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**LEGAL SERVICES CORPORATION
OPERATIONS AND REGULATIONS COMMITTEE MEETING**

April 13, 1989

Commencing at 9:01 a.m.

The Ramada Hotel
901 North Fairfax Street
Cameron East, 2nd Floor
Alexandria, Virginia 22314

PRESENT:

Robert Valois, Chairman
Michael B. Wallace, Ex officio
Claude Swafford
J. Blakely Hall
Lorraine Miller
Hortencia Benavidez
Thomas Smegal
Pepe J. Mendez

STAFF PRESENT:

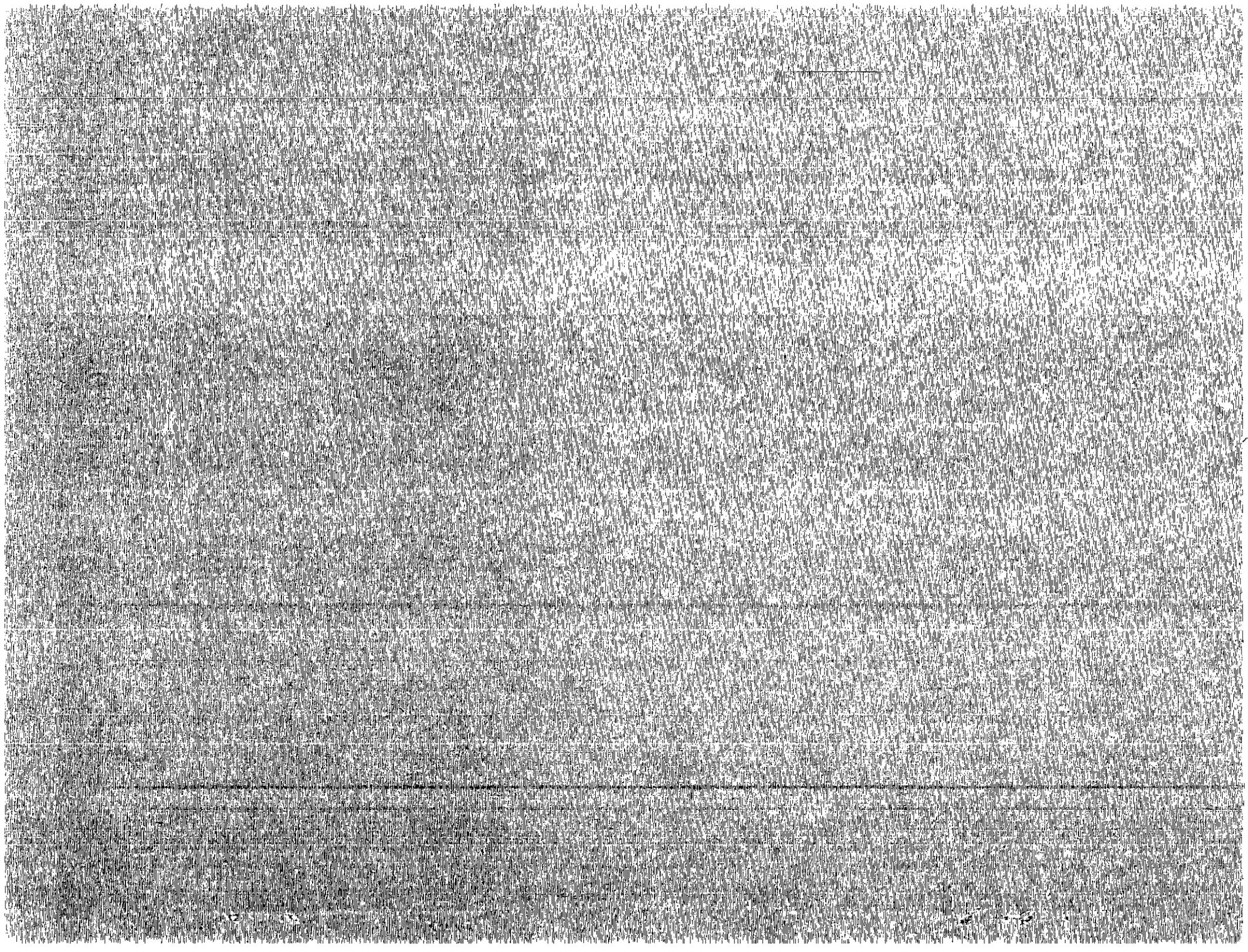
Terrance J. Wear, President
Timothy Shea, Vice President & General Counsel
Suzanne Glasow, Esquire

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MOTIONS BY:

Ms. Miller - 3

Ms. Swafford - 5

Chairman Valois - 42

Mr. Wallace - 124, 125, 125

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1 OPERATIONS AND REGULATIONS COMMITTEE MEETING

2 CHAIRMAN VALOIS: Good morning. This is the meeting
3 of the Legal Service Corporations Operations and Regulations
4 Committee, April 13, 1989, Alexandria, Virginia. Members of the
5 committee who are here are the Chairman, Ms. Swafford, Lorraine
6 Miller. We have a quorum. In addition, board members Pepe
7 Mendez, Hortencia Benavidez are here, as well as President Terry
8 Wear.

9 The first item on the agenda is approval of the
10 agenda. Do I hear a motion to approve the agenda?

11 MOTION

12 MS. MILLER: I make that move.

13 CHAIRMAN VALOIS: Thank you, Ms. Miller. With no
14 objection, the agenda stands without opposition. We'll approve
15 it. The agenda is approved.

