which refers to the fact that
12 we're talking about items considered by the auditor to
13 justify reporting to the recipient's program director or
14 the recipient's board of directors, and it's saying, if you
15 think it's important enough to report to the local Board or
16 to the local program director and it relates to ability to
17 safeguard LSC funds, you got to tell us, too, right away.
18 That's what it say.

19 MR. SNEGAL: Put this language in. So, it's
20 redundant --

21 MR. VALOIS: What's the matter with the
22 language, Joel, I don't understand.

23 MR. COSTER: -- risk that an auditor may not
24 consider something serious enough to notice --

25 (Simultaneous conversations.)

1 MR. MENDEZ: I'll tell you what, let's put the
2 language --

3 MR. VALOIS: The Board just can't rely on his
4 judgment anyway.

5 MR. MENDEZ: Mr. Chairman.

6 MR. VALOIS: Yes, sir.

7 MR. MENDEZ: Let's put this language in this
8 year, and if you bring me back information to show me that
9 there's problems with it at the end of the year we'll take it
10 out next year.

11 MR. SINGSEN: I can make a suggestion related to
12 that.

13 The auditor is going to have it in a note -- in
14 the supplemental --

15 MR. MENDEZ: I know, and we'll have it by next
16 year, so we'll know.

17 MR. SINGSEN: I'm not really conscious that
18 this has happened much in the past.

19 MS. BERNSTEIN: -- audit's until after -- because
20 this audit guide -- because I --

21 MR. MENDEZ: Now, look at -- what I'm telling is
22 that we're going to look at them this year. The audits that
23 come in right now, because this language is essentially in
24 it. We'll leave the language in it. If there's problems
25 with it we'll revisit it in six months or three months or

1 whenever we get the audits -- probably four months -- four to
2 five months.

3 MR. VALOIS: Does any member of the Board not
4 agree that we can permit this to be a further refinement of
5 Mr. Mendez' motion to proceed. I want to keep track of
6 where we are.

7 Okay, tha's fine.

8 Next point.

9 MR. MENDEZ: You're going -- you're adding the
10 language back in. Let's make sure that you say that.

11 MR. THIMELL: Yes.

12 MR. VALOIS: It say, ". . . of a serious nature
13 in the judgement of the auditor."

14 MR. SINGSEN: The second point --

15 MR. MENDEZ: Hold on one minute. I want to make
16 sure that we've got this.

17 Do you have it?

18 MR. THIMELL: Yeah, ". . . of a serious nature in
19 the opinion of the auditor" -- judgment. Same thing.

20 MR. MENDEZ: Now, I'm telling the staff -- you
21 two gentlemen, that if there's a problem at the end of -- when
22 these auditors come in this year and there -- we weren't
23 notified of matters before and we look at the footnotes and
24 see it, then I'll you come back in and tell us about it and
25 we'll change the language.

1 MR. THIMELL: All right.

2 MR. VALOIS: Mr. Singsen.

3 MR. SINGSEN: The second point in this -- the
4 second point in this paragraph has to do with a smaller
5 problem, but one which doesn't strike me as having much
6 purpose. This is again related to the auditor calling up
7 with a problem. But, we have the distinction between the
8 auditor who comes in and does preaudit work as part of the
9 audit. Then comes in and reviews the financial statements
10 and the financial operations and premiere's the audit report,
11 discusses it with the Board of the local program and sends
12 the audit to the Corporation.

13 If any problems discovered anywhere along the
14 way that fits this description, the auditor is to notify
15 you.

16 Now lets talk about the beginning part of the year
17 when a program manager wants to ask a subtle difficult
18 question in a confidential manner about an audit question.
19 Ideally he'd ask his auditor. He'd get him on the phone.
20 He'd bring him in. He'd hire him to do some work to give
21 him an answer on a question. Not an audit question, now.
22 Some other kind of accounting question that the program
23 wanted advice on.

24 In this section, in this paragraph -- and in the
25 next paragraph there's a reference to it also -- this

1 requirement for immediate phone call is added as a
2 requirement even when the work is not being done as part of
3 the audit.

4 MR. VALOIS: Well, tell me again, what --
5 we're addressing specific language.

6 MR. MENDEZ: Mr. Chairman.

7 MR. VALOIS: What part of this section are
8 you referring to?

9 MR. SINGSEN: It's in this paragraph at the
10 bottom of page 6 and it's in the next sentence from the one
11 we read before, which reads, "This requirement exists for
12 items coming to the attention of the auditor during the
13 course of his annual examination or during the course of
14 any other work performed by the auditor during that year."

15 It is that whole phrase that I'm addressing
16 myself to.

17 MR. VALOIS: Or didn't what you don't like?

18 MR. SINGSEN: That's right.

19 MR. MENDEZ: Mr. Chairman.

20 MR. VALOIS: Mr. Mendez.

21 MR. MENDEZ: We had substantial testimony by
22 Mr. Singesen in New Hampshire --

23 MR. SINGSEN: In Washington.

24 MR. MENDEZ: In Washington, excuse me, concerning
25 this and the committee considered this and rejected it.

1 Fair statement?

2 MR. SINGSEN: It's a fair statement. Certainly
3 you heard me clearly.

4 MR. VALOIS: Will you provide us with the --

5 MR. SINGSEN: That's correct.

6 MR. VALOIS: All right, go to the next point.

7 MR. SINGSEN: The next point is more complicated.

8 Probably the toughest issue to understand of all the issues.
9 It has to do with Chapter 1-7 on pages 7 and 8 of this
10 document, and particularly it has to do -- almost totally --
11 with the last sentence which is on the middle of page 8.

12 The reason I say it's complicated is that it
13 deals with the ideas of controlling and controlled
14 organizations, and what the last sentence does --
15 What the last sentence does is say when there's a controlled
16 relationship between a recipient of your grant and some
17 other organization, then the rules, regs, the provisions of
18 the act, the prohibitions on the uses of the funds that
19 go with LSC funds would also apply to the controlled or
20 controlling other organization.

21 The reason this is a problem is that under the
22 Act, Section 1010(c), which provides that the non-public
23 funds of a recipient are not to be used for prohibited
24 purposes, there is no power to regulate the use of
25 non-public or public funds other than your own funds in the

1 hands of a non-recipient.

2 Now, I want to spend one minute talking about
3 these situations because I think it's very hard to understand
4 what we're talking about just using words.

5 What I intend here is just to show the normal
6 situation where Congress gives the Corporation money along
7 with the Act that says what the authority is for the
8 Corporation to use the money. The Corporation gives the
9 grant to a recipient, a local program. The local program
10 may have private funds, as well as your funds, and under
11 the Act these private funds in the hands of the recipient
12 can't be used for -- purpose. That's what 1010(c) does.

13 Suppose the recipient give a subgrant to a
14 subrecipient using your money. Well, that prohibition, all
15 the things in the Act, go with your money so that the
16 subrecipient can't use your money for anything not allowed
17 under the Act.

18 But, now we come to the first problem. Suppose
19 that this subrecipient has private funds from somebody else.
20 1010(c) says the restriction follows your money to the
21 recipient and anything a recipient does with private money
22 is not allowed to be prohibited -- can be something
23 prohibited. But, a subrecipient -- a category you've
24 created -- is not a recipient under the Act and is not
25 subject to that prohibition on the use of private funds.

1 And, your own subgrant regulation makes no
2 attempt to take the 1010(c) provision to the subrecipient, so
3 that the private funds of a subrecipient are not limited
4 by the prohibitions of the Act.

5 An example of this situation is the New York
6 Legal Aid Society. It has about a \$10 million endowment,
7 an annual fund raising drive, uses \$3 or \$4 million to
8 support it's civil division. It is also a subrecipient of
9 the community action for legal service program in
10 New York, and the provisions of the Act, the prohibitions
11 on the money that they raise privately and on their
12 endowment income -- the prohibitions of the Act would not
13 apply under your subgrant regulation to those private funds
14 of the New York Legal Aid Society.

15 This is the standard situation. The new provision
16 in 1.7 -- related organizations is adding something, and it's
17 adding it, as we know, because of concerns about these
18 mirror organizations, mirror corporations, alternate
19 organizations as BIO called them.

20 And, this is the standard picture of an alternate
21 organization, as I understand it. That is, the recipient
22 and the subrecipient in our usual picture are interlocking.
23 They share directors. They share management. The
24 recipient was created by -- the subrecipient was created by
25 the recipient.

1 There's a grant that runs to the subrecipient.
2 The recipient, however, controls the functions of the
3 subrecipient in a significant way.

4 And, in this circumstance, what 1.7 says, is
5 that whatever rules apply to the recipient should apply to
6 the subrecipient. First, that because these are two closely
7 interrelated organization there should be single financial
8 statement disclosing the activities of both essentially as
9 if they were a single organization, even though for
10 corporate purposes they are two organizations.

11 But, now we get into a problem. What the
12 regulation, 1.7, says is private funds that go to the
13 subrecipient in this controlled circumstance --

14 MR. VALOIS: Are in effect going to both of them
15 because it's almost an alter ego situation.

16 MR. SINGSEN: But, that's the problem.

17 Legally it's not an alter ego situation. Our
18 regulation doesn't require finding an injustice or fraud, and
19 consequently, we do in fact still have two corporate entities
20 here and except for the proposal that somehow under the
21 Legal Services Act there is authority to make this combining
22 despite state law incorporations. There's no authority to
23 combine them for the purpose of passing through the
24 prohibitions to the private funds of a non-recipient.

25 Now, this is the basic legal question and this is

1 the situation with New Haven Legal Aid.

2 MR. VALOIS: The question being whether or
3 not we can treat them as a single enterprise or single --
4 a common enterprise for the purpose of subjecting them to
5 this regulation.

6 MR. SINGSEN: Yeah, I think as a legal matter the
7 question is whether you can treat them as a recipient under
8 1010(c).

9 Now, I tell you honest, I think that's a good
10 legal question. Not a resolved legal question, not one
11 that's really been briefed to you in an effective fashion,
12 and what I've proposed before is that, obviously, this is
13 a perfect situation to amend 1627 if you want to carry this
14 through.

15 Just say when you have an interrelated organization
16 the subrecipient is subject to the provisions of the Act and
17 the prohibitions on private funds use and that as part of
18 the subgrant approval process -- and this is indeed what
19 GAO suggests -- you ought to be saying to South Central
20 Connecticut, your subgrant, pursuant to our regulation, has
21 to contain a prohibition provision about your private fund.

22 Now, that's the solution which -- well, I think
23 there's a legal question about it that you would have to make
24 a decision about, and if you do go ahead and make this rule,
25 there may ultimately be litigation about it. That would be

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I think the orderly process and the appropriate location for
this last sentence.

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1 MR. SINGSEN: Which now is imposing this rule
2 without a proper regulatory process.

3 And there are two other situations that I need
4 to at least mention. The first situation is this one.
5 We have the standard grant from the corporation to a
6 recipient, but an inter-related organization doesn't have
7 to be a sub-recipient.

8 It can just be another organization getting no
9 money from our program board but in a controlled relationship.
10 Under the rule set out in 17, even if no money is passing
11 between the recipient and the non-recipient, we are
12 proposing to make the rules -- the prohibitions of the
13 Act applicable to the non-profit -- the private funds of
14 the non-recipient.

15 Here, I think it is extremely difficult to create
16 a recipient relationship where there is no Legal Services
17 money passing at all.

18 This is the situation for example of the consti-
19 tutional law center, which I think is an inter-related
20 organization with the center for judicial studies even
21 though there is no sub-grant at all. Just some transactions
22 going between the two because they share some space and
23 some people.

24 Nevertheless, if the sentence goes through in
25 17 today, the rule will be that all the private funds of

mogp2

1 the center for judicial studies are subject to the prohi-
2 bitions under the Act. It strikes us that that is not an
3 appropriate response.

4 The final situation is the most extended. It is
5 one that I have to apologize for not having realized it was
6 there two weeks ago. That the way 17 last sentence is
7 written, it applies to sub-recipients directly.

8 And what that means is that in this situation
9 where you have got the grant to the recipient, a Legal
10 Services sub-recipient through a sub-grant, and a non-
11 recipient organization and a non-sub-recipient organization
12 over here maybe with the money going to our sub-recipient,
13 not any Legal Services money passing here.

