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ORIGINAL

TRANSCRIPT OF PROCEEDINGS

LEGAL SERVICES CORPORATION

In the Matter of:

COMMISSION ON OPERATIONS AND REGULATIONS

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Pages: 1 through 44

Place: Anaheim, California

Date: November 8, 1985

Acme Reporting Company

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LEGAL SERVICES CORPORATION
COMMITTEE ON OPERATIONS AND REGULATIONS

President's Conference
Room A & B
Holiday Inn
1850 S. Harbor Blvd
Anaheim, CA 92802

Friday,
November 8, 1985

The meeting convened at 9:20 a.m. on Friday,
November 8, 1985

PRESENT:

- ROBERT VALOIS, Chairman
- LORAIN MILLER
- LEANNE BERNSTEIN
- PEPE J. MENDEZ
- THOMAS SNEGAL
- HORTENCIA BERNAVIDEZ
- BASILE UDDO
- CLAUDE SWAFFORD

P R O C E E D I N G S

1
2 MR. VALOIS: This is a meeting of the Legal Service
3 Corporation Committee on Operations and Regulations. I have
4 been appointed as Acting Chairman, because Mr. Wallace
5 cannot be here, and Chairman Durant is also unable to be here.
6 It is a little bit late, 9:20, and the first item on the
7 agenda is approval of the agenda.

8 Leanne, do you want to make a motion to approve
9 the agenda?

10 MS. BERNSTEIN: Yes. As I understand it, there
11 needs to be a small change in the agenda. And that change
12 is that Tom Bovard is no longer with the General Counsel's
13 Office, but he is in the position of Policy Development, and
14 continues with an assignment to Mr. Wallace's Operations
15 and Regulations. But when he makes his report today to the
16 committee, it will be from that position and not from the
17 position in the General Counsel's Office, which I think how
18 it was characterized in the Board agenda.

19 MR. VALOIS: I am sure that there is no objection
20 to the clarification.

21 Is there a second?

22 MS. MILLER: I second it.

23 MR. VALOIS: All those in favor say aye.

24 (A chorus of ayes.)

25 MR. VALOIS: The next item on the agenda is the

1 approval of the minutes of the meeting of October 10, 1985.
2 The members of this committee are better able to address that
3 then the regular members. Yes.

4 MR. BOVARD: If I might, there is one error that
5 I have located in the minutes. On page 19 of both the book
6 and the minutes, line 6 excluding the quotations, you will
7 find the number 16.6(c)(5). That should be (4). That is
8 16.6(c)(4).

9 MR. VALOIS: Okay. If there is no objection,
10 that will be allowed.

11 Is there anything else?

12 MR. BOVARD: On page 19, on line 6 excluding the
13 quotation.

14 MR. SNEGAL: Page 12.

15 MR. VALOIS: Mr. Snegal says page 12 needs a word.

16 MR. SNEGAL: Next to the last line between "sort"
17 and "cases", I think that you would insert the word "of".

18 MR. VALOIS: Without objection.

19 Are there any other corrections to the minutes?

20 (No response.)

21 MR. SNEGAL: I move their adoption.

22 MR. VALOIS: Is there a second on the adoption
23 of the minutes?

24 MS. BERNSTEIN: Can I ask procedurally a question.
25 I know that you do not generally sit on the committee.

1 Have you been made a member of the committee, a
2 voting member, for the purposes on it, or are you just
3 chairing?

4 MR. VALOIS: I have been acting in Michael
5 Wallace's stead by appointment of the Chairman of the Board.
6 I assume that that carries with it all of the privileges
7 and appertances that normally goes with it including voting.

8 MS. BERNSTEIN: Okay.

9 MR. SNEGAL: Maybe I could ask for a second to
10 the motion.

11 MS. BERNSTEIN: Oh, for the minutes?

12 MR. SNEGAL: Yes.

13 MS. BERNSTEIN: Oh, yes.

14 MR. VALOIS: All those in favor of adopting the
15 minutes of October 10 as amended say aye.

16 (A chorus of ayes.)

17 MR. VALOIS: Those opposed.

18 (No response.)

19 MR. VALOIS: The minutes are adopted as amended.
20 The next item on the agenda is the subject of lobbying.

21 Mr. Bovard, do you want to go on the record on it?

22 MR. BOVARD: My name is Thomas A. Bovard, and I
23 an counsel for the Division of Policy Development, Legal
24 Services Corporation. There are going to be no outside
25 witnesses. Instead of that and instead of an actual report,

1 we are going to be showing a video cassette which is the talk
 2 delivered by Allen Raden, a staff attorney of the Western
 3 Center on Law and Poverty on Monday, January 12, 1981. It
 4 occurred in the afternoon at the Hilton Harvest House in
 5 Boulder, Colorado. It is a Denver Regional Project
 6 Director's meeting.

7 The subject of his talk is basically Proposition
 8 9, a talk entitled Mobilization and Coalition Building Case
 9 Studies, the California Proposition 9 and Oregon
 10 Experiences.

11 The video cassette that we are about to show was
 12 one of the pieces of documentary evidence reviewed by the
 13 General Accounting Office in reaching its September 19, 1983
 14 decision. The Western Center is a corporation funded by the
 15 California State Support Center. And the GAO found from this,
 16 and from other tapes, and other pieces of evidence that there
 17 had been a number of violations of the LSC Act, specifically
 18 in three areas.

19 First, a violation of the training prohibition which
 20 prohibits grantees and contractors from using funds provided
 21 by the Corporation to support or conduct training programs
 22 for the purpose of advocating particular public policies, or
 23 in encouraging political activities distinguished from the
 24 dissemination of information about such policies or
 25 activities. That is Section 107(b)(6) of the Act.

1 The second provision of the Act, Section
 2 107(b) (7) that there was found to be a violation of, was a
 3 prohibition against using appropriated funds to create
 4 organizations and coalitions. The first was Section
 5 107(b) (6).