16 The second item is approval of the minutes of January
17 18, 1988 and March 2, 1989. I'm going to call on Maureen Bozell
18 to explain the January 18, 1988 minutes. I believe Chairman
19 Wallace asked Maureen to make an investigation into the
20 transcript. I have a letter from Maureen dated February 1, 1989
21 relating to it. Maureen?

22 MS. BOZELL: Mr. Chairman, Chairman Wallace asked me

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1 to check to make sure that the provision "The Any Provision of
2 1607" was recorded in the committee minutes of last year. That
3 vote did not take place in committee.

4 It took place in a board meeting. The committee acted
5 as a committee of the whole or the board acted as a committee of
6 the whole. So there is no reason for that vote to be recorded
7 in those minutes, the January 18th minutes.

8 CHAIRMAN VALOIS: Is what you are saying that the
9 January 18, 1988 minutes were approved by the board?

10 MS. BOZELL: No.

11 CHAIRMAN VALOIS: That's not what you're saying?

12 MS. BOZELL: No, what I'm saying is that the committee
13 in Raleigh asked me -- approved the minutes as they were with
14 the condition that I check the "The Any Provision."

15 CHAIRMAN VALOIS: I see.

16 MS. BOZELL: I've checked the provision. It's
17 recorded in the board minutes. Those have been approved. So
18 the Operations and Regulations minutes are ready for approval.

19 CHAIRMAN VALOIS: Members of this committee, are there
20 any other questions about January 18, 1988 minutes?

21 (No response.)

22 CHAIRMAN VALOIS: If not, since they've been approved

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1 Section 1610 and 1611 at the last Operations and Regulations
2 Committee meeting.

3 At the time, there were several concerns about the
4 scope and the effect of the revisions as proposed. Since then,
5 I and my staff have looked at 1610/1611. We have had several
6 conversations with some of the commentators and principally Alan
7 Houseman about their concerns.

8 We have prepared a memorandum which we've made
9 available to your committee members, in fact, I believe, the
10 entire board relating to our proposed revisions of the rule as
11 you now have it. That's in a memorandum dated April 11, 1989.

12 I furnished that to -- copies of that are available, I
13 believe, in this room now for the public. Alan Houseman has had
14 a copy of them for a day or two as well.

15 I'd like to speak briefly to the revisions that we
16 have here and, as well, address some of the information that's
17 been furnished to the committee by the Office of Policy
18 Development that relates to all this.

19 First, again by way of background, Sections -- the
20 provisions to Sections 1610 and 1611 fundamentally have to do
21 with the use of private funds. The revisions to the -- my
22 memorandum dated April 11th sets out three recommended

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1 amendments to the proposed revision of Part 1610 and 1611.

2 They deal with three concerns: private funds that are
3 used to match public funds, first of all; secondly, mediation;
4 thirdly, what is largely a technical matter, use of LSC national
5 eligibility standards.

6 Section 1610, by its terms, identifies the provisions
7 of the LSC act and regulations that, by operation of 1010(c),
8 cover private funds. We had several proposed revisions that
9 would enlarge the scope of matters that are covered by 1010(c).

10 The three revisions that we offer here I think address
11 what I think are the principal concerns that our commentors have
12 raised. First of all, there is matching funds. There was
13 considerable comment that private funds were used to match
14 grants made available under Title 3(b) of the Older American's
15 Act.

16 To the extent that the regulation would -- well, let
17 me -- the Older American's Act prohibits the use of a means test
18 in connection with that program. To the extent then that our
19 regulations might threaten the ability to use the private funds
20 in such a way that there's no means test, it might -- the rule,
21 as originally proposed, that might threaten the ability of
22 programs, of our programs to compete for Older American Act

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1 funds.

2 I might add, the Older American Act, in many respects,
3 at least with respect to Legal Services, tracks the LSC act and
4 it specifically contemplates that LSC recipients be at least
5 eligible to compete for their funds.

6 We have drafted a proposed revisions that would permit
7 LSC recipients to use private funds as matches to obtain Title
8 3(b) grants as well as develop mentally disabled grants. I will
9 tell you that that as far as I know the develop mentally
10 disabled grants are very, very modest in scope.

11 I will try to assess that in a moment when I talk
12 about the data. In fact, maybe this is the time to do that.
13 You have a memorandum dated April 11, 1989 from Rob Elgin, the
14 Office of Policy Development.

15 The purpose of this memorandum is to give the
16 committee and the board a feeling for the sums that are
17 involved, both private and public, with respect to -- that they
18 may be affected by the proposed regulation.

19 The 1987-88 LSC fact book indicates that LSC funded
20 programs would receive 11.2 million dollars in funds under Title
21 3 of the Older American's Act in 1988. That, I believe, was a
22 projection.

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1 The first table that appears with the Elgin memorandum
2 indicates the programs reported using 1.8 million dollars of LSC
3 funds to obtain 6.5 million dollars in rough terms of Title 3
4 money.

5 Then from that we would infer that about 1.7 million
6 dollars of Title 3 funds were obtained from the use of private
7 funds as matches. So that's the magnitude of sums that we're
8 dealing with.

9 Under my proposal, the proposed revisions, LSC
10 recipient programs could still pursue this Title 3(b) money by
11 seeking and obtaining private funds to match the Older
12 American's Act funds.

13 The second table, and I might add that Table 1
14 reflects the localities where the -- at least in 1988 -- funds
15 were originating. There are also some indications of purposes.
16 For the most part, they are for legal assistance purposes.

17 Table 2, I think, deserves perhaps a little bit more
18 attention. Table 2 is an attempt to reflect generally the
19 private funds that are obtained by LSC recipients. Again, that
20 may be effected by the scope of this rule.