14 Nevertheless, there is a controlled relationship
15 under the rule as written between the sub-recipient -- not
16 just the recipient now. The recipient is out of it. This
17 is arms-length, pure and simple. But between the sub-
18 recipient and this non-recipient and non-sub-recipient,
19 nevertheless, the private funds of this non-recipient
20 and non-sub-recipient, will be subject to the prohibition.

21 Now, I am not sure how many of these we have,
22 because I don't know much about the control organizations
23 in relationship to sub-recipients. I give you an example
24 just so you can see what I am talking about.

25 Suppose the American Red Cross set up an elderly

mogp3

1 legal services operation in response to a disaster. They
 2 put some money into it, private money. And it also created
 3 a sub-recipient -- the American Red Cross is here, I am
 4 sorry.

5 It creates its own controlled entity to do
 6 elderly or disaster legal services or whatever in response
 7 to the disaster. And our recipient thinks that's a good
 8 idea too and adds some money to this disaster relief.
 9 This is a sub-recipient. It is controlled by the Red Cross.

10 That could mean that all the private money of the
 11 Red Cross would be subject to the prohibitions of the Act.
 12 That's obviously not what you intend, but that is what it
 13 says in 17 at the moment. So we clearly need to change at
 14 least the references to sub-recipients in that last sentence
 15 to avoid this kind of an implication.

16 Now all of my remarks about 17 essentially are
 17 directed to that one sentence. What we propose is that you
 18 take it out of the guide and make it as a proper rule with
 19 proper notice, which is probably not present here partly
 20 because of the publication matter that would certainly
 21 not come to the notice of the American Red Cross.

22 And that you do it in 1627 which is I think this.
 23 And I think where GAO's recommendation suggest that it be.

24 MR. MENDEZ: Mr. Chairman, again we considered
 25 this previously and rejected this position.

mogp4

1 MR. SNEGAL: Do you have these charts? I don't
2 think I was at that meeting. Do we have these charts?

3 MR. MENDEZ: No, we didn't have the charts.
4 Mr. Singesen made virtually the same arguments with the
5 exception of this last one.

6 MR. SINGSEN: Well, I think I had a little
7 more time today than I had then.

8 MR. MENDEZ: Well, but you made the same arguments
9 about the whole issue.

10 MR. SINGSEN: Certainly, the same bottomline
11 legal functions.

12 MR. MENDEZ: Yes. And we rejected those last time.

13 MR. VALOIS: Well, my experience is it is not
14 uncommon to treat people -- two people as one for some
15 purposes. It is certainly true in all forms of labor
16 relations, and I am not real sure whether it should be any
17 different here.

18 Ultimately, you may be right. It may be that
19 some courts is going to have pass judgment on the effect
20 of us doing that.

21 MR. SINGSEN: I do need to be clear. I have
22 no objection to the combined financial statement provisions
23 for disclosure to you to fund sources, I think that is
24 totally appropriate.

25 The issue is only the application of the

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prohibition of the Act down through this process of disclosure which I think is inappropriate in two ways.

One, I think it extends beyond your authority. But two, I think it hasn't been done in a fashion which is appropriate to the making of a rule. There has been no proper notice on this, and no opportunity to comment on it.

MR. MENDEZ: Our -- You see -- I don't want to engage in this, because we have done this before and we have done it in private and hashed between the two of us today.

But I believe we have difficulty in us losing the control over the dollars if it goes from sub-recipient to sub-recipient, to sub-recipient --

MR. SINGSEN: As long as they are your dollars, you don't lose any control.

MR. MENDEZ: Well, we do lose control over the groups that we are affecting though.

MR. SINGSEN: I don't understand --

MR. THIMELL: I think Gary has misinterpreted this last sentence a little bit here. The language would not subject sub-recipient controlled organizations to 1010-C in the fashion he suggested here.

If you will notice the language states that they would be subject to the same restrictions as if the funds were held by the recipient or sub-recipient. So that Red

mogp6

1 Cross there would be treated as a sub-recipient not the
2 recipient, and therefore their private funds would not be
3 affected in the manner that you are suggesting.

4 They would be treated as a sub-recipient, and
5 therefore any funds which they had gotten from LSC would
6 be treated to those restrictions. But clearly, they would
7 be treated as a sub-recipient and not --

8 MR. MENDEZ: They wouldn't even be treated as a
9 sub-recipient because they are not controlled by us -- by
10 the --

11 MR. SINGSEN: Well, I do need to ask a question.
12 I think that what Mr. Thimell has just said is that the
13 private funds of the sub-recipient are not subject to
14 prohibitions of the Act, which is what I have said of course.

15 If that is correct, then you need only say so
16 because I think that is a correct interpretation of the
17 law and it eliminates most of the problems here.

18 MR. SNEGAL: If that is correct, why don't we
19 just delete --

20 MR. THIMELL: A genuine sub-recipient not a
21 controlled sub-recipient. A controlled recipient is a
22 recipient. Now, if that box went all the way up and took
23 in recipient as well, then you have one big organization
24 with four different faces.

25 MR. SINGSEN: Clearly, the grammar we have here

mogp7

1 says that an organization in a controlled relationship
2 with a sub-recipient is subject to the same restrictions
3 as if the funds were held by the sub-recipient. If that
4 is true then this is true unless private funds of a sub-
5 recipient are not under the prohibitions of the Act.

6 MR. MENDEZ: No. Mr. Chairman, we have considered
7 and rejected it. Unless there is a motion from some member
8 of the Board, I request that we move to the next item.

9 MR. VALOIS: Well, does any member of the Board
10 wish for us not to include this for the purpose of attaching
11 it to -- it is actually part of the whole motion already.

12 MR. SNEGAL: Yes, I do want to do something.

13 It seems to me that the point is well taken.
14 And the problem results from a recipient or sub-recipient
15 appearing twice in that last paragraph.

16 And it seems to me one of the ways out of at
17 least the last diagram we have there is to delete from the
18 end of that sentence the words "or sub-recipient" so it
19 only appears once.

20 And then the analogy is to the recipient rather
21 than -- I mean that's where the problem is, Gary, with the
22 American Red Cross, isn't it?

23 MR. SINGSEN: I would say the first place where
24 you have both terms is the place to remove it.

25 MR. SNEGAL: The first place.

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MR. SINGSEN: Yes.

MR. SNEGAL: So we are talking about funds --

MR. SINGSEN: In some organizations in a common control with a recipient, is --

MR. SNEGAL: Or subject to the same restrictions if the funds were held by the recipient or sub-recipient.

MR. SINGSEN: I think probably you mean just the recipient.

MR. SNEGAL: Well, that's -- My first thought was to strike sub-recipient both times.

MR. THIMELL: I think that's --

MR. SINGSEN: Well, I mean, the earlier situations -- this situation which I think is the basic situation that you are concerned about.

What you are saying is if some other organization is a controlled relationship with the recipient, then that other organization is subject to the same rules as the recipient. That is what I think you are saying.

In this situation, even when there is no money passing it is my understanding that you intend the same thing to be true, that is, some organization in relationship to a recipient that is a control relationship is subject to the same rules as the recipient.

In both cases subjecting the private funds of the other organization to control. I don't think the reference

mogp9

1 to sub-recipients adds anything except the American Red
2 Cross.

3 MR. MENDEZ: Mr. Chairman, as I stated before --
4 Tom, do you want to hold it for a few minutes and come back
5 to it and consider it?

6 MR. SNEGAL: Well, I would like to move that we
7 strike the words "or of sub-recipient" at the two occurrences
8 in that sentence.

9 MR. VALOIS: Okay. I do not hear a second.

10 (No response.)

11 MR. VALOIS: Motion denied. Go to the next
12 point.

13 MR. SINGSEN: I have one other suggestion with
14 regard to this one, and that is as an alternative, I urge
15 you to change the word "are" in the last sentence to "maybe"
16 and to proceed with the proper regulatory procedure which
17 hasn't happened here.

18 My own opinion is that if you attempt to enforce
19 this provision in any way, you will find that the authority
20 is not there in an expensive litigation. And that at least
21 on the procedural point, you need to publish a comment
22 and adopt a rule, this is clearly a rule.

23 Maybe it would put auditors on notice to look.
24 And you could include a reference to 1627 if you wanted to
25 say where to look.

mogpl0

1 MR. MENDEZ: Mr. Chairman, I request that we go
2 on to another point and come back to this at a later time.

3 MR. VALOIS: Well, I would just as soon deal
4 with this up or down. He is suggesting the term maybe
5 instead of are.

6 It seems to me -- sort of take Mike Wallace's
7 position on that. Somebody reading this doesn't know
8 whether it does or doesn't apply until somebody tells him.

9 MR. SINGSEN: That's correct. He would have to
10 go and find the source of authority which means the
11 regulation would have to be adopted.

12 MR. VALOIS: I don't much like regulations tell
13 you whether or not -- you have to guess at whether or not
14 they apply.

15 MR. SINGSEN: You understand this is a regulation.
16 This audit guide -- if you pass it this way, this provision
17 is absolutely a new rule. It has not had proper notice in
18 publication, and making it this way, I think you get a
19 problem.

20 Notice and do it with the regulation is what I
21 am saying. Obviously, Mr. Mendez would like me to stop.

22 MR. MENDEZ: Mr. Chairman, we have had our dis-
23 cussion on this.

24 MR. VALOIS: Okay. Go to the next point, Mr.
25 Singesen.

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1 MR. SINGSEN: The third point is in chapter 1-9
2 on page 9. The essence of this is quite simple. This
3 draft of the guide as the earlier proposed guide did,
4 says that to change your fiscal year a program must have
5 prior approval of the corporation.

6 MR. VALOIS: 1-9?

7 MR. SINGSEN: Yes, 1-9 on page 9 is a single
8 paragraph. And the final sentence says that the fiscal
9 year can only be changed upon receipt of the prior written
10 approval of LSC. And the approval of the recipient's board
11 of directors.

12 It's a new rule noticed back spring when it was
13 mailed out. And the issue here is -- this is obviously
14 an issue that the local corporation ought to control, both
15 a matter of local corporate matter and practice. Government
16 or state law.

17 A couple of concerns have been raised. Clearly,
18 the corporation should get immediate notice of any change
19 in the fiscal year, but there seems no real basis to think
20 that there is going to be any difference in your oversight,
21 your capability to observe the program is not going to
22 change your work situation in any way.

23 It doesn't change the rights and powers of the
24 corporation. There is some concern about the possibility
25 of a program manipulating its fiscal year end to somehow

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1 avoid the impact of a rule. That things may relatively be
2 easily solved by alternate language.

3 MR. VALOIS: Is your concern limited to the prior
4 written approval?

5 MR. SINGSEN: Yes, it is.

6 MR. COSTER: This is an issue that seems to have
7 had a disproportionate share of discussion before, and I
8 thought that we had come to terms on the idea that permission
9 would better improve the flow of information within the
10 corporation, save it the disruption that occurs on fiscal
11 years that are changed without notice -- would avoid the
12 potential problem of the evasion of rules such as for
13 example functional accounting by shortening a fiscal year
14 which a program could do say in this year coming by having
15 a 10-month fiscal year they would not receive the benefit
16 of the functional accounting project.

17 There were a number of very real occasions that
18 we decided to go with advanced permission. And I thought
19 we had reached some terms on that.

20 MR. MENDEZ: Mr. Chairman --

21 MR. THIMELL: I would also like to point out
22 this is current practice, and in fact the programs do give
23 us this notice even though it isn't an explicit requirement
24 and doesn't seem to be too burdensome for them to let us
25 know that they are planning to do this.

mogpl3

1 MR. SINGSEN: I think notice is no problem.

2 MR. MENDEZ: Mr. Chairman, we considered this
3 in the committee and rejected his supposition.

4 MR. VALOIS: Does any member of the Board wish
5 to affect moving to the next step?

6 (No response.)

7 MR. VALOIS: Okay. Does not.

8 MR. SINGSEN: Next one is in 2-1.4. This is
9 paragraphs that relate to functional accounting, and would
10 ask you to take a look at -- I believe it is the middle
11 paragraph. In the middle paragraph which begins -- one
12 significant conclusion.