6 And the third was the prohibition against
 7 advocating or opposing ballot measures, Section 106(b) (4)
 8 of the Act. This restricts the Corporation and its
 9 recipients from making use of corporate funds or any
 10 personnel or equipment belonging to a LSC program to support,
 11 advocate, oppose, or urge the defeat of any ballot measures,
 12 initiatives, or referenda at the state, local, or national
 13 levels of government.

14 On the other hand, under this provision, a program
 15 attorney is free to provide advice and representation as an
 16 attorney to an eligible client. The General Accounting
 17 Officer, however, found that in this case that it had gone
 18 quite a bit beyond the simple offering of advice.

19 With that, that short summary, I think that we will
 20 show the film now. And in its own commentary, we should
 21 keep these three provisions of the LSC Act in mind.

22 MR. VALOIS: Before we start the film, if we may,
 23 Cathy Fisher of ABA has asked to speak on the subject.

24 Do you want to talk now or later?

25 MS. FISHER: I will talk after.

1 MR. VALOIS: Okay.

2 MR. SNEGAL: Let me ask a question. You said that
3 there were no outside witnesses.

4 Was it because nobody requested or it was not
5 convenient to be here?

6 MR. BOVARD: Nobody requested.

7 MR. VALOIS: Ms. Fisher has requested.

8 MR. BOVARD: Other than that.

9 MR. VALOIS: How long is this tape?

10 MR. BOVARD: About forty minutes.

11 (Whereupon, a film was shown.)

12 MR. VALOIS: We have terminated the tape because
13 of the time and the difficulty frankly of following it. But
14 I am going to ask Mr. Bovard to provide a transcript of it
15 to each Board member and anybody of the interested public
16 who would like a copy of it. And I appreciate it if you
17 would just sort of summarize what it is about this tape that
18 you think would be depictive for the Board.

19 MR. BOVARD: There were a number of emphases in
20 Mr. Rader's talk. He describes the campaign that his support
21 center funded with Corporation funds to defeat Proposition
22 9 which was Howard Jarvis' tax reduction ballot measure in
23 California.

24 In this talk, he mentions that his program has
25 hired four field coordinators, and used them to build a

1 coalition from organizations such as public employees unions,
 2 organizations interested in education, elderly groups, and
 3 voluntary agency groups. At the same time, many of the
 4 thirty different Corporation funded Legal Services programs
 5 in California committed staff time and emphases that in this
 6 film, that it was staff time, not their own time to work for.
 7 the defeat of this measure, and to involve themselves in the
 8 building of a coalition.

9 Part of the emphasis of the talk, and I am relying
 10 on my memory at this point, he said that in order for Legal
 11 Services Corporation to survive, they should not expect other
 12 organizations to come along simply for the sake of helping
 13 Legal Services Corporation to survive. It would have to
 14 identify areas that those other organizations would be
 15 interested in, focus on those, and thus win support of these
 16 groups.

17 And so he was holding up the campaign on
 18 Proposition 9 as an example of the sort of things that could
 19 be used to build a political base for the survival of Legal
 20 Services Corporation.

21 Let me see, there are a couple of other points that
 22 I would like to make. I would like to make the point as well
 23 that the meeting that you just saw, and you heard enough of
 24 the talk to see the political emphasis of that, it was funded
 25 by the Corporation. Grantee organizations within the

1 boundaries of the Denver region sent representatives to the
2 session, and paid their salaries.

3 Later at this particular meeting, it says that
4 the major concern of Legal Services Corporation is not a
5 legal one, and in terms of the poor not legal at this point,
6 but they are political. And that is one of the most
7 interesting quotations from the whole film. When I provide
8 transcripts, I will highlight that provision.

9 But the whole tenor of this particular presentation
10 is that the new thrust that is needed by the Corporation is
11 one of addressing political areas, and therefore helping them
12 build networking and a coalition. And he emphasizes also
13 in the film that a network is not necessarily a formal
14 organization, but it is relationships that you build by
15 meeting the needs of these other groups, and then you can
16 call upon them when you have a need for something, to
17 accomplish something that is part of your agenda.

18 MR. VALOIS: Mr. Snegal.

19 MR. SNEGAL: Do I understand that we will get a
20 transcript of that?

21 MR. BOVARD: Yes. The Corporation, I am told, has
22 transcripts. They are still packed away in the boxes, or
23 I would have provided you with them. I will get copies. It
24 is not supposed to be particularly good. I will see.

25 MR. SNEGAL: I was just going to say if you are

1 going to do that, I would appreciate having a copy of a
2 couple of other things. I understand that this was evidence
3 considered by the Hearing Officer on the defunding of the
4 Western Center on Law and Poverty. I would like to see that
5 Hearing Officer's opinion. And I think that this matter
6 was reviewed by a Federal Court judge in Washington, and I
7 sure would like to see his opinion also, maybe as a package.

8 MR. BOVARD: Okay.

9 MR. SNEGAL: Maybe highlighting where each of them
10 referred to the statement that you referred to, or this
11 particular meeting, how they treated it in their decision.

12 MS. BERNSTEIN: Tom, you already have got the GAO
13 report on it.

14 MR. SNEGAL: I do?

15 MS. BERNSTEIN: You should, on lobbying.

16 MR. SNEGAL: Well, yes. How long is it?

17 MR. BOVARD: It is very short, the GAO report.

18 MR. SNEGAL: Would you include that, too. I may
19 have it.

20 MR. BOVARD: The GAO report has an appendix. And
21 unfortunately, I do not have the whole thing here. But the
22 appendix summarizes most of the tapes. This is just one tape
23 of a number of tapes and talks that were delivered in this
24 conference. I understand that there were tapes of the whole
25 thing. I do not know that we have all of them or not.

1 MS. BERNSTEIN: Since we are here in California.
2 There is a memorandum that was a December 2, 1980 memorandum,
3 Subject: Examples of Coalition Efforts at the State and
4 Local Level Around Issues Affecting Lower Income and Working
5 Class Groups. The California portion of that memo says that
6 this is from Russ to Alan. I understand that it is to Alan
7 Houseman. I do not know who the Russ is.