21 That is principally in three respects: one, for legal
22 assistance activities for clients who are or may be ineligible;

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1 number two, for research or analysis of public policy issues
2 which would be affected by the provision of the proposed
3 amendment that would make private funds subject to the general
4 prohibition as to broaden general legal research; thirdly, what
5 is described here, what is described in our data as other, and
6 some of those other really would be special purpose types of
7 grants.

8 Maybe the best way to describe this is to go to the
9 very end of the Elgin memo to look at the forms from which this
10 data was gleamed from the refunding applications. The H forms
11 require the LSC recipients to identify non-LSC funds both by
12 source and the purpose of them.

13 It's these forms that were searched and aggregated to
14 come up with the data that we display. If you cast your eye
15 down to the bottom of that form, of course, at the outset of it,
16 the terms and the sums and various kinds of reporting
17 requirements are to be entered on the form.

18 At the bottom, though, there's a request to indicate
19 where LSC funds or resources used to procure the grant and where
20 LSC funds were used as matching funds to procure the grant.
21 It's the LSC matching responses that we used to identify LSC
22 funds that we used to match -- as a match to obtain Title 3(b)

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1 Older American's Act,

2 From the totals that we had, the programs received
3 under the Older American's Act, we were then able to back out
4 the private funds that we used to match Title 3(b) money. Also
5 as part of -- about two-thirds of the way down, there's a place
6 to indicate the purpose of the funds.

7 On the second page there, there are seven codes, P
8 codes, which require the applicant to indicate whether the funds
9 were for legal assistance, general support, training,
10 publications, legislative, administrative or grassroots
11 lobbying, research or analysis or other.

12 Now for purposes of this -- let me continue then. The
13 third page, again of the H forms, again titled -- this is Form
14 H(6)(b), Use of Non-LSC funds, under Activity, the first entry
15 in that matrix requests that if funds were obtained for the
16 provision of legal assistance to persons not income eligible
17 under LSC income or asset guidelines, that was to be indicated.

18 It was this form that was used to identify grants,
19 private grants, that were obtained by LSC recipients to provide
20 services to recipients, to clients who were otherwise
21 ineligible. Now, of course, under the current regs, that's
22 perfectly permissible to use private funds of ineligible

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1 clients. The proposed regulations would change that as to
2 private funds not as to public funds.

3 Then, maybe it's useful then to turn to Table 2 and
4 look at the -- I think it's most useful perhaps to look at the
5 very end of -- maybe at the beginning we have what this
6 reflects. These are -- what is indicated here are private funds
7 available for use in representation of ineligible clients, broad
8 general research and/or the other column.

9 So those three data points were gleaned from the
10 funding applications. That is, where private funds were
11 identified as available for ineligible clients that was
12 preserved and reflected in this exhibit, where private funds
13 were obtained for any purposes which would include broad general
14 research or actually what, under the P code, is styled as
15 research and/or analysis of public policy issues.

16 Finally the other purposes. Now, research, I will
17 tell you that I'm treating research and/or analysis of public
18 policy issues as basically a proxy for broad general research;
19 likewise, the other category as special purpose grants.

20 Now, you'll get some indication of how this is treated
21 if we look at the data. I don't want to take up too much time
22 with this. The whole purpose of this discussion, frankly, is to

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1 give the board a feel for the size of the sums that may be
2 affected by the proposed changes.

3 Recipient names and recipient numbers are identified.
4 Column A identifies the amounts. Column B -- again, I'm looking
5 at Table 2 of the Elgin memo -- is the source. Column C is the
6 purpose. That refers to the purpose code that was entered by
7 the applicant that filled out the funding application. Column D
8 indicates private funds for assistance ineligible clients.

9 Now if we look at the totals -- I happen to have my
10 copy of the exhibit that doesn't have the totals; bear with me.
11 Column D, the total reflects there that approximately 3.6
12 million dollars in private funds was available in 1988 for the
13 provision of legal assistance to ineligible clients.

14 That doesn't mean, I might add, that it is exclusively
15 ineligible clients but at least potentially ineligible clients,
16 as I read this. Column E indicates that 265,000 dollars in
17 private funds was made available to LSC recipients exclusively
18 for the purpose of what I would say is basically policy
19 research.

20 It is exclusively for that purpose. There were other
21 grants that were made available for multi-purpose, several
22 purposes including broad general research. I'll get to those in

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1 a moment. Column F reflects sums that were made available
2 exclusively for what is designated as the other purposes.

3 I might add, if you cast your eye down the sum of the
4 descriptions that appear in Column C, you can get a feel for
5 what those are even, for instance, on the last page, some of
6 this is recruiting and training.

7 If you look elsewhere it will be for library
8 materials. It may be for building fund purposes. For instance,
9 at the bottom of page 5, there is a P-7 that is for building
10 donation. Likewise, there are a number of -- in the middle of
11 page 5 for amnesty representation, which is perfectly
12 permissible.

13 Some of the P-7 indicators are for consumer education,
14 expert witnesses, royalties, things like that. Column G
15 identifies receipts by LSC programs of roughly 6.5 billion
16 dollars for multiple purposes that include broad general
17 research.

18 There again, the indication appears then that general
19 research or policy research may be permissible under the grant,
20 but it appears that presumably other activities are as well. I
21 would infer or suggest from this that to the extent that some of
22 the public policy research may be constrained, that presumably

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1 that the balance of the other activities that are not otherwise
2 affected by this rule -- to the extent there are other
3 activities, then the programs could still pursue these 6.5
4 million dollars in grants.