13 This is on page 13 of the guide. You will find
14 in the first sentence the statement that the AICPA
15 recommendations are that organizations which solicit
16 significant contributions from the general public must
17 summarize the cost of providing the various services or
18 other activities on a functional basis.

19 Then says, other covered organizations are
20 encouraged to do so. I ask you to insert there the
21 phrase "such as most Legal Services programs" same as
22 under the AICPA standards, Legal Services programs are
23 other covered organizations, not with a couple probable
24 exceptions, like the Legal Aid Society in New York which
25 does have substantial reliance on private outside

mogpl4

1 contributions.

2 Most Legal Services programs are not organizations
3 that solicit significant contributions from the general
4 public under standard accounting literature.

5 MR. VALOIS: Well, all you are saying is that
6 after other covered organizations, you want to limit the
7 encouragement of that to other legal aid type organizations.

8 MR. SINGSEN: Actually, it is even simpler than
9 that. The way this reads --

10 MR. MENDEZ: Can you give us specific language.

11 MR. SINGSEN: Other covered organizations (such
12 as most Legal Services programs) are encouraged to do so.

13 MR. MENDEZ: Now, we discussed this previously
14 to my recollection.

15 MR. SINGSEN: I don't believe we discussed this
16 one. This I tried to raise yesterday --

17 MR. VALOIS: If it is not a requirement, I mean,
18 what you are doing is putting a further limitation on it
19 by definition.

20 MR. SINGSEN: It is just that I think as it is
21 written now, people will misread it and believe that this
22 paragraph believes that Legal Services programs are
23 organizations that solicit significant contributions from
24 the general public.

25 That happens to be a statement contrary to

mogp15

1 audit standard definition. So this isn't the simplest
2 way to say that -- remember, the next sentence says that
3 you are directing it. And that is the important sentence
4 in this three paragraphs.

5 MR. VALOIS: Let me just catch up with you.

6 MR. MENDEZ: All right, Mr. Chairman -- I think
7 we just delete the sentences from there.

8 MR. VALOIS: It is not a requirement. It is
9 encouraged to do so.

10 MR. MENDEZ: I would just delte the sentence.

11 MS. BERNSTEIN: What's the significance --

12 MR. VALOIS: What are we encouraging more paperwork
13 for.

14 MR. MENDEZ: I would just delete the sentence.

15 MR. VALOIS: Well, it is not necessary. If it
16 is necessary, why don't we say so.

17 MR. COSTER: That particular sentence?

18 MR. VALOIS: Yes.

19 MR. COSTER: It is certainly not necessary
20 deletion --

21 MR. VALOIS: It is explanatory language.

22 MR. MENDEZ: We understand it is explanatory
23 language, and I think, if I understand his problem, I would
24 just eliminate the problem, eliminate the sentence.

25 MR. VALOIS: Well, but he is trying to --

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1 MR. SINGSEN: If you eliminate the sentence then
2 it really sounds like Legal Services programs are within
3 this definition of funds which solicit significant con-
4 tributions -- organizations that solicit significant con-
5 tributions from the general public.

6 That's the problem. You could eliminate the
7 paragraph.

8 MR. COSTER: We could eliminate the paragraph.
9 I don't object to that.

10 MS. BERNSTEIN: Why don't we just eliminate the
11 first two sentences. I don't think there is any reason
12 to eliminate the fact if it is just providing history that
13 the corporation has recommended the adoption for years.

14 MR. COSTER: Well, because Mr. Singsen's next
15 point of change is in the third sentence of that paragraph.
16 Again, a wording change of a similar nature that we are
17 not that strong on. Why don't we -- you want to mention
18 that first, or do you want to still argue that?

19 MR. MENDEZ: Let's delete the paragraph.

20 MR. VALOIS: Second. All right. There doesn't
21 seem to be any objection. Without an objection from any
22 other member of the board, we are going to delete the
23 paragraph.

24 All right. Mr. Singsen, go ahead.

25 MR. SINGSEN: The next point is in 2-1.9. It

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1 deals with recognition of grant and contract support.

2 MR. VALOIS: What page?

3 MR. SINGSEN: At the top of page 18.

4 MR. SNEGAL: That's where you have already put
5 the word "LSC".

6 MR. SINGSEN: That's correct.

7 In that paragraph, the same sentence actually
8 that's already been amended by the insertion of the word
9 "LSC".

10 What it states is that all LSC funds are required
11 to be expended on a first-in, first-out basis. No exceptions
12 will be made to this policy.

13 Now, I heard the earlier description of the
14 provision of the appropriations act which is working its
15 way through Congress at the moment. And I haven't examined
16 the language.

17 But what it seems to say is something quite
18 similar to this. That is, that all funds from prior years,
19 all funds granted by Congress from prior years have to be
20 spent before any funds from this year are to be spent.

21 If that is the language, then first whatever
22 discussion we might have on this today, and if it becomes
23 the law, will very shortly be meaningless.

24 Second, however, I would note that the point of
25 the discussion in my November 2 memo is that it should apply

1 to you as well as us. And that indeed from this language
2 it sounds like it might. And so I think that is appropriate.

3 MR. COSTER: I think that Mr. Singesen is in the
4 awkward position of using his sword as a shield, because
5 some weeks ago, this settlement that was reached in a New
6 England program lawsuit some four years ago in Connecticut
7 I believe --

8 MR. SINGSEN: New York.

9 MR. COSTER: In New York. Required the corporation
10 to maintain the facility in one fashion or another to
11 continue representation of clients that current funds could
12 not be applied towards.

13 At that point, many programs evidently nationwide
14 that still are holding onto their funds found excellent
15 justification for the retention of 1981 funds.

16 The corporation is holding onto 1981 funds. That's
17 been discussed as well. That's why we have previously said,
18 I think Mr. Singesen will recall, this is one regulation
19 where we are required under that settlement to protect the
20 program's ability by maintaining those funds in the cor-
21 poration's accounts.

22 But that we don't handicap that responsibility of
23 the program by requiring the balance of them to dispose of
24 those funds in a businesslike fashion. And we have also
25 discussed that it is clear. There has been no language in

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1 any of the appropriations documents that would suggest that
2 Congress places restrictions in in one year, anticipating
3 that they are speaking to different years dollars when they
4 invite us or discourage us as a corporation from serving
5 certain interests.

6 MR. SINGSEN: Very briefly, just to respond.

7 There are three situations that in one way or
8 another relate to this one in the corporation's own budget.
9 One, is the investment income which isn't 1981 money. It
10 is 1977 money or 1976 money. It has been held as a separate
11 fund all these years.

12 And if the act is changed, or the appropriations
13 bill is written the way it has been described, that money
14 will have to be expensed immediately. The second is that
15 the commitments procedure which allows taking a decision
16 made in this year and setting aside, reserving funds from
17 this year for an activity next year, would not be appropriate
18 under this language.

19 The third has to do with fund balances, and the
20 question there is, the corporation's own fund balance
21 practice which is of course much more liberal than the
22 program's ten percent rule.

23 MR. VALOIS: Mr. Singesen, I have heard you talk
24 about this paragraph, but you haven't told us what it is
25 you want us to do yet.

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MR. SINGSEN: On page 22 of my memo of November 2, I have a proposed set of language.

MR. VALOIS: Substitute for this?

MR. SINGSEN: It is actually to return to the language that you had in the proposed guide of February of 1985.

MR. VALOIS: Did you present that in Mr. Mendez' committee?

MR. SINGSEN: Yes, I did.

MR. VALOIS: This is on page 22?

MR. SINGSEN: That's right. Bottom of the page.

MR. VALOIS: Just briefly, what is your --

MR. SINGSEN: That you allow two exceptions to a -- proposal. The first being that the corporation itself approves a fund balance plan allowing expenditures over a specified time frame. And the second being that the recipient establishes a distinct fund to account separately for the use of carry-over funds.

MR. VALOIS: But the latter of those obviously goes directly to the heart of the matter.

MR. MENDEZ: Mr. Chairman, we have considered these items previously and we have rejected them.

MR. VALOIS: Does any member of the board want --

MR. SNEGAL: When you say previously, Mr. Mendez, is that yesterday?

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MR. COSTER: No. This language here is very close to the language which the corporate released in January of this year. And after the comment period, chose to delete in its entirety and add in the sentence, no exception will be made to this policy.

Those two exceptions were initially -- originally at least as of January of 1985 corporation language.

MR. THIMELL: I think the fact that Congress is moving ahead to in effect implement this language would strongly argue against us changing it now.

MR. VALOIS: Okay. What is your next point, Mr. Singsen?

MR. SINGSEN: In 2-1.92 on page 18, there you deal with what happens when someone has from a cost reimbursable contract, and expends the full amount of funds under that cost reimburseable contract, but still has a little bit more to do?

MR. MENDEZ: I am sorry. What?

MR. SINGSEN: Page 18, the paragraph number 2 in the middle of the page. And page 23, of my November 2 memo has a proposed change in language.

MR. VALOIS: The change you would add, is what has been underlined?

MR. SINGSEN: That's correct. And I would then delete the following two sentences. I would note that in

mogp22

1 the discussion of question of costs, this is an approval
2 process. I understand, although the process hasn't actually
3 occurred, it is the next item on your agenda, that there
4 will be discussion about inserting this particular area
5 into the 1630 on questioned costs.

6 And I think it belongs in 1630 if you are going
7 to require it not in the audit guide. It is an approval
8 process. It leads to disallowed costs if approval is not
9 granted or applied for.

10 I also have a substantive concern about this,
11 like we talked about before with indirect costs. That is
12 these are -- this is a situation where a program would be
13 making the decision to use its annualized funds to complete
14 an activity begun with a special grant.

15 In that situation, if it is illegal, ineligible,
16 improper, unreasonable or any of those bad things, you have
17 the power to disallow it under your current procedures.
18 The only situation in which you would have an approval power
19 to exercise here and choose to exercise it, is one where
20 beyond those terms, you decided for some reason you didn't
21 like it.

22 That strikes me again as a subject more appro-
23 priately limited to local priority decisionmaking and a
24 subsequent review, not a prior approval. It goes to what
25 I think you are working on in language in indirect costs.

mogp23

1 MR. COSTER: And you likewise have heard our
2 side on this. From a big picture perspective, what we are
3 looking at is requiring professional and long-term planning,
4 or at least medium term planning of program.

5 And it is true, that we are not going to withhold
6 the ability to transfer these funds in specious fashion,
7 but we are asking the programs to count their dollars up
8 as they go along is the reason that we give these sorts
9 of grants.

10 And we shouldn't have to add on top of that grant
11 language, and don't spend more than we are telling you.
12 We really mean it. And that should be the policy. That's
13 why we have these grants. And the term micro-management
14 is constantly thrown at us. I think it is just a requirement
15 of professional management.

16 MR. SINGSEN: I think professional management
17 need to be very careful. I don't think the corporation needs
18 to spend its time on this when it has got complete power to
19 disallow somebody that does something wrong.

20 MR. COSTER: I would hope that if this is adopted,
21 it doesn't rain these requests down on us. I hope that it
22 would alter the behavior of the recipients. That's the
23 intent.

24 MR. VALOIS: Does any member of the board want
25 to talk about this one anymore?

mogp24

1 (No response.)

2 MR. VALOIS: Go on, Mr. Singsen.

3 MR. SINGSEN: The next item is in 2-1.13. It
4 appears on pages 20 and 21 of the guide. There is a draft
5 of a language change on page 24 of my memo at the top.

6 The point is simply this. Under the language in
7 the proposed guide, interest income earned on prior year
8 money would be subjected to the rules of the current
9 appropriations act. That appropriations act explicitly
10 limits its application to the funds provided by the Act.

11 What I suggest is that you make any interest
12 income subject to the same rules that applied to the fund
13 that earned the money which is of course -- let's say 1984
14 money, earned the interest income, the 1984 rules obviously
15 should apply to money earned on 1984 LSC funds. Not the
16 1985 rules which may be different.

17 MR. VALOIS: I am not sure that is quite that
18 obvious. What's the effect of this congressional direction
19 on FIFO would have on interest income in your opinion?

20 MR. SINGSEN: My opinion is that -- Well, first
21 I have to see the language, as I haven't seen it. I am
22 not even sure how extensively it applies.