8 But the public employees labor unions played a
9 key role in the anti-Proposition 9 campaign. "And Alan
10 Rader and Annie Hurwitz would be best able to discuss the
11 coalition efforts or to suggest who on the labor side could
12 explain the nuts and bolts of coalition building with
13 California unions. Again Dean Tipps was a very important
14 person in this campaign. I do not know to what extent
15 Mickey Cantor," who was a member of the Board at that time,
16 "was involved in actual coalition building meetings, but you
17 can surely find out what he thinks about all of that."

18 I just wondered if either Annie Hurwitz or Dean
19 Tipps is in the room, and whether they would be interested
20 in talking with us about the coalition building efforts at
21 that time. If they are here, they are not saying. Okay.

22 I can concerned about this. I am concerned about
23 this not only because of the clear indication that client
24 services were to be sacrificed for a political campaign, but
25 also because this is still going on. And Alan Houseman, who

1 unfortunately is not in the room right now either, in the
2 Clearinghouse Review -- and Tom, I hope that you got this
3 this summer. If you got it and did not get a chance to read
4 it, I know that you have got a lot more things to read than
5 I do.

6 So this is the summer issue of the Clearinghouse
7 Review which Alan Houseman had an article entitled
8 Community Group Action, Legal Services, Poor People and
9 Community Groups. Alan Houseman gives as one of the things
10 that Legal Services programs should be doing today is that,
11 "Programs will have to redirect advocacy from litigation
12 and traditional forms of administrative adjudicatory
13 representation into advocacy directed at discretionary
14 decisions that will be made increasingly at the state level.
15 For years, Legal Services has directed its major
16 representational efforts toward federal and federal/state
17 programs like AFDC, food stamps, Social Security, public
18 housing, and Medicaid.

19 "The strategy worked largely because sympathetic
20 administrators and responsive courts recognized from the
21 creation of the beneficiary poor people's rights as an
22 effective avenue to reach desirable social goals. The climate
23 for that kind of advocacy has changed greatly.

24 "The present administration seeks a reduction in
25 the federal role and an elimination of beneficiary rights in

1 favor of discretionary almost charitable decisions on where
2 to use sharply limited resources. In those instances in
3 which an activist federal role is continued, it is usually
4 to restrict or to eliminate rights and to impose new controls
5 on the lives of poor people.

6 "The new advocacy will require lawyers and legal
7 workers to examine the policies behind certain rules and
8 programs, and then to convince the decision makers, many of
9 whom will be at the local or state level, that a particular
10 client must be helped in a particular situation."

11 He goes on to say that, "A major goal for Legal
12 Services will be to establish at the state level a set of
13 state laws and regulations that provide entitlements to poor
14 people. This will be more difficult than the successful
15 past efforts at the federal level, although the effort will
16 require many of the same advocacy tools including litigation,
17 administrative representation, and legislative advocacy."

18 He is not talking about enforcing existing laws,
19 making sure that there is an equal access to the courts, but
20 he talking about a state oriented lobbying effort in order
21 to create new law. Now whether you agree with it or do not
22 agree with it, the GAO says that that is illegal with LSC
23 funds.

24 I just would ask all of the Board members to take
25 a close look at this article. Because I think that what we

1 are dealing with in the lobbying regulations is something
2 that is not an 1981 issue, but it is a current issue. And
3 Alan Houseman has been very forthright in setting forth his
4 position which is not my position. But I do ask you to look
5 at it. And when we come back to the lobbying with LSC money
6 again in terms of how we are going to phrase or rephrase these
7 regulations, I think that you should have an idea of the
8 current attitude about this.

9 MR. SNEGAL: Leanne, is that a portion of that
10 publication?

11 MS. BERNSTEIN: Yes, it is a portion of that
12 article and it is a portion of the publication.

13 MR. SNEGAL: If it does not violate the copyright
14 laws, and I do not know if Alan has a copyright on this or
15 whether the publication does, but it might be helpful to us
16 to include in the package Mr. Houseman's article if that is
17 appropriate.

18 MR. VALOIS: Mr. Bovard, if you do not have anything
19 further on this.

20 MR. BOVARD: No, I do not.

21 MR. VALOIS: We will hear from Kathy Fisher at
22 this time who has requested this time. Kathy, if you could
23 identify yourself.

24 MS. FISHER: My name is Cathy Fisher and I am in
25 San Francisco, and I am the Director of the Bar Association

1 and a member of a private firm up there. And I have been
2 asked by the Standing Committee on Legal Aid and Indigent
3 Defendants of the ABA to just come and remind this Committee
4 of the ABA's position with respect to lobbying on a few
5 discrete matters.

6 I have asked Mr. Houseman to come up here with me,
7 because he is much more familiar with the technical aspects
8 of the regulations than am I. And if the Committee has any
9 questions, I may ask Mr. Houseman to step up to bat.

10 Before I speak as a representative or at the request
11 of ABA, I would like to say something briefly as a private
12 attorney who practices in this state. The showing of that
13 video tape and the comments about the Western Center,
14 particularly herein California where the Western Center
15 practices, is something that disturbs me deeply.

16 My own firm which is a large firm with offices in
17 San Francisco, and Los Angeles, and around the world
18 co-counsels a great number of cases with the Western Center.
19 The Bar Association does work with that organization. I
20 think that I can say with a fair degree of familiarity that
21 the Western Center is one of the most respected Legal Services
22 providers in the state both for their competence and their
23 integrity.

24 I cannot speak to anything that happened in 1980
25 or 1981. I certainly cannot speak to the nuances of the

1 pending proceeding which I understand took place, and which
2 I also understand was found to be without merit. But I must
3 say that since this Committee and ultimately the Board are
4 sitting in our state and making these comments, that I would
5 like to say that about the Western Center in general.

6 I know that the Committee and the Board are greatly
7 interested in private attorney cooperation with Legal Services
8 providers. And frankly, some private attorneys and some
9 Legal Services providers are better at that than others. But
10 I must say that I do not think that there is any better than
11 the Western Center in terms of its cooperation with private
12 attorneys in providing services for the poor.

13 Now that we have gotten that out of the way, I would
14 like to do what I was asked to come here to do, which is to
15 remind the Committee of the ABA's position on some matters
16 concerning this proposed regulation.