5 Column H, same thing for so-called other. Again, it
6 includes all the grants with multiple purposes that include the
7 other category. The Column I includes all the multi-purpose
8 grants that include 6 and 7. Actually, the prior two are done
9 in such a way that they are mutually exclusive.

10 That is 300,000 dollars roughly. In sum, then, the
11 portion of the amendments to 1610 that affect broad general
12 research, in all likelihood, clearly would, in my estimation,
13 would affect the 265,000 dollars that appears in Column E,
14 number one.

15 Number two, for what appears in -- as for private
16 funds that are obtained for legal assistance for ineligible
17 clients, which is also part of the proposed amendments to 1610
18 and 1611, approximately 3.6 million dollars are obtained by our
19 programs for that purpose.

20 There's no indication that that's -- and I'm not aware
21 that there's been any argument that those sums are exclusively
22 for those purposes. Hence, to the extent -- I would infer to

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1 the extent that those 3.5 million dollars are available for--
2 could be constrained in such a way they'd be made available
3 exclusively for eligible clients, then that would advance the
4 purposes and the policy that underlay the proposed change on
5 eligibility.

6 That is, that only eligible people who are income
7 eligible under the LSC national guidelines can be served. As
8 for the other --

9 MS. SWAFFORD: Is that the proposed change; that only
10 eligible people --

11 MR. SHEA: Correct. With respect to private funds.
12 Obviously, LSC -- it applies to LSC. The change would be that
13 with private funds, you can only serve LSC income eligible.
14 This data is simply an attempt to give you a feel for the size
15 of the environment, the irregularity.

16 I think that's all I have on this. I hope I didn't
17 belabor that too much. Let me then return to my summary of my
18 proposed recommendations.

19 With respect to matching funds, the changes to
20 matching funds then would preserve programs currentability to
21 use private funds to compete for Title 3(b) Older American Act
22 public money. Likewise, on the proposed change, it would permit

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1 them to compete or develop mentally disabled grants as well.
2 Those are very, very small in scope. I am sure they are less
3 than one million dollars.

4 The next change that we had was one relating to
5 mediation. It's on page 2 of my memorandum. We put in -- there
6 were some comments in connection with 1610 and 1611, one in
7 particular from, I believe, Iowa, a program in Iowa, that--
8 Nebraska perhaps that --

9 MR. MENDEZ: I'll say it's west of the Mississippi.

10 MR. SHEA: It was from a program director of Sister
11 O'Rourke (phonetic). I don't remember what program it is,
12 frankly. She runs a training program wherein mediators are
13 trained to provide mediation for farmers whose property is
14 threatened by bankruptcy or they otherwise have substantial
15 debtor problems.

16 The tenor of her comment was many of these farmers may
17 be: number one, income eligible; number two, they might be
18 people who could otherwise be served by the program but they
19 don't have enough resources to do it; three, there are a number
20 of public programs and federal and local programs that are
21 attempting to sponsor such mediation.

22 As you know, of course, the corporation has been for

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1 some time advancing mediation as an effective, efficient and
2 perhaps not as a contentious way of dealing with the problems of
3 eligible clients. I would urge that this mediation exemption be
4 included here to pursue that purpose.

5 It's not a -- the exemption merely is that the clients
6 are not necessarily indigent. Of course, a mediator is not
7 necessarily in a position to check the income status of the
8 people for whom he's mediating, first of all.

9 There is a general provision, though, a general
10 constraint on the exemption as we have drafted it that the
11 mediation must be consistent with the purposes of the LSC act
12 and regulations. So presumably, the people wouldn't be
13 mediating, I don't know, merger earners and acquisition but
14 matters that relate to the interests of the poor.

15 The third change is largely a technical change. Alan
16 Houseman pointed to me that there are a number of programs in
17 the south and west that use for their LSC funds an eligibility
18 standard that is below the national mandate.

19 Our mandate is 125 percent of the national poverty
20 guidelines. There are some programs -- I know there are some
21 Texas programs that use 100 percent and there are others in the
22 south and west that do that too.

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1 This change would permit them to keep, if they want, a
2 limit for eligibility for LSC funds below the 125 level but for
3 private funds use 125. I think that's -- our only interest is
4 preserving the national guideline.

5 If they want to have different standards for our funds
6 and private funds, I would urge that we don't have any -- that's
7 something that's permissible from our point of view.

8 I think, unless you have some other questions, that's
9 all I have by way of my presentation.

10 CHAIRMAN VALOIS: One other item, Mr. Houseman has
11 given to me some suggested language on retroactivity. I assume
12 you got it too and, like me, received it this morning. What is
13 it?

14 MR. SHEA: In principal, I certainly don't oppose a
15 retroactivity proposal. It does -- as I understand this, it
16 would permit funds received to be either in the hands of the
17 program before some date certain -- and there may be an issue as
18 to what the date certain is -- as long as they receive prior to
19 that date certain, to be spent in accordance with the --

20 CHAIRMAN VALOIS: Maybe we better hear from Mr.
21 Houseman as to what his intent is rather than --

22 MR. SHEA: All right. Anyway, I certainly don't

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1 oppose an appropriate rule.

2 CHAIRMAN VALOIS: I think we need to deal with it one
3 way or the other.

4 MR. SHEA: Any other questions?

5 CHAIRMAN VALOIS: Let me look at this.

6 (Pause)

7 MR. MENDEZ: Tim, attachments to your memo, that's the
8 most current draft. Is that a fair statement?

9 CHAIRMAN VALOIS: Yes, and I might add the text that
10 appears in capital letters -- the text that is underlined is, or
11 has lines through it, are the changes that were published in the
12 federal register.

13 The material that appears in all capitals are the
14 changes that I'm recommending that the committee adopt in my
15 memo.