23 If what the rule states is that all LSC funds
24 shall be -- from prior years -- shall be expensed prior to
25 any use of current year funds, I think it would apply to

mogp25

1 interest derived as well as to the direct funds.

2 I haven't looked at the legislative history, but
3 my guess is that would be the intent.

4 MR. COSTER: And the staff has reported before
5 that it is our -- on information, the current language
6 conforms with standard federal grant making procedures.
7 And that the funds are handled on a FIFO basis.

8 That an agency has the opportunity to modify that,
9 and that we have been working under a modified procedure,
10 this conforms with, you know, the default provisions in
11 standard federal grants.

12 The reason, the need for making this change is
13 the confusion and opportunity for misinformation that the
14 programs have with the audit division in Washington of
15 the corporation, and particularly, the monitors.

16 When you start dealing with three and four years
17 worth of, you know, oh, that was special money from 1983,
18 that's interest money from 1982, that's market money or
19 illegal money from 1981, it truly does cloud the issue.

20 And I think this is part of the FIFO concerns
21 is trying to clarify the sources and permissive uses of
22 the money. This is not a radical change from the true
23 world I don't think.

24 MR. VALOIS: I don't believe that Mr. Singsen
25 is saying we don't have the authority to do that. He is

mogp26

1 just questioning whether or not we are right in doing so.

2 MR. SINGSEN: I actually have a small question
3 about authority, but certainly no authority to argue my
4 question.

5 MR. VALOIS: Can we go to the next item?

6 MR. SINGSEN: Yes. The next item is on page 71.
7 It is section 6-2. And I suppose given this discussion
8 today, I should preface it by saying, this is also an item
9 that we discussed two weeks ago, only for some reason the
10 guide this time doesn't say what was decided two weeks ago.

11 MR. VALOIS: That's 71, go ahead.

12 MR. SINGSEN: In section 6-2, it is a very short
13 paragraph. The last sentence of which in the proposed guide
14 reads: LSC does however reserve the right at its discretion
15 to select the auditor.

16 The auditor referred to is described in the
17 first sentence, the selection of an auditor, together with
18 contracting for auditing services is the responsibility of
19 the recipient.

20 In our committee meeting two weeks ago, the
21 committee agreed that its interest here was to assert its
22 power directly to audit, that is, the corporation can come
23 out and audit. Or to have the power to hire an auditor
24 and send that auditor out to audit the program.

25 And under the act, it is absolutely clear that

mogp27

1 there is authority to audit directly, and I think to audit
2 through an instrumentality. The instrumentality language
3 is what was discussed at the meeting.

4 MS. BERNSTEIN: Yes, that's correct.

5 MR. SINGSEN: Now, what is said here doesn't say
6 that.

7 MR. VALOIS: Now, what is the changes?

8 MR. MENDEZ: I think what we need to do is strike
9 the first sentence, and it is okay.

10 MR. SINGSEN: If I can, I have prepared a memorandum
11 on this issue after I got the guide.

12 MR. VALOIS: Don't give us a memorandum. We
13 got three sentences here. Tell us which ones --

14 MR. SINGSEN: I think you can change the sentence
15 to read, LSC does however reserve the right at its discretion
16 to directly audit the recipient either on its own or
17 through instrumentality, which was the language I thought
18 we had discussed.

19 MS. BERNSTEIN: The question here, as I understand
20 the discussion, and the committee meeting, who pays for
21 the audit.

22 MR. COSTER: And more importantly I think, who
23 is the auditor working for? And of course there are
24 professional disclosure concerns and things that are related
25 to that.

mogp28

1 MR. MENDEZ: My recollection -- you tell me if I
2 am wrong -- was that language -- let's look at 6-2. Are
3 you there?

4 If we delete the first sentence, gentlemen, tell
5 me what's wrong with that.

6 MR. SINGSEN: I think it is still the problem that
7 the auditor has no reference except the one that the program
8 is going to choose.

9 What's the problem with saying to directly audit?
10 Either by its own staff or --

11 MR. MENDEZ: Which section of your paragraph?
12 Do you have Mr. Singsen's --

13 MR. THIMELL: Yes, I have seen that. I would
14 like to just point out something here.

15 When this was discussed two weeks ago, it was
16 actually discussed in the context of section 1-5 which is
17 on page 5 of the guide. This is a provision that appears
18 in numerous places.

19 We made the change that we agreed upon here, and
20 neglected to follow through with that change on the page
21 that he is referring to. The change that was actually
22 agreed to was to insert after --

23 MR. MENDEZ: What page is it?

24 MR. THIMELL: Page 5. I have page 5 in my book.
25 Was to insert -- this is the last -- second paragraph up

mogp29

1 from the bottom, the last sentence of that on page 5.

2 However, LSC reserves the right at its discretion
3 to select and contract with the auditor in accordance with
4 section 1009-C-1 of the LSC act.

5 What we did agree to is to insert and contract
6 with at that point. And it was simply an oversight -- and
7 contract with has not been inserted in the section we are
8 discussing here, and the other place it appears in the guide.

9 MR. SINGSEN: First, that is not my recollection
10 of what was decided because of the ambiguity that you can
11 see in the language that we have here.

12 MR. VALOIS: Where is here?

13 MR. SINGSEN: I am sorry. It's right here.

14 Page 5.

15 MR. VALOIS: Page 5. What's ambiguous about the
16 last sentence?

17 MR. SINGSEN: The words "the auditor", does that
18 refer to the auditor that is hired by the local program
19 through a clear written understanding between the recipient's
20 board of directors and the auditor with respect to the
21 scope of the auditor's services?

22 It seems it must since that is what the first
23 sentence in the paragraph says.

24 MR. VALOIS: I must admit that I don't understand
25 why 6-2 on page 71 is not contradictory to start with. I

mogp30

1 don't understand why it is not contradictory. It appears
2 to me because it says in the first sentence that the
3 recipient gets to pick the auditor.

4 I think that is a fair reading of what it says.
5 And then in the last sentence it says, we get to pick the
6 auditor.

7 MR. SINGSEN: I think that is exactly right.

8 MR. VALOIS: One of those things is true and one
9 is not. I don't know which one you would want.

10 MR. MENDEZ: In the first instance, that is just
11 generally discussed. The statute says that we can select
12 an auditor if we desire, and contract with an auditor.

13 However, we also are providing that the grantee
14 can select its own auditor if it so desires.

15 MR. VALOIS: Well, why don't we say that then?

16 MR. SINGSEN: Excuse me one second. The act
17 says you can either come and audit everybody yourself or
18 anybody --

19 MR. VALOIS: Or except yours --

20 MR. SINGSEN: Or, you can require the programs
21 to provide you with an independent audit. To this date
22 for most purposes the corporation has opted to have the
23 programs provide the audit.

24 The assertion here of a right to come directly
25 and do an audit raises no problems because it is clear in

mogp31

1 the act that you have that right. The only issue is if
2 the local programs providing the audit, do you have the
3 authority to step in and say, and your local audit for you
4 that you contract with is going to be done by this organi-
5 zation we choose.

6 MR. MENDEZ: No, we don't. We are not saying that.

7 MR. SINGSEN: So the way to take the contradiction
8 out of the last sentence is to say, nevertheless, LSC
9 does however reserve the right at its own discretion to
10 select an auditor or come directly by itself and audit the
11 program.

12 MR. VALOIS: In which case we have two auditors.

13 MR. SINGSEN: Could have two. And indeed with
14 other sources of funds besides LSC, you would have two.

15 MR. COSTER: I have a question for Mr. Singesen.

16 Do you envision any access or disclosure problems
17 to the Legal Service employed auditor visiting a program
18 to conduct the audit?

19 MR. SINGSEN: Yes. I think there is one problem
20 that has to be dealt with. It has been dealt with before
21 in a couple of other contexts.

22 And the problem is -- and the corporation has
23 in fact done some audits on its own where it has perceived
24 a problem. The one difficulty is client confidential
25 material. The auditor can't be given access to that material

mogp32

1 in the course of the audit because he is not within the
2 privilege.

3 The auditor who works for the program can be
4 given access because he comes within the privilege. And
5 there are actually some worked out settlements where you
6 have got other government agencies that need audit informa-
7 tion -- audit type information, where the program hires
8 the auditor.

9 The auditor goes and reviews and provides a
10 certification to the funding source that the records are
11 or are not the way they are supposed to be, but without
12 disclosing any of the client confidential information.

13 An example would be the client escrow funds
14 which is important as far as the audit, but which discloses
15 obviously confidential information about the client.

16 There would need to be if it was an outside
17 auditor.

18 MR. COSTER: If Legal Services contracted with
19 an outside auditor, do you think that the contract could
20 work around the transmittal of otherwise non-discloseable
21 information to the Corporation?

22 In other words, that a program could rest assured
23 that though the LSC had signed the contract with ABC and
24 Associates or what have you, that you could go ahead and
25 have a wider disclosure? Or would those same objections

mogp33

1 remain?

2 MR. SINGSEN: Obviously, there would be concern,
3 and whether as a matter of law we could avoid the ethical
4 problem through contractual terms, I don't think I am sure.

5 I think we could make a very good try.

6 MR. MENDEZ: If the corporation selected the
7 auditor, paid for it, but said the confidentiality runs
8 between -- it's a third party beneficiary contract, then
9 it appears to me like you wouldn't have any disclosure
10 problems.

11 And the corporation would be sitting back --

12 MR. SINGSEN: Here is the problem I would have,
13 but I am not -- I haven't thought all this through frankly.

14 You had that in the contract, and you provided
15 under -- for a reliance on it --

16 MR. MENDEZ: I am sorry?

17 MR. SINGSEN: And in reliance on such a provision
18 creating a full wall between corporation and any information
19 released to the auditor.

20 The program released confidential information
21 to the auditor. You would then have the -- if there were
22 disclosure, you would have remedies problem. That is,
23 in reliance on the contract provision, the information was
24 disclosed, you breached a confidence by thinking that you
25 had assurances, if those assurances weren't kept, I think

mogp34

1 there would be a problem with any appropriate remedy that
2 would protect the lawyer who had released the information.

3 Maybe if you got client consent, but that would
4 be another problem.

5 MR. MENDEZ: That -- doesn't -- what about if you
6 have a three-way contract between the auditor, the
7 corporation and the board?

8 MR. SINGSEN: That's a possibility. I think that
9 is a possibility. Negotiations might be complicated, but
10 I think it's a possibility.

11 MS. BERNSTEIN: Gary, do you disagree with the
12 act, 1009 -- whatever it is -- C-1 -- that we -- that the
13 programs are supposed to be audited, and that we have the
14 discretion to do it ourselves or select an auditor to do
15 that audit?

16 MR. SINGSEN: I certainly wouldn't disagree with
17 the act, and I think you do have that discretion.

18 MS. BERNSTEIN: So the distinctions as I am seeing
19 it that you are raising in terms of confidentiality have
20 absolutely nothing to do with the auditing process because
21 it is just a matter of who is selecting the auditor.

22 If your auditor would have the same problems in
23 terms of client confidentiality.

24 MR. SINGSEN: No, and that's why a three party
25 contract might solve the problem if my auditor enters into

mogp35

1 a contract with me, I have got a much more -- I have got a
2 direct relationship contractually.

3 If it is your contract with the auditor, I am at
4 best a third party beneficiary, and it is not quite the
5 same situation. I think the three-party contract might
6 solve -- although I am not an expert on how to do this.

7 I mean, Alan may have a better idea about this
8 issue. I know he has considered it in more depth than I
9 have.

10 MS. BERNSTEIN: What about the corporation doing
11 the audit itself?

12 MR. SINGSEN: I think the same problem exists
13 if the corporation staff comes in, and indeed in monitoring
14 context and fundamental criteria review, there is a problem
15 about confidentiality.

16 MS. BERNSTEIN: So you are saying that 1009-C-1
17 doesn't mean what it says?

18 MR. SINGSEN: No, I don't say that at all. But
19 there is another provision in the act which is nothing done
20 by the corporation in its activities shall be in any way
21 contrary to the professional responsibilities of the
22 attorneys in the program under the code of professional
23 responsibility.