17 First of all, I would like to say that as I
18 understand it, the ABA's comments on this matter stems from
19 two basic ABA policies. The first is that the Legal Services
20 Corporation provide a broad range of legal services, and that
21 those legal services be full and adequate. The concentration
22 on those terms, I must say, usually have been on the terms
23 broad and full and adequate.

24 I would like to stress that with respect to this
25 regulation, I think that some of the emphasis has to be on

1 the term legal services. I think that that policy clearly
2 was meant to cover legislative and administrative services
3 in addition to the other kinds of legal services that private
4 lawyers traditionally have provided.

5 The second policy of the ABA that is reflected in
6 more specific comments is a concern about the ethical duties
7 of lawyers. And in particular, that a lawyer not be limited
8 in his or her ability to provide legal advice and factual
9 information to a client.

10 Now those policies are reflected in specific
11 comments, and those comments have previously been submitted
12 to this Board on two occasions. I would like to mention three
13 specific comments. The first is in Section 1612.2 which is
14 entitled Public Demonstrations and Activities. And
15 specifically with respect to subsection (c).

16 That section states, "Nothing in this section shall
17 prohibit an attorney from informing and advising a client
18 about legal activities, legal alternatives to litigation, or
19 fulfilling the professional responsibilities of an attorney."

20 The ABA's suggestion about that particular
21 subsection was that it ought to govern this entire regulation.
22 That is really all that says basically, that an attorney is
23 to fulfill his professional responsibilities and to be free
24 to give legal advice about alternatives to litigation. There
25 is no reason that it should be limited to public

1 demonstrations and activities, but instead should be part of
2 the definitional or general section.

3 The second specific provision that has concerned
4 the ABA continuously is this business of the retainer
5 agreement which is part of Section 1612.5 and of Subsection
6 (b)(2) of that provision. Specifically, the portion of the
7 retainer agreement requirements that concerned the ABA was
8 the section that required the statement by the client in the
9 client's own words of the matter on which relief is sought.

10 I think that it is fair to say that the ABA's
11 comments reflect both a practical and an ethical concern about
12 that particular provision. The practical concern is that you
13 are talking about a situation in which a client is being
14 asked to phrase a question about a legal matter, about a
15 matter on which relief is sought.

16 That is something that really in some ways is the
17 ABA's comments that would require a reversal of the
18 traditional role of the attorney and the client. The other
19 practical part of the ABA's concern is that that sort of
20 thing is really unnecessary for the Corporations' monitoring
21 purposes, since there is a previous portion of that same
22 provision that it is a request that the scope of
23 representation be described, and therefore the additional
24 statement by the client is unnecessary.

25 MR. VALOIS: What is the other section that you

1 are talking about?

2 MS. FISHER: Immediately before where it requires
3 a statement by the client in the client's own words, that
4 there is a requirement that the retainer agreement specify
5 that the legislative or administrative measure on which the
6 representation is sought, that the type of representation
7 sought, that it might be a statement that includes the
8 client's direct interest in that particular legislative or
9 administrative measure.

10 MR. VALOIS: I understand where it is in (b) (2).

11 But are you saying that it is duplicating something
12 that is said elsewhere?

13 MS. FISHER: No, no. What I think that the ABA
14 is saying is that the requirement that the statement in the
15 client's own words duplicates the other requirements of that
16 paragraph that there be that kind of general statement in
17 the retainer agreement to begin with. That objection is
18 really just to the portion of it that would include a
19 statement in the client's own words about the matter on which
20 relief is sought.

21 Certainly, the retainer agreement can be phrased
22 to set out the nature of that without having a client put that
23 in his or her own words. The concern about the
24 unnecessaryness of it is in part related to the concern about
25 the ethical matters that the ABA has also raised.

1 And those fall in two areas. First of all, there
2 is concern that when you have clients putting in their own
3 words about what relief they are seeking, and you are having
4 the Corporation and other public bodies monitor that sort of
5 retainer agreement, that you create a situation in which
6 necessarily you are divulging attorney/client information. .
7 You are creating a situation as well which may impinge on
8 Fifth Amendment concerns depending on what the statement in
9 the client's own words says.

10 I think that we can all imagine situations in which
11 the client could ask for relief that surely would violate
12 some Fifth Amendment rights. And I think that the ABA is
13 concerned that it would always violate the attorney/client
14 privilege as a communication to a lawyer which is a request
15 and a confidential request for legal advice.

16 The third specific area which has concerned the
17 ABA is that the matter --

18 MR. VALOIS: If I can keep you on this area for a
19 moment. Assuming that the representation of the client in
20 a legislative form everybody agrees is proper in some
21 circumstances, it seems to me, and this is not my normal
22 Committee, that it seems to me what this attempts to do is
23 to sort out precisely what the attorney's role is with
24 respect to his advocacy on a particular measure rather than
25 being a general franchise because it has an indigent client

1 who has lobbied in the legislature on related matters.

2 Now how would you propose to separate those two
3 things?

4 MS. FISHER: I think that what I would propose to
5 do is to simply delete the language at the end of that
6 subparagraph which states, "And a statement by the client in
7 the client's own words," et cetera. There certainly can be
8 a specification of the subject matter of the retention
9 without the client divulging his or her own.

10 MR. VALOIS: You do not have any problem with
11 identification of the particular piece of legislation or the
12 particular case matter upon which relief for representation
13 is being sought?

14 MS. FISHER: I believe that the ABA's concern is
15 divulging client communications in that context.

16 MR. SNEGAL: There are two statements. You have
17 been referring to the second one. There are two. It says
18 "a statement" twice".

19 Do you have any problem, Kathy, with the first
20 "a statement"? Backing up a little further, "Shall include
21 a statement of the client's direct interest in the particular
22 legislative area." Or are you focusing on the second
23 statement?

24 MS. FISHER: I am really focusing on the second
25 statement.

1 MS. BERNSTEIN: When you say that these are the
2 ABA's views, you mean the Committee's views, right?

3 MS. FISHER: I believe that these are the ABA's
4 comments on this legislation as reflected in ABA policy.
5 The Committee has asked me to be here to relate the ABA's
6 policy.