16 CHAIRMAN VALOIS: If you're prepared to do it, why
17 don't we go ahead and hear from you on 1611(2). Does any member
18 of the board have any questions about 1610 at this point?

19 (No response.)

20 CHAIRMAN VALOIS: I think it's been substantially
21 clarified in what started out as a fairly straightforward
22 proposal. I think it's fairly clear. Do you want to do 1611?

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1 MR. SHEA: Our changes to 1611 are -- actually, I've
2 already really treated that. The change to 1611 would eliminate
3 the provision in the rule as now written that permits recipients
4 to use private funds to represent ineligible clients. So it is
5 --

6 CHAIRMAN VALOIS: Page 5 simply parallels the 1610
7 changes since last time that you've just finished discussing?

8 MR. SHEA: Yes, that's right.

9 CHAIRMAN VALOIS: So it's simply parallel or
10 complemented?

11 MR. SHEA: That's right. That's exactly right. Well,
12 why don't we hear from Mr. Houseman. Mr. Houseman, if you will
13 address 1610 and 1611 and your retroactivity. Mr. Houseman has
14 presented two proposals to us this morning. One is on 1610.6,
15 Retroactivity. The second is a proposed further amendment or
16 modification of 1610.3 and 1611.3.

17 PRESENTATION BY ALAN HOUSEMAN

18 MR. HOUSEMAN: Yes, I will focus on those. Let me
19 initially just -- I want to talk about a couple of things we
20 didn't talk about last time. I wait to do that. The thrust of
21 the discussion so far has been on client eligibility.

22 The PAGNLADA position, which hasn't changed from our

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1 comments, just to be clear for the record, is we don't believe
2 the corporation should include either broad general legal or
3 policy research or representation of financially ineligible
4 clients or class actions for that matter in the prohibition in
5 the 1610.

6 I want to talk to you about the broad general legal or
7 policy research in some detail because we didn't address that
8 thoroughly last time. Most of these proposals don't address it.
9 Let me just start by saying, assuming you are going to adopt
10 some regulations that includes one or more of those provisions,
11 an assumption, I take it, that is probably valid, then if we do,
12 and I urge you not to, then I think we've got to deal with a
13 couple of problems.

14 The first is retroactivity. If this reg comes into
15 effect, many programs will have received private funds already
16 that will be affected by this. Their existing grant obligations
17 to private donors, to private foundations and others would be
18 detrimentally effected because they would not be able to spend
19 those private funds for the purposes for which they were given.

20

21 They may have hired staff. They may have incurred
22 obligations already based on those private funds. This

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1 provision would -- and we can debate the wording; I frankly just
2 drafted this early this morning.

3 God knows how thoughtful it is, but the theory was
4 that if you already had private funds -- now I included public
5 funds. I did it out of an abundance of caution because of the
6 presumption, but we are primarily talking about private funds
7 here.

8 If you had private funds that were provided to you,
9 you could use those private funds, the existing private funds to
10 engage in any of the activities that you would now restrict
11 under this provision, either a date certain or prior to the
12 effective date of the amendments.

13 I picked October 1st. Obviously you could pick a
14 different date.

15 CHAIRMAN VALOIS: You could have picked last October
16 1st, too, right, but you picked a future date?

17 MR. HOUSEMAN: Well, I couldn't have picked the last
18 date because that wouldn't have affected the retroactivity.
19 Programs are receiving private funds. They will be receiving
20 them up until some time whenever this is effective.

21 If you don't want October 1st, that's debatable. I
22 picked it only because it struck me this wouldn't be affective

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1 much before July or August anyway. This was just some date
2 certain better than an effective date which may drag on; who
3 knows?

4 MR. MENDEZ: Wouldn't it be just simpler to just say
5 that -- rather than to go through all this language, just to say
6 that this is effective with regard to this particular section on
7 XYZ date, rather than make your generic list?

8 CHAIRMAN VALOIS: What he's asking -- what I think
9 he's trying to get --

10 MR. MENDEZ: Just say 1610 retroactivity and 1610 is-
11 - just list the restrictions on 1610 funds to be effective on
12 some date certain?

13 MR. HOUSEMAN: That doesn't deal with the
14 retroactivity issue because programs already have grants. They
15 are getting money for private funds.

16 MR. MENDEZ: I understand that, but you're going
17 through and making a list here.

18 MR. HOUSEMAN: No, the list is the three things you're
19 adding. That's all. It's not the things that are already
20 added. You can reference them -- this is actually a simpler way
21 of referencing -- you can reference the statutory sections, I
22 don't care, that's just a drafting problem.

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1 What I'm saying here is, if you've gotten money
2 already and you're using that money, private money for broad
3 general legal --

4 MR. MENDEZ: I understand.

5 MR. HOUSEMAN: We can worry about the drafting. The
6 concept is what I'm trying -- that doesn't do it though.

7 MR. MENDEZ: I think if you're going to do that, you
8 have to divide two things. One, you have to divide the
9 expenditure of funds and two, the application of new funds,
10 application for and use of new funds.

11 MR. HOUSEMAN: No. See, the reg would go into effect.
12 At that point, it would effect all future funds, no question
13 about that. This would say if you already had funds in your
14 coffers or in existing agreements, that it wouldn't affect those
15 until -- you couldn't get new funds.

16 MR. MENDEZ: I understand that. It seems to me that--
17 - I have a concern that everybody is going to be voting up
18 between now and whatever date all these things and be hustling
19 at all of these. That's the concern that I would have.