24 MS. BERNSTEIN: That's fine. But audits can be
25 conducted without violating that.

mogp36

end 5a

5b

1 MS. SINGSEN: As long as they are, there's no
2 problem. But if you are talking about an outsider coming
3 within the privilege --

4 MR. MENDEZ: Here's the difficulty that you have
5 when you are performing an audit, you have various check
6 registers that you want to come in and review. And they
7 have specific client funds. There is that problem, that
8 difficulty.

9 MS. BERNSTEIN: Client funds?

10 MR. MENDEZ: There is the potential of being able
11 to assert attorney client privilege and no disclosure
12 being available. That's -- and the first question I asked
13 was about third party beneficiaries.

14 I happen to differ with you on that aspect.
15 There is a lot of insurance type contracts that I have and
16 I assert, you have third-party beneficiaries.

17 MS. SINGSEN: I would frankly defer to you on
18 that, and certainly to Al -- standing on those kinds of
19 questions.

20 MR. VALOIS: Is what we mean that -- in the last
21 sentence, LSC does, however, reserve the right, at its
22 discretion, to select the auditor on behalf of the recipient.

23 MR. SINGSEN: That is what I read that language
24 to potentially mean, and I don't want that.

25 MR. THIMELL: We mean it to say select and

mogp37

1 contract with the auditor, and it just simply wasn't added.

2 MR. MENDEZ: See, we don't -- we can't do it on
3 behalf of the recipient. That's their position and --

4 MR. SINGSEN: If it changes in 6-2, if you just
5 made to select its own auditor.

6 MR. VALOIS: So we have two auditors?

7 MR. SINGSEN: The possibility of two is there.
8 That's not terrible.

9 MR. COSTER: There may be -- because we aren't
10 allowed the act -- if we need to do an audit, then you
11 can't do the audit to turn in. And you are required to
12 give us a good opinion audit every year. You can't have
13 it disclaimed or limited scope opinion.

14 MR. SINGSEN: All right. But how we could
15 solve if you decided to directly audit the programs.
16 Confidentiality concerns is something that we would have
17 to address. I doubt that it is -- for this guideline
18 provision.

19 MR. VALOIS: Yes, let's bring this to a conclusion.

20 MR. MENDEZ: All right. As far as you two are
21 concerned, on page 5, the final sentence is satisfactory?

22 MR. THIMMELL: Yes.

23 MR. MENDEZ: Mr. Singesen, on page 5, is the final
24 sentence satisfactory?

25 MR. SINGSEN: I think it has to change from the

mogp38

1 auditor because that is clearly referring to the auditors
2 selected by the local program to its own auditor. In
3 other words, to say to contract with its own auditor.

4 MR. CUSTER: I don't know that the auditor does
5 that.

6 MR. MENDEZ: Now, is there any difficulty with
7 that language?

8 MR. VALOIS: Well, we are accepting the proposition
9 that there are two auditors.

10 MR. COSTER: I don't see a problem with putting
11 its own rather than the auditor.

12 MR. MENDEZ: All right. With its own auditor.
13 All right. Now, put that same language back there in
14 the back in 6-2. And delete that paragraph, right? Are
15 we all on the same wave length?

16 MR. COSTER: Which paragraph.

17 MS. BERNSTEIN: What paragraph?

18 MR. MENDEZ: 6-2.

19 MS. BERNSTEIN: No, you don't want to delete it.
20 Just fix it.

21 MR. MENDEZ: Yes. That's it -- this is what was
22 agreed at the meeting on the 25th, the same change needs
23 to be made --

24 MR. THIMELL: All right. Now, so it should read
25 select and contract with its own auditor on 71 as well?

mogp39

1 MR. MENDEZ: To select -- reserves the right on
2 71, the last sentence delete it and substitute --

3 MR. THIMELL: Substitute the same sentence from --

4 MR. MENDEZ: Same sentence from 1-5.

5 MR. THIMELL: Okay.

6 MR. VALOIS: What are you going to do? Generally,
7 the recipient board?

8 What we have done on page 5 if I understand
9 correctly is we have amended the sentence which begins,
10 generally, the recipient's board of directors --

11 MR. THIMELL: No, after LSC.

12 MR. VALOIS: Okay. However, that makes a big
13 difference, okay. However, LSC reserves the right at its
14 discretion to select and contract with its own. All right.
15 Its own auditor in accordance with sections 1009-C-1.

16 And now, the proposal to bring all this to a
17 close is at 6-2. We delete the last sentence and substitute
18 the sentence that I just read on page 5, is that correct?

19 MR. COSTER: Yes.

20 MR. MENDEZ: That would cover it.

21 And we are doing the audit -- grant conditions
22 are going to have the same language.

23 MR. COSTER: Yes.

24 MR. VALOIS: Paragraph (a) of the grant conditions
25 should have may select its -- may be the auditor or select

mogp40

1 its own auditor also.

2 MR. SINGSEN: There is one more place --

3 MR. COSTER: Same language --

4 MR. SINGSEN: -- On page 6, the last sentence.

5 MR. COSTER: I don't see any problem with that.

6 It's another auditor.

7 MR. SINGSEN: Now, there is no problem with that.

8 That's fine now because it's referenced.

9 MR. COSTER: It would mean that the heading for
10 6-2 is now completely --

11 MR. SNEGAL: It seems to me -- can I ask --
12 propose a housekeeping change.

13 You got two problems. One, is you got audit
14 requirements up above 6-1 where you are talking about how
15 you select the auditor. It seems to me 6-1 should be
16 auditor selection.

17 And what we have now is 6-2 should be moved up
18 there as a second paragraph of that portion, and the last
19 paragraph of what is now 6-1 that starts out financial
20 statements, is really 6-2, audit standards.

21 You got the headings in the wrong place. So
22 what you want is 6-1 auditor selection, which you have
23 got plus what we just did --

24 MR. MENDEZ: Auditor --

25 MR. SNEGAL: 6-2 should be recaptioned 6-1.

mogp41

1 MS. BERNSTEIN: No.

2 MR. THIMELL: No. Move the caption 6-2 --

3 MR. SNEGAL: Up above this last paragraph that
4 says financial statements, and also move above that what
5 we have just done so it is part of 6-1.

6 MR. THIMELL: No, no. I think those are audit
7 requirements in 6-1. I think you might want to relabel
8 it 6-2, auditor selection.

9 But 6-1 is --

10 MR. SNEGAL: No. Congress has granted LSC --
11 the corporation will conduct and so on --

12 MR. THIMELL: Yes, standards and requirements,
13 makes a difference.

14 MR. VALOIS: All right. As I understand where
15 we are. We would move the phrase 6-2, audit standards,
16 above the last paragraph in 6-1.

17 So that paragraph then becomes audit standards.
18 The paragraph which is former paragraph 6-2 now becomes
19 6-2.5 and is labeled auditor selection. Does that suit
20 everybody? Or to follow the format.

21 MR. THIMELL: 6-2.1.

22 MR. VALOIS: .1, yes, rather than .5.

23 And to that last paragraph which is now auditor
24 selection, we have added the sentence as amended from page 5
25 which I won't read again.

mogp42

1 MR. MENDEZ: All right.

2 MR. VALOIS: What's next?

3 MR. SINGSEN: I have two very quick things.

4 MR. VALOIS: You said 8 now. This is 12 as I
5 count it.

6 MR. SINGSEN: Maybe I said 8. The rest is quite
7 small. One legal thing which Mr. Mendez will reportedly
8 discuss before and will go very quickly.

9 On the small things. First, staff has already
10 mentioned there are a number of typographical errors. I
11 would just like to say that we also feel as many of those
12 as can be cleaned out should be cleaned out. Go ahead.

13 Anything that has even a scintilla of substance,
14 I would like to know about, but I don't think there is a
15 real problem there.

16 In the appendices 1 to 5, not 6. Where we have
17 got some example financial statements, that there are two
18 kinds of issues. One, there are some numerical things
19 which in the appendices now what we are showing isn't
20 particularly typical of Legal Services programs.

21 And if there is time, those numbers probably
22 should be more typical of Legal Services programs, where
23 for example, rent tends to be 5 percent not 10 percent of
24 the budget.

25 MR. COSTER: We have reached the same conclusion

mogp43

1 although we haven't expended the energy to adjust a \$4,000
2 figure to \$8,000 because it would be more reasonable.

3 MR. VALOIS: That's all comestic.

4 MR. SINGSEN: I just want to make sure that this
5 time before it goes out, that those will get fixed.

6 But the second is a little more important.
7 Because we are making those appendices substantially required
8 in terms of form, and very strong guides to what an auditor
9 should do.

10 There are four or five items in the appendices
11 now where there should be footnote disclosure of items
12 that are appearing in the statements. But in the process
13 of preparing them, that disclosure hasn't happened.

14 Now, these aren't matters of rights between pro-
15 grams or anything. It is just not quite as good as it
16 ought to be as a model.

17 For example, there is an outstanding loan. If
18 you want to look, I can --

19 MR. MENDEZ: Let me ask a question. What do you
20 want us to do about it?

21 MR. COSTER: We want permission to add about
22 four footnotes that are something more than clerical
23 correction, but would be significant enough that this audit
24 would fail our audit condition review as it currently stands.

25 MR. VALOIS: Have you attempted to agree on this?

mogp44

1 MR. COSTER: We have itemized four, and Gary
2 said there is maybe another one.

3 MR. SINGSEN: Five.

4 MR. VALOIS: Did you agree with the four?

5 MR. COSTER: I agree completely with them.

6 MR. VALOIS: Okay. Will you submit a copy for
7 the record and go to the next item, Mr. Singesen.

8 MR. SINGSEN: The last item.

9 Has to do with the manner in which this guide
10 becomes rule. And as I have said before -- we have made
11 representations since the spring about the appropriate
12 method by which to make the audit guide a rule of the
13 organization.

14 Those are basically the prescribed publication
15 comment, republication for final adoption. Up until this
16 time it is our understanding that what will follow on
17 adoption by the Board is a mailing to all programs of the
18 audit guide with an announcement that it goes into effect
19 in 30 days.

20 Perhaps with a notice in the Federal Register
21 to the same effect, but not publishing the text of the
22 guide.

23 There are four things I need to say for the
24 record. They have been considered before.

25 MR. MENDEZ: Before you do that, Mr. Bayly,

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I would like to have you be prepared to respond to his comments.

MR. SINGSEN: First, I think -- I will be candid about this -- I think the question of whether the publication in February was effective is a close question for most of the provisions in the guide.

Obviously, most interested parties got notice of its existence, and it was available to everybody. It was not the normal manner of publication of a rule where the full text is published.

In any case, if February was effective, I think for the final rule purposes, the guide probably needs to be published in its full content whether it is accessible to the public as it remains the rule in the future.

Unlike the situation where you are offering it for comment, I think it ought to be available in the public record as a document as a rule.

Third, three provisions were not noticed in the February publication. First, was absolutely no exceptions to FIFO. The second was the whole functional accounting process, and the third, was the new restrictions on the use of investment income.

A fourth provision certainly was not noticed to the effective parties, and that's the inter-related organization provision. The American Red Cross did not know that

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1 you were considering a rule that might put all of its --
2 the private funds under the Act.

3 Those four provisions at least need to be properly
4 published for comment before I believe that you can make
5 them into rules under the Act. Those are the issues that
6 I need to raise for purposes of publication.

7 I would note as Mr. Mola reminded me, that we do
8 still have the indirect cost issue to come back to.

9 MR. VALOIS: Well, I guess what I would like to
10 know, maybe Mr. Bayly is going to address this anyhow is,
11 are we required to spend several thousands, and thousands,
12 and thousands of dollars publishing all of this and the
13 Federal Register?

14 Or, is it enough that we make an entry into the
15 Federal Register, describe what it is that we have adopted,
16 and invite anybody who wants a copy to tell us and we
17 mail them a copy.

18 It seems to me to be a bit absurd that we end
19 up publishing something of this volume in the Federal
20 Register, when it can be accomplished much more reasonable
21 by requests of interested parties. Do you know the answer
22 to that Mr. Singesen?

23 MR. SINGSEN: Do I know absolutely the legal
24 answer? No. My concern is if you don't publish it, and
25 you try to enforce it -- say the inter-related organizations

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1 provision, there will be a legal impediment to enforcement.