7 MS. BERNSTEIN: Okay.

8 MS. SWAFFORD: I have a question. I wonder if you
9 could identify once again, maybe I did not get it, the
10 Committee on the ABA that you are speaking for.

11 MS. FISHER: The ABA's Standing Committee on Legal
12 Aid and Indigent Defendants. I should say that I am not a
13 member of that Committee. Since I am out here in California,
14 that Committee has asked me to attend and to relate the
15 ABA's comments.

16 Moving on to further provisions of 1612.5, the
17 third concern of the ABA that I would like to relate is found
18 in what I suppose that I would describe as a combination of
19 subparagraphs E(4) and G(2) and (3). Excuse me, H(2) and (3).

20 The concern here, and it has been reflected in
21 previous ABA written comments -- but I think that it was
22 complicated, so I wanted to repeat it -- is that the
23 restrictions here if you read them together I believe
24 prohibit dissemination of factual information concerning
25 legislation directly affecting a large number of clients.

1 The example given in the ABA's written comments
2 is that if there were to be supposed or actual legislation
3 respecting changes in the welfare laws, that these
4 provisions would restrict the ability of Legal Services
5 providers to communicate that information to their clients
6 with the exception of specific clients who had requested
7 representation on those specific issues.

8 The concern here I think is that it is restricting
9 not only advocacy, or as the regulations state propaganda
10 with respect to general legislation, but as well factual
11 information about legislation that may concern a large number
12 of clients that are served by a particular program.

13 The ABA's position on this is that is probably
14 inconsistent with its ethical opinion which appears in 334
15 which says that you should not restrict the advice given
16 to clients by Legal Services providers. And the concern is
17 that is restricts not only advice which is perhaps even at
18 a higher level, but factual information that is communicated
19 to clients as perhaps part of an ethical obligation to those
20 clients.

21 MR. VALOIS: But are you not we dealing with a
22 distinction between a situation as to whether or not Legal
23 Services providers are in the role of some sort of retained
24 general counsel to give advice to indigent clients that they
25 the providers think ought to be heeded by people in a certain

1 group of indigent clients, as to whether or not Legal Services
2 money is supposed to be spent for clients with specific
3 problems, is that the distinction that we are dealing with?

4 MS. FISHER: It may be in part. You know, I have
5 been a private lawyer for ten years, not a Legal Services
6 practitioner. And so probably I am not able to speak to the
7 practical distinction.

8 MR. VALOIS: Well, I am a private lawyer, too.

9 MS. FISHER: But I will say that as a private
10 lawyer and perhaps you as one understand that there are
11 also regulations and matters that concern my clients which
12 do not specifically concern the matter that I might be working
13 on at any given moment.

14 But I think that it is necessary for them as a
15 matter of general law and the business that they are in that
16 they know that information. And that is often in situations
17 where neither myself nor my firm are acting as general counsel,
18 but simply perhaps as an attorney or an officer of the court,
19 that there is a group of people that a particular regulation
20 affects and not in some general fashion, but in a very
21 particular way.

22 And I suppose that given a particular instance that
23 distinctions can be made as to whether one is technically
24 obligated to pass that information on to one's clients. But
25 as a practical matter, we are talking here about factual

1 information and not advocacy. That latter category has
2 already been restricted.

T2 3 MR. VALOIS: I may have overlooked something to the
4 extent of say a newsletter from a provider to some list --
5 I do not know how you would disseminate it -- to people that
6 a bill has been introduced in the legislature which would
7 have the following effect on you as a poor person if passed.

8 Would that be factual information?

9 MS. FISHER: I would think that it would be.

10 MR. VALOIS: And the ABA's position is that that is okay
11 to disseminate that sort of information, even though they do
12 not have any clients who would be immediately affected by
13 passage of that legislation?

14 MS. FISHER: I think that probably the ABA's position
15 in brief is that certainly it is okay. And in some instances
16 that it would be highly desirable, because that information
17 directly affects the needs of certain categories of clients.
18 I think that you are talking about general mailings to poor
19 persons.

20 I think that in ABA's comments, the sense of their
21 comments is, you know, they are matters affecting particular
22 categories of clients such as AFDC recipients or other
23 categories of clients that may be critically affected in
24 matters of legislation.

25 But I must say that I think part of the concern is that

1 clients know what the law is in order to obey it, or know
 2 what the proposed law is in order to plan to obey it. It
 3 is as much a law and order function if you will as it is
 4 concern that clients be able to exercise their rights to
 5 affect pending legislation.

6 MR. VALOIS: I guess that maybe what we are dealing
 7 with is whether it is the proper function of LSC grantees to
 8 disseminate that information, or whether in the exampe that
 9 you gave that it should be disseminated by somebody else,
 10 maybe the AFDC office, or the newspaper, or elsewhere. Whether
 11 or not our funds should be used for that purpose.

12 MR. UDDO: Ms. Fisher, I have a question.

13 Are you saying that the ABA's position would be
 14 that a lawyer has an ethical obligation to disseminate that
 15 kind of information to former clients or potential future
 16 clients, because we are not talking about people that you
 17 are actually representing where that information would be
 18 relevant to the representation. It sounds to me as though
 19 you are coming close to saying that, and I do not think that
 20 that is the ABA position.

21 MS. FISHER: I think that one of the problems with
 22 both this regulation and necessarily with any comments on
 23 it is that it regulates matters of lawyer judgment. And I
 24 think that what the ABA's formal opinion says and what its
 25 comments say is that in some instances that yes, it may

1 violate a lawyer's ethical obligations not to be able to
2 communicate certain factual matters concerning legislation.

3 MR. UDDO: You said not be able to. My question
4 is does a lawyer have an obligation to disseminate that
5 information; could you get disciplined if you did not send
6 that information out to your client?

7 MS. FISHER: I think that what the ABA's formal
8 opinion is and its position is that in some instances that
9 perhaps yes.