20 CHAIRMAN VALOIS: Mr. Houseman has the same concern
21 which is why he put October 1, 1989.

22 MR. HOUSEMAN:: Well, you could pick a different date

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1 if you want to answer that concern. First of all, I don't think
2 that's the way private funding works. You work long and hard
3 from foundations from other funding sources. They don't change
4 their scheduling just because you have a problem.

5 MR. MENDEZ: That's not my experience, though.

6 CHAIRMAN VALOIS: We could also make it effective the
7 date of the first publication in the federal register, too,
8 couldn't we?

9 MR. HOUSEMAN:: Yes. We could fiddle with that. I
10 was trying to draft something that was either a firm date or
11 something. Otherwise, I think we do have a retroactivity
12 problem. I don't think it's minor.

13 MR. MENDEZ: I don't think that it's the intent to
14 mess with any of the funds that have already been given. I
15 think it's --

16 CHAIRMAN VALOIS: What he's talking about is
17 unexpended funds which they presently have in --

18 MR. MENDEZ: I understand.

19 CHAIRMAN VALOIS: Do they apply or don't they apply?
20 That's the issue.

21 MR. HOUSEMAN:: We can draft something that meets your
22 concerns.

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1 MR. WEAR: Mr. Chairman, if I may. Mr. Houseman, let
2 me just ask a couple of questions. What sort of private funds
3 or grants are we talking about here? Do you have any specific
4 examples that you can give us that would be impacted?

5 MR. HOUSEMAN:: Sure. A number of the grants that are
6 cited in --

7 CHAIRMAN VALOIS: In the table, Table 2 of the so-
8 called Elgin memo.

9 MR. HOUSEMAN: A lot of the grants in Table 2, I
10 presume, would be affected by this. I don't have the specifics
11 on these grants, and neither do you for that matter. So we
12 don't know precisely how much of these grants would be affected.

13 We don't know, for example -- I'm going to make some
14 points about this -- of this research grant whether this money
15 was really for broad general legal or policy research or not.
16 Some of it may be; some of it may not be.

17 I think we're talking about -- and these grants--
18 many of these grants would be affected plus other programs we
19 receive. For example, you get grants from foundations. You
20 usually get them for a year, sometimes for two years.

21 Many of the large foundations -- and there are some
22 that are referenced here -- give you grant for two years. You

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1 get that money. It may come periodically. It may come all at
2 once, or it may come at some reporting system and it may not; it
3 depends.

4 Each foundation is different. I've got a number of
5 foundations in my program. Some give me a check at the outset.
6 Some give me a check a month. Some give me a check quarterly.
7 Some give me a check after the fact. It all depends.

8 MR. WEAR: It's your understanding, based on your
9 experience, that none of these private grants would run longer
10 than a two year period? We don't have any open-ended grants
11 here that would be covered by us?

12 MR. HOUSEMAN: I've never heard of any. I wouldn't
13 say there isn't one, but I don't think so.

14 MR. WEAR: Are any of these grants used to fund what
15 amounts to a revolving fund for some purpose?

16 MR. HOUSEMAN: I couldn't answer that for certain. I
17 doubt it, but we could -- I doubt it. I don't know of any, but
18 that doesn't mean there isn't any.

19 MR. MENDEZ: That's not usually the way foundations
20 work anyway. They will either give you a restricted or an
21 unrestricted grant.

22 MR. WEAR: Yes, well we may -- I guess the point I'm

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1 getting at is we may want to get at some sort of a date that
2 would terminate this exception. In other words, if there's
3 money in the pipeline now, that that will be expended within
4 some particular time frame so that we know when this
5 retroactivity portion ends.

6 MR. HOUSEMAN: The problem with that is that you've
7 got grants that have existing obligations that may run past
8 what you say is the time they've got to reorder their things
9 which could be a big problem.

10 I don't know if it's a big problem, but I know that it
11 could be a big problem. If you've undertaken obligations, hired
12 staff in doing certain things, and your told you can't do it,
13 what I'm trying to say is if you've taken on those obligations,
14 you ought to be able to finish those obligations. You shouldn't
15 be able to take on new obligations.

16 CHAIRMAN VALOIS: Well, I guess what both Mr. Mendez
17 and Mr. Wear are trying to figure out is how long a period are
18 we talking about? What period of time do these obligations run?
19 You don't know the answer --

20 MR. HOUSEMAN: Well, I've heard of none that go more
21 than two years. Most go a year. Some go for 18 months, I'm
22 sure, but I think we're talking -- most of the grant cycles are

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1 in a yearly basis.

2 CHAIRMAN VALOIS: I think that we will deal with this
3 -- let's move on to your proposed one, 1611.

4 MR. HOUSEMAN: Okay. What I have proposed here is
5 just -- the heart of it is on page 2, Authorized Exceptions.
6 I've chosen to deal with it because I think it's better drafting
7 to deal with in the context of 1611, but you could deal with
8 this in the context of 1610 too. It just means doing it twice.

9 What 1611.4(b), as I propose, would do is permit
10 programs to use private funds to match any federal, state or
11 local agency which has a matching requirement. The proposal
12 that you proposed only deals with Title 3(b) and development
13 disabilities which are probably the primary match requirements.

14 There are other federal programs that may have a
15 match. There are certainly state and local governmental funds
16 that may have a match that aren't caught in any of the way we
17 report today other than a broad category.

18 What I'm trying to do is draft a generic proposal that
19 essentially goes slightly beyond the staff proposal. So if
20 there is a match requirement from public funds, you could use
21 private funds to meet it. That's what (b) does.

22 Now the alternative proposal under (b) would extend

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1 that slightly further so that if you had a public funded
2 activity, you could use private funds to supplement that
3 activity whether there was a match or not.