2 MR. VALOIS: Mr. Bayly can you address that now?

3 MR. BAYLY: Yes. I don't -- In a word, I don't
4 feel that there is any legal impediment to its enforceability.
5 I am satisfied that the procedures leading to the adoption
6 of this guideline as well as the substance of it are
7 legally sufficient.

8 The corporation is not bound by precisely the
9 same standards as the United States Government is in
10 respect to publication in the Federal Register.

11 The touchstone of the corporation is reasonability.
12 The notice has to be reasonable. The opportunity for comment
13 has to be reasonable, and the final publication has to be
14 reasonable.

15 And it seems to me in all instances, what is
16 before you today passes muster. Publication in February
17 seems to me was sufficient to put all interested parties
18 on notice of what was being considered. There was certainly
19 ample opportunity to present comment, to adjust the comment,
20 to respond to the comment, and in fact, to receive further
21 comment.

22 I don't think any of the provisions that have
23 been noted here today or discussed here today are surprises
24 to anyone, and I think that there has been sufficient
25 notification of them all.

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1 Finally, I don't feel as I guess I have said,
2 publication of the guide in its entirety is necessary.
3 Rather, it seems to me it would be sufficient for most any
4 legal purpose to have it synopsized or published in an
5 abridged version in the Federal Register.

6 And indeed it is not necessarily so that it has
7 to be published in the Federal Register though it seems
8 to me that it is probably the preferable way of effecting
9 publication of it.

10 MR. VALOIS: Is there anything further?

11 MR. SINGSEN: Just one note of actual note.

12 The government circular on cost standards, A-122, the OMB
13 circular is in fact published for comment in its entirety,
14 and then republished as final, and then published again
15 when it is adopted by GAO. It is not short.

16 MR. VALOIS: They got more money.

17 MR. SINGSEN: That's true.

18 MR. VALOIS: Well, evidence of your opportunity
19 to comment has been manifest by observing the passing
20 of lunch without the partaking thereof.

21 MR. SINGSEN: We have all noticed it. Nevertheless,
22 I am all interested parties. I represent only those
23 recipients who are members of the association known as the
24 project advisory group. And there are many other interested
25 parties like the Red Cross.

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MR. COSTER: I should ask -- we don't just notices in the Federal Register. We have mailed copies out on two occasions prior to today an entire copy of the audit guide.

MR. MENDEZ: To all --

MR. COSTER: To all of our recipients, and a list of I think another 40 or 50 interested parties because they have asked in the past. That number might be too high, but I think it is near 50 people that --

MR. SNEGAL: I just have a question for Mr. Bayly. Let's assume someone follows the Federal Register and saw the audit guide that was published in I understand February. How would one know that functional accounting was going to be a subject that was going to be incorporated in the final, for example, in the final expect?

MR. BAYLY: Well, they would know it from essentially the wording in those -- as well as the expected inference to be drawn from the wording of the notice at that time.

It would have to know that functional accounting came within the larger ambit or perimeter of issues to be considered by the corporation, the publishing of this guide.

MR. SNEGAL: Well, that is what I am asking. How would they have known that from the February publication?

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MR. BAYLY: Well, they would be put on notice of what the corporation had before. After all, it is only the most significant aspects of the issue before the corporation that has to be noticed.

MR. COSTER: Perhaps I could assist.

I have been advised that the agenda for these meetings is published in the Federal Register, and functional accounting has been on the agenda both committee and board level a total I think of five times while I have been involved with it which is 8 or 10 weeks.

Moreover, functional accounting has been an appendix since 1977 I believe. It has been an informational nature. It has not been a requirement, but the appendix is part of the audit guide as well as section 2-1.4 which we made some modifications to today which may -- I don't know how far back that goes.

But I know that the appendix is 6.

MR. SNEGAL: And that appendix was published in February?

MR. COSTER: That appendix was published. It was radically different, but it was not --

MR. SNEGAL: But I want to know if there was any announcement of functional accounting in February?

MR. COSTER: Yes, sir, there was.

MR. SNEGAL: There was. Those words appear?

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1 MR. COSTER: Yes.

2 MR. SINGSEN: Excuse me. Do the words functional
3 accounting appear in the Federal Register?

4 MR. COSTER: I think --

5 MR. THIMELL: I have the Federal Register notice
6 itself here. And it informs those people reading it that
7 the audit guide is being published, and that the purpose
8 of the audit guide is to assist recipients and their
9 auditors in understanding the accounting, reporting and
10 auditing requirements for grants and contracts entered into
11 with the Legal Services Corporation.

12 I think it makes it clear that the requirements
13 are being set forth. If you have got one of these circum-
14 stances, you should be interested to get your copy.
15 Functional accounting -- the sections have been in the
16 audit guide since 1977. Now, revisions have been made,
17 changes have been made, but people have been on notice
18 for a long time that this is an interest of the Corporation.

19 And I think that notice has been given.

20 MR. BERNSTEIN: I was wondering how many comments
21 did you receive for the publication that was made earlier
22 on the question of functional accounting? From the
23 program -- and from PAG.

24 Did they in fact make comments suggesting that
25 we adopt or reject functional accounting?

mogp52

1 MR. THIMELL: There were -- I don't know --

2 MR. COSTER: PAG provided written comments very
3 early on largely -- I think wholly in opposition. I don't
4 know the number of the total comments received on functional
5 accounting.

6 I know that there were written comments received
7 addressing functional accounting that, you know, had a
8 good geographics spread on them.

9 MR. SINGSEN: I need to add a piece of history
10 only. The provisions in the guide have said in the past
11 that this is something to consider. That there is no
12 requirement.

13 The comment that was put in by PAG for example,
14 said we have been telling everybody to think about it
15 since 1977, perhaps we should stop telling them to think
16 about it until AICP -- we do something.

17 MR. MENDEZ: Mr. Bayly, do you believe --

18 MR. SINGSEN: Sorry. I need to finish.

19 The first time that a requirement of functional
20 accounting was proposed to this board was in October. It
21 came a month and a half after the auditor of this corporation
22 the director of the audit division essentially recommended
23 that the provisions on functional accounting be removed
24 from the guide.

25 There was clearly no notice that a requirement

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1 was going to be part of the guide considered.

2 BY MR. BAYLY: There is in my opinion no obligation
3 for the Corporation to notice, and re-notice and re-notice
4 in response to every wave of commentary that comes to them.
5 It was sufficient as I say to give the notice that was
6 provided in February, the kind of notice that was given in
7 February is the typical sort of abridged or summarization
8 that's given -- provided in the Federal Register by any
9 other entity or governmental agency.

10 And as I tried to explain in reply to Mr. Snegal's
11 question, it is expected that the interest public take a
12 look at that, refer themselves to the surrounding documents,
13 and decide for themselves whether or how they want to
14 make comments in reply.

15 MR. VALOIS: It seems to me they have got some
16 duty to keep up with it if they are interested. All right.
17 There is no point in us further debating about whether or
18 not the notice has been sufficient.

19 The general counsel thinks it is, and I am
20 perfectly ready to vote on this -- Mr. Mendez' motion as
21 amended.

22 MR. SINGSEN: There was a tabled item 1630.

23 MR. VALOIS: That part of it remains tabled as
24 far as I know.

25 MR. SINGSEN: Oh, I am sorry. I thought you were

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1 going to spend 10 or 15 minutes drafting something and
2 come back to it.

3 MR. VALOIS: Excuse me, you are right, Page 20.

4 MR. MENDEZ: All of the language would remain the
5 same with the exception of --

6 MR. VALOIS: The same as is printed?

7 MR. MENDEZ: No. As was read to us previously.
8 With the exception of the last sentence. In the last
9 sentence, I would be appropriate if it says as follows:

10 If objection is raised and allocation of costs
11 is required provided it must be based on the standards of
12 45 C.F.R. 1630. Now, that's --

13 MR. SINGSEN: It is -- the objection -- provided
14 it must be --

15 MR. MENDEZ: We have all of the other language
16 previously.

17 MR. SINGSEN: Yes, I understand.

18 The sentence reads: If objection is raised,
19 then allocation of costs is required provided it must be
20 based on the standards -- that it could refer to --

21 MR. MENDEZ: Provided the objection -- is based --
22 if we are going to do that -- on the standards of 45 C.F.R.
23 1630.

24 MR. SNEGAL: If objection is based --

25 MR. VALOIS: No. If objection is raised -- if

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1 objection is raised --

2 MR. SNEGAL: Then allocation of costs --

3 MR. VALOIS: Then allocation of costs is required
4 provided the objection is based --

5 MR. SNEGAL: Might be better that way. The
6 objection must be based on the standards of -- better
7 language.

8 MR. VALOIS: Okay. Would you give that to us one
9 more time as further refined.

10 MR. MENDEZ: I have changed the language again
11 just to further refine it. I think it might make more
12 sense if we say: If objection is raised, then allocation of
13 costs is required.

14 The objection must be based on the standards of
15 45 C.F.R. 1630. Now, if there is any difficulty with what
16 is coming in, I want to know about it so we can take care
17 of it as soon as possible.

18 MR. THIMELL: There is a lot of standards in 1630.
19 Which ones are we adopting here? Maybe we should get the
20 specific side if we are going to --

21 VOICE: I think you are talking about 1630.2(b).

22 MR. THIMELL: 2(b), 1, 2 and 3. The whole thing.

23 MR. VALOIS: Mr. Singesen, have you followed this?

24 MR. SINGSEN: Yes.

25 MR. VALOIS: Are you in agreement?

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1 MR. SINGSEN: I am in agreement with this as far
2 as it goes, yes. Obviously, I would raise some other
3 concerns. They haven't come in, but this much --

4 MR. MENDEZ: Clarify some of your difficulties.

5 MR. SNEGAL: Mr. Chairman, I would certainly
6 appreciate it if someone would now read that paragraph.

7 MR. MENDEZ: Do you want me to read the paragraph?

8 MR. SNEGAL: Yes, I really would appreciate it
9 if you would.

10 MR. MENDEZ: I have a brilliant paragraph.

11 MR. VALOIS: You are talking about the whole 2-1.12?

12 MR. MENDEZ: No.

13 MR. SNEGAL: Paragraph 2, and can skip the first
14 sentence which I understand wasn't changed.

15 MR. MENDEZ: Beginning with in this case --

16 MR. SNEGAL: Right there.

17 MR. MENDEZ: In this case, 30 days written notice
18 must be given to the director of MAC (ph) -- if no
19 objection is raised by the Corporation allocation of
20 costs is not necessary as long as the grant activities in
21 question are eligible under the LSC's act and regulation.

22 Such allocation is subject to the provisions of
23 45 C.F.R. 1628. If objection is raised, then allocation of
24 costs is required. The objection must be based on the
25 standards of 45 C.F.R. 1630.

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1 MS. BERNSTEIN: .2(b).

2 MR. MENDEZ: Yes, .2(b).

3 MR. SNEGAL: Could we leave it to the staff to --
4 it seems to me you could take about two of those sentences
5 out if you put up -- if the first time objection occurs
6 you put in 45 C.F.R. 1630.2(b). It seems to me you can
7 shorten it.

8 Now, Mr. Mendez, has done a credible job of
9 trying to write this at this Board here, but I think it
10 is more appropriate for the staff maybe to take approval
11 in principle and get this language that makes more --

12 MR. MENDEZ: I am not willing to do that. I
13 am willing to leave with difficult language -- live with
14 difficult language for awhile so that we don't have any
15 questions coming down later.

16 MR. VALOIS: Well, I would prefer that we go
17 ahead and make -- decide this whole matter which is on
18 the table. And at some future board meeting we think that
19 -- we find that it is necessary in the way of improving
20 language, then I would much prefer to take up some minor
21 topic like that.

22 When we know what is agreed at this point, we
23 know what is disagreed. We know what's been considered.
24 I think that's all we need to know.

25 Do you have any other comments, Mr. Singen?

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1 MR. SINGSEN: No, not at this time.

2 MR. VALOIS: Fellow board members, are we prepared
3 to vote on this?

4 MR. MENDEZ: I believe we better ask if there is
5 any other public comment?

6 MR. VALOIS: Is there any other public comment?
7 I know Mr. Mola was whispering in Mr. Singesen's ear there.

8 MR. MOLA: No.

9 MR. MENDEZ: All right. He wore everybody else
10 out.

11 MR. SINGSEN: I wouldn't exactly say that was the
12 way the wearing was going.

13 (Laughter.)