10 MR. UDDO: Could you give me an example?

11 MS. FISHER: You know, it is really hard for me
12 to give examples not being a Legal Services provider.

13 MR. UDDO: Well, just in general.

14 MS. FISHER: Let me stick with the Legal Services
15 area, because I think that these regulations particularly
16 concern that area. If there is a client who comes in
17 particularly with respect perhaps to a housing matter, and
18 within that representation it comes to the attention of an
19 attorney that there are as well certain issues that
20 interrelate with AFDC funds and perhaps a provision of housing
21 allowances or whatever else may involve AFDC funds, it may
22 be incumbent upon that particular Legal Services attorney to
23 communicate proposed or actual legislation which has to do
24 with the changes in that legislation which might affect that
25 particular client.

1 Now it may be that the particular representation
2 is restricted to the housing matter.

3 MR. UDDO: Now it seems to me like what you are
4 saying is that it might be nice to tell them that, but I do
5 not think that you are saying that the ABA's position is that
6 you have an obligation to tell them that, and that you could
7 be disciplined for not telling them that.

8 MS. FISHER: Well, I think, you know, that if it
9 were information that bore upon the life of that particular
10 client, that you do have an obligation to advise them.

11 MR. UDDO: So every client that you have, you feel
12 obligated to advise them on every dimension of their rights
13 irrespective of what you are representing them on?

14 MS. FISHER: No, I do not think that that is what
15 I have said. What I am saying is that I think that one does
16 have an obligation to advise them with respect to any matter
17 that might affect the rights within the scope of the
18 representation. And I think that we are quibbling concerning
19 what the scope of the representation is.

20 MR. UDDO: Well, I think that it is important,
21 because I really see that there is more of an analogue
22 between private practice and Legal Services practice than
23 I think that you are suggesting. I am trying to think of
24 it in terms of a private practitioner. And I do not think
25 that many private practitioners believe that they are duty

1 bound to pass on that kind of information to clients on issues
2 unrelated to what their representation it.

3 I mean I do not think that somebody who is
4 representing someone say in a personal injury case feels
5 obligated to pass on changes in legislation on family law
6 to the client that they are representing in a personal injury
7 case. I think that it would be an impossible burden to put
8 on a lawyer.

9 MS. FISHER: And I think that it was the suggestion
10 that your co-member of this Committee made earlier. I think
11 you are making a distinction between are you general counsel,
12 and are you retained for a specific matter. And I think that
13 the ABA's opinion on this concerns the gray area in between.

14 The lawyer, of course, is primarily responsible
15 for determining the scope of the representation, and to the
16 extent that this regulation unnecessarily limits the scope.
17 And what you may be talking about is the interference in that
18 area which might impair that particular lawyer's ability to
19 conform with ethical obligations.

20 At the very least, I think that what we are
21 talking about is putting lawyers into a situation where they
22 have to be concerned about whether they are going to obey
23 the regulation or whether they are going to comply with
24 ethical obligations, which I think that as lawyers that we
25 can appreciate is an impossible and very fragile position.

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I would like to go on to say that that kind of ties into my final comment on this or the ABA's final comment, which is that this is a very complicated regulation. And unfortunately as a complicated regulation, it involves very fragile matters of an attorney's relationship to his or her clients.

The ABA suggested in its final comment that in the enforcement stage of this regulation that the Corporation consider offering materials in a question and answer form to the programs, interpretative material, so that they will not be put in the position that we have been discussing here, which is whether they are going to comply with ethical obligations or comply with regulations that govern that program. Thank you.

MR. VALOIS: Thank you very much.

MR. HOUSEMAN: May I just make a brief comment?

MR. VALOIS: Sure.

MR. HOUSEMAN: Two things. First, I do not know if this was pointed out as I was out of the room for a second, but in the Western Center situation, I think that the record should reflect that an ex-California State Judge was a hearing referee, and found that the Western Center had not violated the law. And a Federal Court also in the Western Center case found that there was no violation of the LSC Act in the matters that were discussed in the video tape.

1 Secondly, I would like to just respond to one of
2 the things that you said with regard to the phrase
3 "particular matter" in representation of eligible clients with
4 regard to that phrase. I think that it is important to
5 understand that the position which the groups that I
6 represent take is that that in fact is what the law requires.
7 That is that if you have an eligible client and a particular
8 matter would affect that eligible client, is either affecting
9 it now or would affect it in the future, you can represent
10 that eligible client on that particular matter before a
11 legislative body.

12 MR. VALOIS: Do you have to go back to that client
13 and say, hey, there is a bill coming up, so how about signing
14 this retainer, so I can go up there and talk to the
15 legislature, do you have to do that?

16 MR. HOUSEMAN: It is going to depend on the
17 situation.

18 MR. VALOIS: Well, tell me the situation.

19 MR. HOUSEMAN: Every situation is factually
20 different. That is you may be representing somebody in a
21 case where you have won the case and the legislature is
22 taking action that would undermine the case, and you have to
23 act immediately to try to deal with that. That is one
24 example.

25 Another example is that you are representing

1 somebody in a matter and a bill comes up --

2 MR. VALOIS: You say would have to.

3 Do you think that there is an obligation under the
4 Code or Professional Responsibility to do that?

5 MR. HOUSEMAN: Yes. If you were handling the case
6 in an ongoing matter.

7 MR. UDDO: If the case is complete.

8 MR. HOUSEMAN: Say you have won a preliminary
9 injunction, and the legislature takes action, I think that
10 you hve an obligation to go to the legislature.

11 MR. UDDO: I thought that the case was ended,
12 I am sorry.

13 MR. HOUSEMAN: No, I am sorry. I think that there
14 are numerous situations where you would not have to go back
15 to the client. In many situations, however, you would have
16 to go back, and you should inform the client of what this
17 particular matter is, and make sure that they make an informed
18 decision as to whether they want representation of it or not.

19 MR. VALOIS: You are mixing up, Mr. Houseman, the
20 distinctions that we are all very interested in. Because
21 as has been said, this is a complicated matter, and the
22 Congress has given us a certain amount of direction on this,
23 and GAO has been interested in it, and so on, and so forth.

24 And what I am trying to figure out, and it is
25 something that you are not helping me with, is when a matter

1 is finished, which is part of what you said. I mean you
2 represent a client in a housing matter period. That matter
3 is over as far as that client is concerned at the time that
4 whatever the action is is ended.