4 That addresses a situation that exists in several
5 states where they get public funds, Title 20 for one example.
6 Programs get Title 20 funds for some of those funds. Let's use
7 Pennsylvania as an illustration.

8 Pennsylvania gives public funds. There is no means
9 test for domestic violence representation. A lot of the
10 programs use private funds to supplement the public funds for
11 their domestic violence representation where there can be no
12 means test.

13 CHAIRMAN VALOIS: The reason we've modified the
14 proposal at all, as I understand it from your discussions with
15 Mr. Shea and his with me and so forth is that under the Older
16 American's Act there is a means test. It's been modified to
17 accommodate that plus suggestions from senators and others.
18 You're getting away from that.

19 MR. HOUSEMAN: No, no, what I'm saying is --

20 CHAIRMAN VALOIS: Yes, you are. There is no means
21 test or no program specific in your proposal.

22 MR. HOUSEMAN: No, what I'm saying is the Older

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1 American's Act and development disabilities are not the only
2 public funding sources that prohibit a means test. There are a
3 variety of state and local funding sources and possibly at
4 times some other federal funding sources that prohibit a means
5 test.

6 CHAIRMAN VALOIS: But even your amended proposed
7 1611(b) does not incorporate the means test.

8 MR. HOUSEMAN: We can incorporate that if that's what
9 you want to do. All this says if you get public funds and
10 there's required match --

11 CHAIRMAN VALOIS: It's not what I want to do. It's
12 your proposal and what you're telling me is inconsistent with
13 what your proposal is.

14 MR. HOUSEMAN: I think it is.

15 CHAIRMAN VALOIS: It is; you're right. Go ahead.

16 MR. HOUSEMAN: What we started out with was the
17 proposition that if we're going to use private funds to match
18 public funds where there's a match requirement and there's no--
19 if there's a means test requirement it doesn't matter.

20 That is, if there's already a means test, LC eligible,
21 you can do it anyway. So what we're talking about is public
22 funds where there's prohibition on a means test and there's a

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1 match requirement, allowing private funds to be used for that
2 match.

3 If you want to put matching funds for no means tested
4 program, that's fine with me. I don't have any objection to
5 that. My point is -- I'm not trying to extend it any further
6 than that on the first --

7 MS. SWAFFORD: Question.

8 MR. HOUSEMAN: Yes.

9 MS. SWAFFORD: You used cases of violence, I guess is
10 one example of ineligible funds. Do you right off hand have
11 other examples of the types of ineligible funds?

12 MR. HOUSEMAN: Yes. For example, nursing home
13 residents, many programs provide representation to nursing home
14 residents. Some may be eligible. Some may be not.

15 MS. SWAFFORD: You wouldn't have a means test?

16 MR. HOUSEMAN: That is, when you get Older American's
17 Act money, you get development disability money in some
18 circumstances to represent them. You get other federal and
19 state money to represent them. There's no means test -- there's
20 a prohibitional means test. That's another example.

21 I gave a number of examples last time. Outside--
22 there are examples of -- there may be -- some programs may be

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1 involved. There are a couple of comments that mention this in a
2 teen pregnancy program with some federal funds where there's no
3 means test utilized. There's some kind of a state match
4 requirement.

5 These are taken from the comments. I think there was
6 a comment -- and I don't remember the specific comment -- that
7 talked about representation of victims of child abuse where,
8 again, the public funds were used.

9 There was a private funds match and no means test was
10 used; those kinds of examples that come to mind from the
11 comments and from what I've been able to dig up. We don't have
12 a full set of data on that.

13 That's the kinds of things I'm talking about that go
14 beyond this in terms of this particular proposal.

15 MS. SWAFFORD: You answered my question.

16 CHAIRMAN VALOIS: Tim, do you want to respond to any
17 of this?

18 MR. SHEA: Only one -- I guess one minor point. As to
19 this matter of retroactivity, I don't oppose something
20 appropriate that might preserve the expectations of programs
21 with respect to money they've got.

22 I'm not actually so sure that if we were to -- I think

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1 we probably have the authority -- I don't regard something that
2 is purely prospective as being retroactive even though it
3 relates to funds that they've had in their accounts for some
4 time.

5 That's not retroactive. So I'm making, I guess, what
6 is really a technical point. I'm not resisting his proposition,
7 but I think we have authority to do that, in part because it
8 really isn't retroactive.

9 I don't oppose a proposal that an appropriate
10 provision be made to preserve programs expectations for funds
11 they already have.

12 MR. WEAR: Mr. Chairman, in effect, I think what Mr.
13 Houseman is proposing is some sort of a transition rule, not
14 really a retroactive issue.

15 MR. HOUSEMAN: That's correct.

16 MR. WEAR: It's the same sort of thing that you deal
17 with in the tax law when you make a change. Businesses plan and
18 then the tax laws change and then some people come in and
19 complain about it. Sometimes they get a transition rule and
20 sometimes they don't. That's really what -- it's the same kind
21 of thing we're talking about here, I think.

22 MR. HOUSEMAN: I don't want to get into a technical

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1 legal argument unless I have to.

2 MR. WEAR: No, and I didn't intend to try to get into
3 one either.

4 MR. HOUSEMAN: Fine, call it transition. That's fine
5 with me.

6 CHAIRMAN VALOIS: The other issue on 1611, we have
7 taken care of the largest problem that I heard about anyhow.
8 Now Mr. Houseman is proposing that we have generic language that
9 deals with unidentified problems.

10 The two that were unidentified were the major concerns
11 that I heard about, the Older Americans and disability support.