14 MR. VALOIS: We are voting on Mr. Mendez' motion
15 to adopt the audit and accounting guide and to paragraph 6
16 as amended several times through negotiations and discussions
17 today.

18 And somebody please call the question.

19 MR. MENDEZ: No, we just do it.

20 MR. VALOIS: Okay. All those in favor say "aye".

21 (Chorus of ayes.)

22 MR. VALOIS: Opposed?

23 (No response.)

24 MR. VALOIS: That is passed.

25 MR. MENDEZ: Now, we are giving these people

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1 authority to make technical spelling type corrections.

2 MR. VALOIS: No. What we are giving them authority
3 to do is to discuss those changes with Mr. Singesen, and
4 if they get into a disagreement, they are going to come
5 see you.

6 MR. MENDEZ: Okay.

7 MR. COSTER: I believe that we can't agree on it,
8 it's not so critical it needs to be changed. That's the
9 level of the changes. If there is disagreement, we will
10 go with that as it is drafted.

11 MR. MENDEZ: Okay.

12 MR. SINGSEN: There is one matter with regard to
13 the guide. I believe you were going to --

14 MR. MENDEZ: That's next.

15 MR. VALOIS: We have another matter on the --

16 MR. MENDEZ: Mr. Chairman, I have one matter that
17 I told everyone yesterday that I would want to put out and
18 make sure that we all understood that.

19 And that this is a resolution I offer for the
20 Board. Is the -- board of directors of the Legal Services
21 Corporation that the functional accounting policy be imple-
22 mented in the following manner:

23 1) That the staff examine a number of programs
24 currently reporting in this or a similar fashion with regard
25 to benefits, costs, methodologies and operational needs.

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1 2) The staff consult with independent experts
2 in the field, organizations with experience with AICP
3 statement of position 78-10, and Legal Services program
4 personnel as appropriate. That the staff prepare for dis-
5 tribution written guidelines for implementing the functional
6 reporting requirements by January 31, 1986.

7 That training and technical assistance be provided
8 to recipients in implementing functional accounting in
9 February, March and April 1986.

10 5) That testing of functional accounting systems
11 by recipients begin by May 1, 1986. That full operation
12 of functional accounting by recipients commence by July 1,
13 1986.

14 That the staff design reasonable, functional
15 reporting requirements for the first six months of 1986.

16 8) That recipients make a good faith effort to
17 comply with the functional reporting requirements as
18 detailed in the January 31, 1986 written guidelines for
19 the entire year.

20 And 10) that nothing in this resolution shall
21 modify in any way any other financial reporting requirements
22 imposed by the Corporation.

23 MS. BERNSTEIN: Pepe, would you accept what I
24 think is a friendly amendment. The first one that you
25 mentioned, January 31, could we insert -- to be published --

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1 I mean you say that date. How are they -- are they going
2 to send it out?

3 MR. MENDEZ: This is the creation of the --

4 MS. BERNSTEIN: The timetable.

5 MR. MENDEZ: It's the timetable, but the 31
6 timetable is how we are implementing it.

7 MS. BERNSTEIN: No, I understand.

8 MR. MENDEZ: They will mail it out.

9 MS. BERNSTEIN: That's what I wanted to get in
10 there. Some sort of indication as to how people are going
11 to know. For distribution, okay.

12 MR. SINGSEN: I had thought it was going to come
13 back at least to the committee for some kind of review.

14 MR. COSTER: It is.

15 MR. MENDEZ: It is. But I wanted to make a sense
16 of what the Board was, and that it was good faith, and that
17 it was set forth so that everyone -- so we can send it
18 out to everyone, if that is what it is.

19 MR. SINGSEN: I know it's late. But by the time
20 you got to 7, I couldn't keep up.

21 MR. MENDEZ: We are going to publish it for
22 everyone.

23 MR. SINGSEN: But the particular provision that
24 I didn't catch was the one about the entire 1986.

25 MR. MENDEZ: That the staff design reasonable,

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1 functional reporting requirements for the first six months
2 of 1986.

3 MR. SINGSEN: And then the next one --

4 MR. MENDEZ: That the recipients make a good
5 faith effort to comply with functional reporting requirements
6 as detailed in the January 31 written guidelines for the
7 entire year.

8 MS. BERNSTEIN: That's the good faith part.

9 MR. MENDEZ: Good faith. Now, it's good faith
10 effort on functional accounting and good faith effort on
11 the audit guide with regard to functional accounting.

12 We have said that before that that's what it is.

13 MR. MOLA: We also talked yesterday about trying
14 to reconstruct or capture data for the first six months
15 in a reasonable way.

16 MR. MENDEZ: Yes. That the staff design
17 reasonable functional reporting requirements for the first
18 six months.

19 MR. VALOIS: May the record show Mr. Mola is
20 nodding his head in agreement.

21 (Laughter.)

22 MR. MENDEZ: Mr. Singesen is too. I believe
23 that reflects what I told you yesterday in that it has --
24 and we will mail this resolution out to everyone. I
25 assume it is the rest of the board. I have asked that

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1 this resolution be approved by the Board.

2 MR. VALOIS: Do we want to make it legal?

3 MR. MENDEZ: Yes, I think we should.

4 MS. BERNSTEIN: Yes, I second it.

5 MR. VALOIS: The resolution -- Mr. Singesen.

6 MR. SINGSEN: Just briefly.

7 The first one when you talked about the staff
8 examining programs regarding the benefits, costs, methods,
9 and operating needs. You will remember our colloquy
10 yesterday about a report on the overall costs of going
11 forward on functional accounting.

12 I said that is encompassed within that statement.

13 MR. MENDEZ: All of that is encompassed.

14 MR. VALOIS: It's been moved and seconded that
15 we -- all right. Change the word "sense" to "desire".
16 Is that okay.

17 MR. MENDEZ: That's fine.

18 MR. VALOIS: All right. All those in favor of
19 the resolution say "aye".

20 (Chorus of ayes.)

21 MR. VALOIS: Opposed?

22 (No response.)

23 MR. VALOIS: All right.

24 Fellow members of the Board, we have one more
25 matter to cover. Would you prefer to eat or cover.

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1 BOARD MEMBERS: Cover.

2 MR. VALOIS: Okay. May we take three and only
3 three minutes. And I will start again in three minutes.

end 5b

4 (Whereupon, a short recess was taken.)

6a

5 MR. VALOIS: Okay. We are going to continue.
6 Mr. Mendez.

7 MR. MENDEZ: Mr. Chairman, I request Mr. Bayly,
8 wherever he may be -- here he is. Act as the -- Mr. Bayly
9 and Mr. Coster act as the contact to publish as final the
10 audit and accounting guide with the appendices.

11 And solicit comments with regard to implementation
12 of the functional accounting. Okay?

13 And publish as much as can be reasonably expected
14 in the Federal Register, I think some of the appendixes
15 and some parts of the guide are not required, but be
16 reasonable in your selection because it is fairly expensive
17 for us.

18 Mr. Chairman, we also have one other matter,
19 COB-86, and with regard to COB-86, my committee did not
20 enact or act on that item. However, I instructed Mr.
21 Thimell previously to contact the Hill if they haven't
22 come up with a continuing resolution or other matter to
23 obtain direction from the Hill so that we can figure out
24 what we are going to do with regard to the grant procedures
25 in January.

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1 Because in December we have to tell the field
2 what we are going to do.

3 MR. VALOIS: Well, the matter of that this was
4 going to be considered was given notice, and was not
5 discussed in your committee?

6 MR. MENDEZ: Well, we deferred the matter because
7 of the instructions from the Hill by Mr. Smith previously.

8 MR. VALOIS: All right. Is there anything further
9 from your committee?

10 MR. MENDEZ: Mr. Chairman, we have nothing further.

11 MR. VALOIS: The next matter is item 7 on the
12 agenda, discussion and action on recommendation of the
13 committee on operations and regulations, specifically,
14 45 C.F.R. 1630 questioned costs.

15 It is my understanding that this matter is
16 presently before the Board on motion or referral from that
17 committee. Has that gotten here yet?

18 MR. BOVARD: Yes, it has. Part 1630 was voted
19 out without recommendation, but to be submitted to the
20 full board by the operations and regulations committee
21 on October 25, 1985 at the special meeting held at the
22 Capital Holiday Inn in Washington.

23 MR. VALOIS: And that appears in the board
24 book -- without continuing pages, but I say as passed
25 for that recommendation to operate October 25, 1985,

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consisting of 9 pages. Well, to get it rolling, we need a motion -- the underlining and striking of the sections are understood by all concerned.

MR. MENDEZ: Mr. Chairman, at this time I would move that we -- for the purposes of discussion move that we adopt 1630.

MS. BERNSTEIN: I move to table.

(Seconded.)

(Discussion.)

MR. VALOIS: All right. The motion to table has been made and seconded, and I believe we will have a roll call vote. Ms. Swofford?

MS. SWOFFORD: Am I voting on the move to table?

MR. VALOIS: Yes.

MS. SWOFFORD: I vote aye.

MS. BERNSTEIN: Aye.

MR. SNEGAL: Aye.

VOICE: No.

MR. MENDEZ: No.

VOICE: Aye.

VOICE: Aye.

MR. VALOIS: Well, the ayes have it. Tabled.

MR. MENDEZ: Mr. Chairman, I request that this matter be put on the calendar for next meeting.

MR. VALOIS: Mr. Baker, you are so directed.

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All right. That was quick enough.

VOICE: Is the next meeting in El Paso?

MR. VALOIS: Yes.

(Discussion.)

MR. VALOIS: We are at the end of our agenda items. There are a couple of people that requested a very short time. Will you please identify yourself?

MS. SAUNDERS: I am Carolyn Saunders. I am with Delaware County. I would like to pass this out.

MR. VALOIS: Ms. Saunders, I believe we saw you in New Hampshire, and it is nice to have you back.

MS. SAUNDERS: What I would like to do -- the resolutions -- advisory council for the National Legal Services Corporation board of directors. It reads --

MR. VALOIS: Okay. It is not necessary for you to read it because I think everybody has seen it. Unless it has been changed in the last day or so.

MR. MENDEZ: Our reporter can't hear you from the back.

MR. VALOIS: Okay. We have it in writing. You don't have to read it. But did you tell us anything about it in addition to what it says?

MS. SAUNDERS: No, I guess we will just leave it up to the Board at this point. But we would like you to seriously consider it. But I would like to give you

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1 Mr. Chairman is the persons who signed it.

2 MR. VALOIS: Okay. All right. Mr. Baker,
3 will you see that the original of this gets into the record
4 with these signatures on it. Yes, ma'am.

5 MS. FISHER: Mr. Chairman, I am Cathy Fisher.
6 I am a director of the San Francisco bar association and
7 chairperson of the Legal Services committee of that organi-
8 zation.

9 The chairperson of the Legal Services for the
10 poor committee of our sister Los Angeles County Bar
11 Association was scheduled to address the Board today and
12 was unable to return at 2:00 o'clock as he was requested.

13 Therefore, I would like to offer his written
14 statement for the record, and to provide copies for each
15 member of the Board.

16 MR. VALOIS: Thank you very much. Appreciate that.
17 Yes, ma'am.

18 MS. WIGGINS: My name is Cecelia Wiggins, and
19 I am on the board of directors of the Legal Aid Foundation
20 in downtown L.A.

21 I am a client representative. I am sorry, I had
22 a previous engagement this morning, I couldn't get here
23 for your movie. I did hear one remark that really upset
24 me greatly. That the gentleman made the statement after
25 showing the brief chapter film that poverty is not a

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1 financial situation. It is a state of mind.

2 Well, ladies and gentlemen, I say to you, I don't know
3 where you got this guy, but let him try to take a state of
4 mind to the grocery store. Let me try to pay the rent
5 with a state of mind. Believe me poverty is indeed financial.
6 State of mind it may well be.

7 Because if you are in dire poverty as many of us
8 are out there, your state of mind is the first to go.

9 (Applause.)

10 MR. VALOIS: The chopping up of the film was
11 not the fault of the gentleman who tried to show it to us.
12 We contributed to that. Please, tell us who you are.