5 Now three weeks later or in the following year in
6 the legislature some matter comes up or before the city
7 council for that matter which would affect that client's
8 position, do you have an obligation to go back to the client
9 and ask him whether or not he wants representation, or can
10 you simply go up to the legislature and lobby for or against
11 that particular matter even though it is ended. That is what
12 I am trying to say.

13 MR. HOUSEMAN: I think that you have an obligation
14 in that situation to go back to that client. Unless the
15 retainer was written very broadly which would be very
16 unusual, I do not think that there would be any doubt about
17 it. I am not even sure -- I do not think that you have an
18 obligation to go back to that client. But I think that if
19 you went back to that client and informed that client of
20 the situation and that client asked you to represent them
21 in that situation, that would be fine.

22 I have heard this discussion. And part of what
23 happens is that there is a view that what Legal Services does
24 is that they get a client on one matter, and then goes and
25 lobbies on everything else. Whatever one thinks of that view,

1 which I think is a myth, what I am saying is that I think
2 that the statute and what I think that the regulations should
3 say quite clearly is that if you have a relationship with
4 a client in which a matter affects that client's rights or
5 would affect that client's rights, that you can go under the
6 statute to the legislature and lobby on behalf of the
7 particular interests of that client.

8 And I think that that is what the statute means,
9 and that is consistent with the position that we have
10 proposed and presented before this Committee, and will be
11 presenting before the Committee and the Board.

12 MR. VALOIS: But what is the relationship between
13 a client to whom services have been rendered and that matter
14 is closed, what is the relationship beyond that point
15 between that former client or client as the case may be and
16 the Legal Services provider, what is that relationship?

17 MR. HOUSEMAN: It is going to vary in a number of
18 different situations. That client may be just one individual
19 who comes in and gets service and leaves and you never see
20 again. It may be a client who comes in periodically for
21 various things, and you see quite often. It may be a client
22 who is a member of a group, and you are representing that
23 group, and you are in constant sort of communication with
24 them over matters. It could be a variety of things.

25 And I think that the answer to your question is

1 going to differ very much depending on what kind of client
 2 you are talking about. I do not think that there is an
 3 ethical obligation for the first person who you served a year
 4 ago to go back to that person and inform them of a particular
 5 piece of legislation that may affect them, unless that person
 6 happens to be a member of a group, or unless that person is
 7 someone who has continually sought service from your office
 8 about a variety of things, or that person was a member say
 9 of a local client's counsel that was continually involved
 10 in these issues, and essentially there is an ongoing
 11 relationship between the program and that client.

12 However, in the first instance, I do not think that
 13 there is an absolute ethical obligation, but I do not think
 14 that the statute prohibits an attorney of informing that
 15 client of the possibility of proposed or pending legislation.
 16 And then if the client makes a decision to have the program
 17 represent him, I think that that is permissible under the
 18 statute.

19 MR. UDDO: But the converse of that is that the
 20 regulation would not be creating the ethical dilemma that I
 21 thought that we were hearing about. I mean if the regulation
 22 says that you cannot go back to that former client where the
 23 relationship is clearly ended, it is not putting the
 24 Legal Services lawyer in the position of having to choose
 25 between the regulation and the ethical obligation.

1 MR. HOUSEMAN: That may be, but that is only one
2 type of client.

3 MR. UDDO: At least that type of client, you would
4 agree?

5 MR. HOUSEMAN: In terms of ethics, yes, but not
6 in terms of the statute.

7 MR. UDDO: I am just asking about the comparison
8 of the ethical obligation and the regulation.

9 MR. HOUSEMAN: On that issue, that narrow issue,
10 yes. Most of your clients or many of them, many of them
11 are not in that situation. Many of them are people who come
12 to your office for a variety of different matters, and many
13 of them are members of groups. You have ongoing relationships
14 with these people.

15 It is no different from private practice if you
16 want. My counsel for the Center on Nonprofit Corporation
17 Matters who is not on a retainer, every time there is a
18 change in the nonprofit corporation law that affects the
19 Center or IRS regulations, I get a letter from him which
20 lays out what the change would be. And I may retain him
21 then to do something for me or I may not. But he is
22 informing me of what the acts and practices are.

23 That happens throughout private practice. My
24 attorney who did our wills and we had no formal relationship
25 any longer when there is a change in federal tax law or

1 state law which affects our wills, I get a memo from her.

2 MR. UDDO: But she does not send you memos on
3 changes in other areas of the law?

4 MR. HOUSEMAN: Well, on that matter, she does. I
5 do not have an ongoing relationship. That is a common
6 practice.

7 MR. VALOIS: Is not the will a little bit
8 different? The will is alive and useful as long as you are,
9 I guess, and this probably gets under applied representation
10 that it is valid currently. The will is a little bit
11 different.

12 MR. HOUSEMAN: I am not sure that it is any
13 different from if you are representing AFDC people possibly
14 and a welfare rights group and legislation is being proposed
15 and that affects that welfare rights group, that it is no
16 different to me than informing that welfare rights group and
17 its members what the consequence of that legislation may be,
18 whether it is adverse or positive.

19 MS. FISHER: May I say that it might also have to
20 do with what is involved. For example, if there is a consent
21 judgment or simply a judgment in the law affecting that
22 particular consent judgment or judgment changes, I think that
23 one would have an obligation to tell the client who was the
24 beneficiary or the victim of such a remedy.

25 MS. BERNSTEIN: How was the retainer drafted for

1 the anti-Proposition 9, how did the client draft the retainer
2 form for that, what would it have said?

3 MR. HOUSEMAN: I do not know. There were
4 retainers, but I have no idea.

5 MS. BERNSTEIN: Let us say that the current
6 regulation were in place now.

7 How would a Legal Services program draft such a
8 retainer? You just told us. I assume that you were citing
9 what you said was a vindication of what happened then saying
10 that it was not illegal even though the GAO said it was by
11 saying that the court found that they had not violated the
12 law.

13 I am having trouble, because this is part of the
14 Act. This is not part of the regulations. And the Act reads
15 "Neither the Corporation nor any recipient shall contribute
16 or make available corporate funds, or program personnel, or
17 equipment for use in advocating or opposing any valid
18 measure, initiatives, or referendums. However, an attorney
19 may provide legal advice and representation as an attorney
20 to any eligible client with respect to such client's legal
21 rights."

22 I want to know how the retainer is to be drafted.

23 MR. HOUSEMAN: First of all, what the court held,
24 of course -- it did not deal solely with that section, as it
25 also dealt with Section 1007(a)(5), which specifically

1 references initiative petitions -- but what this section
2 dealt with, what the court held was that the kind of advice
3 that was being given by the Western Center was legal advice
4 and representation with regard to those client's legal rights.

5 MS. BERNSTEIN: That is not what Allen Rader said
6 on the tape. Allen Rader did not say that. He said that
7 they were running a political campaign.

8 MR. HOUSEMAN: I did not hear the tape. I am just
9 telling you what the court said. In terms of the retainer,
10 it seems to me that the retainer would talk about precisely
11 that fact. That is that the program was retained to provide
12 legal advice and representation on a ballot measure that may
13 affect that client's rights and responsibilities.

14 MS. BERNSTEIN: And it is that broad, do you think
15 that that broad of a retainer is all that is needed under
16 the Act? It does not seem to me to be a particularly
17 specific matter. How does it affect the client?

18 MR. HOUSEMAN: A ballot measure could have a direct
19 affect on a client.

20 MS. BERNSTEIN: How did this ballot measure have
21 a direct effect on the client in your view?

22 MR. HOUSEMAN: The direct effect was the cut-back
23 in a number of different benefits.

24 MS. BERNSTEIN: It was lower income tax, was it
25 not?

1 MR. HOUSEMAN: What?

2 MS. BERNSTEIN: Was not the ballot measure to
3 lower income tax?

4 MR. HOUSEMAN: Yes, property taxes, but it had a
5 direct effect on benefits that were provided by counties in
6 California, educational benefits, county general assistance.
7 benefits, et cetera.

8 MS. BERNSTEIN: If taxes are lower -- what I am
9 trying to get down to is the fact that we are really dealing
10 with a philosophical argument as far as whether or not a
11 ballot initiative is a good or bad thing. And it is really
12 political debate, because the other side of that issue would
13 be if you lower taxes, you increase the possibility of jobs,
14 more people will be employed, and poor people will be helped.

15 I am saying that it is a philosophical argument
16 here, and it seems to me that the Act is very clear.

17 MR. HOUSEMAN: The Act seems clear that you can
18 provide legal advice and representation.

19 MR. MENDEZ: May I explore, Alan, just in the
20 process of making it clear, if I could just follow through
21 with it. You said that when we were making the analysis of
22 what has a direct effect on it, and Proposition 9 was to cut
23 back property taxes, I thought that you were saying that the
24 direct effect of that is lowering income and --

25 MR. HOUSEMAN: No, educational benefits and

1 possibly -- I do not know the California structure, so I am
2 not an expert on --

3 MR. MENDEZ: That is fine. But let us just explore
4 the philosophical thing without being burdened by what
5 actually occurred.

6 MR. HOUSEMAN: Right.

7 MR. MENDEZ: Are you saying that a cut-back in
8 income on property taxes directly affects somebody, because
9 it reduces the amount spent on AFDC or SSI?

10 MR. HOUSEMAN: It could, it might.

11 MR. MENDEZ: You are saying that that is a direct
12 effect?

13 MR. HOUSEMAN: Yes, I think so.

14 MR. VALOIS: Thank you. We have run out of time,
15 unless there is something absolutely compelling.

16 MR. SNEGAL: Let me ask Cathy. The ABA has a
17 concern about E(4) and the H section (2) and (2). The
18 preamble to the H section, there is nothing in the section
19 intended to prohibit an employee from doing things. And you
20 have a concern about those, or did I misunderstand you?

21 MS. FISHER: As I said, the reason that I chose
22 to speak about this is that ABA's communication of it in
23 the regulations seems complicated to me. As I understand
24 it, what happens when you read Section E(4) together with
25 Section G(2) is that you still cannot do --

1 MR. SNEGAL: H(2).

2 MS. FISHER: Excuse me, H(2). What you still
3 cannot do is to communicate factual information to eligible
4 clients except with respect to the specific matter on which
5 you are representing them.

6 MR. SNEGAL: I see. So what the ABA would like
7 would be for H(2) or H(3) to be broader and not as narrow.

8 MS. FISHER: That is exactly right. E(4) prohibits
9 dissemination of materials except to certain individuals.
10 H(2) says that you can inform a client, and specifically
11 makes that subject to Subsection E. And I think that one
12 could deal with this by either taking out within the
13 requirements of Subsection E language, or you could do it
14 by broadening Subsection 4 of paragraph E to include eligible
15 clients generally instead of just eligible clients who sought
16 representation in a matter related to the legislation. You
17 could do it either way, I would think.

18 MR. SNEGAL: Okay, thank you.

19 MR. VALOIS: Thank you.

20 What is this fourth item on the agenda?

21 MR. BOVARD: That is boilerplate. It is put there
22 in case we have to handle something else. There are no
23 other regulations that we need to handle.

24 MR. VALOIS: The Chair will entertain a motion to
25 adjourn this Committee meeting.

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MR. SNEGAL: So moved.

MR. VALOIS: Is there a second?

MS. MILLER: Second.

MR. VALOIS: All those in favor.

(A chorus of ayes.)

MR. VALOIS: The Committee is adjourned.

(Whereupon, at 10:34 a.m., the Committee was

adjourned.)

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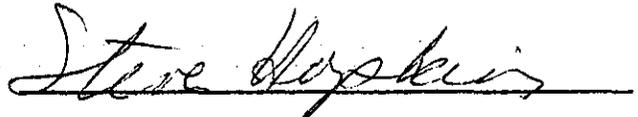
CASE TITLE: Committee on Operations and Regualtions

HEARING DATE: November 8, 1985

LOCATION: Anaheim, California

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

Date: November 18, 1985



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