13 MR. DURAN: My name is Quaker Duran. I am a
14 citizen of this country. I am an employee of the Legal
15 Services Corporation, and I also represent the local union
16 of Legal Services workers in Los Angeles.

17 And I am here basically to inquire as to whether
18 there is any support from this Board to be involved in some
19 way in the divestment movement against South Africa. The
20 assets of the Corporation are really sizeable, and would
21 anybody on the Board consider a resolution requiring the
22 Board to --

23 MR. VALOIS: What assets does this Board have --

24 MR. DURAN: You have control --

25 MR. VALOIS -- if I were to give it to you --

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or somebody else --

MR. DURAN: You have control -- you know, I am not asking you to give it to anyone. What I am really asking if the Board has considered passing some resolution that would require recipients to not invest in banks that do business with South Africa. Has that question been --

MR. VALOIS: Well, which recipient is investing in a South African bank?

MR. DURAN: Probably many.

MR. VALOIS: Well, which one? Give me a name.

MR. DURAN: I don't know for example.

MR. VALOIS: Well, when you find that out, let us know.

MR. DURAN: Well, has the Board -- is my question -- has the Board considered any study of that question to determine whether or not recipients are in fact investing monies in banks --

MR. VALOIS: No. The Board has many, many pressing things to do, and that is not one of them.

MR. DURAN: Have you considered the struggle in South Africa and the divestment movement as something the Board should consider itself with?

MR. MENDEZ: Well, let me explain something.

MR. DURAN: The question has been presented in many public forums, and this is just another public forum.

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1 MR. MENDEZ: I understand -- I am very sympathetic
2 with your position, but before we do that, you tell me that
3 we wouldn't be in violation of the Act, by interfering
4 unduly with local programs.

5 MR. DURAN: Well, maybe the Board should do a
6 study to determine whether or not it is feasible just like
7 some other governmental agencies, quasi-agencies has done
8 to determine whether or not they can pass resolutions
9 prohibiting their agents from investing monies that they
10 have control over in banks or financial institutions that
11 do business with South Africa.

12 MR. MENDEZ: I am very sympathetic. I understand
13 your problem.

14 MR. DURAN: Will you be willing to introduce
15 some motion that would begin that process of looking at
16 that problem and coming up with a position for or against?
17 I mean it is important that the public know, you know,
18 where people are on this Board on that question.

19 MR. VALOIS: Well, we would be glad to take
20 whatever you have said under advisement. If you want to
21 supplement in writing and your return address, I think it
22 would be helpful.

23 MR. DURAN: I will be willing to do that.

24 MR. VALOIS: Thank you.

25 MR. SINGSEN: Mr. Chairman, I apologize. There

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1 is a problem which has just come to my attention, and it
2 is a matter of I think what should be easy to clarify.

3 MR. VALOIS: Is it about audit --

4 MR. SINGSEN: Well, I think we have got an error
5 which none of us picked up, but it is a very important error.
6 It is on pages 66 and 67.

7 MR. MENDEZ: Joel, will you please come forward,
8 please. Are you in agreement with the error?

9 MR. THIMELL: No, I am not.

10 MR. MENDEZ: It's only one guy's error.

11 MR. SINGSEN: But in Gilford, New Hampshire, when
12 this guide was put forward in its gray covered version,
13 the provisions on ineligible costs in chapter 4 were the
14 provisions that had been proposed in February, and sub-
15 stantially objected to.

16 And early in that discussion of the guide at
17 that meeting, Mr. Mendez, I believe proposed that the
18 chapter that was in the draft on ineligible costs be
19 replaced with the current rules on ineligible costs pending
20 final adoption of 1630 which would then supplant the
21 current rules.

22 Somehow what we have here in this draft of the
23 guide is again the provisions that were taken out in
24 October, the ones that were originally proposed in February,
25 not the current rules.

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For example, the provision here --

MR. MENDEZ: Gary, get a copy of that, give it to Joel. Send a copy to all of us of the 1981 -- Wallace said put 1981 in, put 1981 in.

MR. THIMELL: That motion was tabled. It was never taken off the table. It's in the minutes. The motion regarding the adoption of the guide and whether or not we have 1981 version or this version was tabled, and you didn't untable it.

Let me get the minutes here.

MR. SINGSEN: Sounds like it is time to remove it from the table then.

MR. MENDEZ: I will tell you what everybody anticipated was -- correct me if I am wrong -- that we were going to go forward with 1630 and handle these issues.

MR. THIMELL: You stated at the beginning of your motion today that in fact when 1630 was adopted that it would supersede the provisions that are here in the guide. That is our understanding that this will be in fact replaced by whatever the Board adopts as a final rule with 1630.

But in fact, in Gilford, no decision was made to change this because in fact the motion was tabled, and there was a discussion as to whether or not it should be taken off the table. And the decision was made to not do so.

1 I have the minutes here if anybody would like to
2 hear a reading.

3 MR. MENDEZ: Now, it appears to me that this is
4 fair commentary because we have tabled the other thing.
5 We have got to come back and we have got to address paragraph
6 -- chapter 4. We have got to do that. Because we were
7 anticipating removing that chapter 4, and since it is
8 tabled, we have got to clear up chapter 4 now.

9 MS. BERNSTEIN: Except that, Pepe, we currently
10 and John you can correct me if I am wrong, but we currently
11 have in effect and what would continue to operate is
12 instruction 838 that is our current -- our current --

13 MR. SINGSEN: Maybe we are not being clear. Let
14 me give a simple example of what we are talking about.

15 In what is on page 67 in the guide, there is an
16 absolute prohibition on the purchase of real property.
17 There is a requirement of prior approval before a program
18 can lease real property. Neither of those are current rules.

19 Neither of those have ever been the rule. And
20 they were part of a proposal in February which the director
21 of the audit division said you weren't going ahead with,
22 which isn't in 1630.

23 I can't believe that you want through this error
24 to impose those rules for the one between now and 1630.

25 MS. BERNSTEIN: As I understand, it is not an

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1 error so long as the publication covers this, and that
2 those would be all right under the publication of the
3 audit guide.

4 MR. MENDEZ: Mr. Chairman --

5 MS. BERNSTEIN: I think that Mr. Bayly is --

6 MR. MENDEZ: -- correct me if I am wrong. This
7 is a proposal. This is not what was in effect before
8 February. It was not in effect --

9 MS. BERNSTEIN: Yes, there are lots of parts of
10 the audit guide that weren't.

11 MR. MENDEZ: May I?

12 This was not in effect previously, and this is
13 not part of the prior audit and accounting guides. Is
14 that a fair statement?

15 MR. THIMELL: Yes, it is not the current require-
16 ment.

17 MR. MENDEZ: All right.

18 MR. SNEGAL: Is there an existing chapter 4
19 and is it entitled --

20 MR. MENDEZ: All right. Mr. Chairman, I move that
21 we adopt -- we replace the existing requirement that was
22 previously passed by the Board on whatever date it was,
23 and place it back in here and remove this chapter until
24 we have a chance to work on 1630.

25 MR. SNEGAL: I second that. And do I understand

1 the difference between -- I am sorry. Do I understand if
2 we put that back in, we are putting back in what is 4-4
3 also or not?

4 LSC is considering adoption of regulations which
5 may supersede the --

6 MR. THIMELL: That was part of Wallace's motion
7 originally. That would have been the way he would have --

8 MR. SNEGAL: And this 4-4 was intended to be
9 attached to what was already in existence in the audit
10 guide, is that right?

11 MR. THIMELL: That's correct.

12 MR. SNEGAL: Will you accept a friendly amendment
13 to put in the old chapter 4 plus 4-4 here? I think that
14 makes more sense out of it then.

15 MR. MENDEZ: That's fine.

16 MR. SNEGAL: That's what Wallace intended.

17 MR. MENDEZ: And when you do that, I want everybody
18 on the Board to get a new copy immediately of chapter 4.

19 MR. VALOIS: The motion is to remove chapter 4
20 from the audit and accounting guide that was just adopted,
21 and substitute for that chapter 4 the chapter 4 or the
22 applicable chapter which was in existence prior to today's
23 adoption of the guide; is that correct?

24 MR. SNEGAL: With the addition to it of what is
25 presently on page 67 as 4-4.

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MR. VALOIS: All right.

MR. SNEGAL: So whatever it used to be plus 4-4 appropriately numbered, is that correct?

MR. THIMELL: That's our understanding.

MR. MENDEZ: Mr. Chairman, I have some discussion. I have some questions. Mr. Bayly, will you please come forward.

MR. BAYLY: Yes.

MR. MENDEZ: If we enact chapter 4 next meeting in December, are these individuals going to be bound by chapter 4 in January?

MR. BAYLY: Well, to be frank, it is a question of course I am considering for the first time now, I would say most likely, yes. But I have a reservation or two.

Once again, applying the rule of reasonability, it seems to me there has been adequate comment, adequate notice. All that remains, of course, is that it be published.

MR. MENDEZ: But it is not going to be published for 30 days.

MR. BAYLY: Well, it would have to be I guess applicable in 30 days thereafter, kind of thinking aloud you see in response to your question.

MS. BERNSTEIN: But I think the question that Pepe is asking is, will it be effective 30 days thereafter.

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1 MR. BAYLY: Yes, it would be in my view.

2 MR. THIMELL: But not on January 1.

3 MS. BERNSTEIN: That's right. But the only
4 reason that January 1 is a touchstone as I understand it
5 would be if it were to be utilized in connection with a
6 denial of -- termination of funding.

7 MR. BAYLY: For other purposes, I think there is
8 no significance to the time for which it is -- it becomes
9 effective. So that any portion is separable for purposes
10 of becoming effective within 30 days after publication.

11 MS. BERNSTEIN: And that is, for instance, a
12 program had questioned costs that amounted to less than
13 10 percent of their grants -- of their grant -- then that
14 could be set off during 1986. I mean under the current regs.

15 MR. BAYLY: Correct.

16 MR. VALOIS: Any further discussion?

17 MS. BERNSTEIN: Now, let me make sure this is
18 straight, because you said under the current regs --

19 MR. HOUSEMAN: The current --

20 MS. BERNSTEIN: Oh, under the current defunding --
21 but if as Pepe is saying the questioned cost regulation
22 that was tabled today is acted on in December and that
23 becomes effective 30 days thereafter, a program would be
24 subject to that in 1986, but not necessarily on January 1.

25 MR. HOUSEMAN: That's correct.

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1 MR. BAYLY: Yes, that's my view as well.

2 MS. BERNSTEIN: Let the record show everybody is
3 nodding.

4 MR. VALOIS: Everybody agreeing with Mr. Houseman
5 and Mr. Singsen for this purpose.

6 MR. MENDEZ: At least we have got a unified voice
7 from PAG.

8 MR. VALOIS: Any other questions?

9 (No response.)

10 MR. VALOIS: All right. All those in favor of
11 motion say aye.

12 (Chorus of ayes.)

13 MR. VALOIS: Opposed?

14 (No response.)

15 MR. VALOIS: Okay. It stands.

16 Is there anybody that -- has an opportunity to
17 speak?

18 MR. MENDEZ: Mr. Chairman, I have one last item
19 that I want to make sure that everyone is aware of.

20 When we meet in El Paso, Texas, we will be taking
21 up the FY-87 mark and PAG will be allowed two and a half
22 hours to make their presentation.

23 And we will at that time be considering the 1987
24 mark after testimony from PAG, and presentation by the
25 corporation.

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MR. VALOIS: Anyone else want to testify?

MR. MENDEZ: No.

MR. VALOIS: No.

MR. MENDEZ: We open it up for public comment at this time.

MR. VALOIS: If there is nothing further, let's move.

MR. MENDEZ: Move for adjournment, Mr. Chairman.

MR. SINGSEN: Did you have the public comment, or you have --

MR. MENDEZ: We had it. I move we adjourn.

MR. VALOIS: Seconded. All those in favor of adjourning say aye.

(Chorus of ayes.)

(Whereupon, at 2:35 p.m., the hearing was adjourned.)

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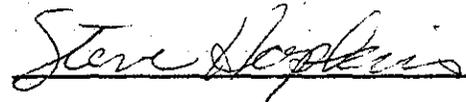
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5 HEARING DATE: November 8, 1985

6 LOCATION: Anaheim, California
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