12 MR. SHEA: Is there a question pending?

13 CHAIRMAN VALOIS: Well, I mean we were trying to
14 address what Mr. Houseman was raising in 1611.

15 MR. SHEA: Fine. Keep in mind, I guess the two
16 programs that were identified as prohibiting having specific
17 prohibitions on a means test were the two that we addressed in
18 our proposal.

19 Frankly, I don't recall comments -- on a state level,
20 I'm not aware that there are -- or for that matter, I can't
21 pretend to have researched it in every respect -- that there are
22 state programs that otherwise prevent means tests one way or

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1 another.

2 I mean, I could pursue that overnight if that would be
3 helpful.

4 CHAIRMAN VALOIS: There are two ways of doing it. One
5 is to draft some language which gives the president some
6 discretion. The other way is to stick with what we've got until
7 such time we identify whether we really do have some other
8 problem and then come back and revisit these regulations with a
9 further amendment at some point. I, frankly, would prefer the
10 later.

11 MR. SHEA: Well, I guess that's for the board to
12 decide. I don't know -- I mean, unless we had some sense that
13 there were some other such programs out there in some specific
14 way, I think it would be --

15 CHAIRMAN VALOIS: I don't know what we're dealing
16 with.

17 MR. SHEA: That's right.

18 CHAIRMAN VALOIS: Mr. Houseman doesn't and Mr. Wear
19 doesn't. We have addressed the major concerns with the present
20 -- your present language.

21 MR. HOUSEMAN: There were some comments in the record
22 -- and I will try to find them -- that made reference to using

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1 private funds to match where there was not a means test and the
2 context outside of development disability and the Older
3 American's Act.

4 The one that I remember the most was domestic violence
5 and the child abuse example that I gave where there's public
6 funds involved.

7 CHAIRMAN VALOIS: It would be helpful if you could
8 locate this.

9 MR. HOUSEMAN: I think in both those cases -- the
10 point is that we agree on the principal. All I'm trying to
11 make sure is we don't exclude some program where there is that
12 kind of requirement, that we just haven't failed to laundry
13 list.

14 MR. MENDEZ: I think you're right.

15 MR. HOUSEMAN: That's all I'm trying to get.

16 MR. MENDEZ: Alan, I'm very receptive to that. Would
17 you please find a specific comment to talk about that?

18 CHAIRMAN VALOIS: The other option, just procedurally,
19 is we can deal with it at the board level if he can find it
20 after this committee.

21 If there's nothing further from Mr. Houseman and Mr.
22 Shea at this point, I want to invite public comment.

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1 MR. HOUSEMAN: I've got a couple more things to say.

2 CHAIRMAN VALOIS: You do, all right. Go ahead.

3 MR. HOUSEMAN: I want to address -- there's one other
4 proposal that I made that's in front of you.

5 CHAIRMAN VALOIS: 1611(c)?

6 MR. HOUSEMAN: Yes. Now what this would do is beyond
7 the matching issue, quite clearly -- what it would do is allow
8 private funds to be used to represent financially ineligible
9 clients in particular groups.

10 I referenced, for the sake of referencing, 1007(h)
11 groups and the 1007(a)(2)(c) of the elderly and disabled. Dan
12 laundry listed a few others; homeless, victims of domestic
13 violence, family farmers threatened with the loss of their
14 farms, and other groups as designated by the corporation.

15 The purpose of this would be to prevent representation
16 of particular client groups where often programs do not today
17 use a means test. There is political opposition to the use of a
18 means test or a means test presents problems.

19 For example, representing victims of domestic
20 violence. Many of them may not technically meet the LSC
21 eligibility standards. They come into a domestic violence
22 shelter. They need legal assistance immediately.

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1 Programs use private funds to buy that
2 representation. You can't easily impose a means test on them.
3 This would limit the ability of programs to do that. Similarly,
4 homeless people may have access to other resources that would
5 take them outside of the assets or take them outside of the LSC
6 eligibility standards but, in fact, are poor.

7 A number of programs have received private grants to
8 represent family farmers threatened with loss of their farms,
9 foreclosures, et cetera, bankruptcy. There are programs where
10 significant private funding has been provided for that.

11 They may, because of the assets test in our
12 eligibility standards, not technically be eligible for legal
13 assistance but they don't have access to resources they can draw
14 upon unless they sell the farm which is what the whole
15 foreclosure bankruptcy issue is all about in the first place.

16 CHAIRMAN VALOIS: With this proposal, you come
17 virtually full circle from where we were to begin with.

18 MR. HOUSEMAN: Well, yes and no. This only opens it
19 up to designated groups that are recognized by congress in the
20 statute, 1007(h) or 1007(a)(2)(c) which are the elderly and
21 disabled. These categories that I've listed here, I presume,
22 that representation of financial and ineligible clients include

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1 many more than these groups. In fact, I know it does.

2 It would still be prohibiting the use of private
3 funds for representation of many financial ineligible clients.
4 You would be limiting it only to a few financial ineligible
5 clients where we know there's particular problems, which is why
6 either the congress has recognized a particular access problem
7 in 1007(h) or 1007(a)(2)(c) or where we know today there's
8 particular difficulties of these client groups.

9 That's what this is about. I can't give you an
10 estimate of what we're talking about here. I don't know of the
11 3.6 million to which the data suggests is out there, how much of
12 this would represent those groups.

13 My guess is it wouldn't be that much. I don't know
14 that for sure. A guess would probably be one million of that at
15 most.

16 CHAIRMAN VALOIS: Are there any other members of the
17 public here to speak to 1610 or 1611?

18 (No response.)

19 CHAIRMAN VALOIS: If not, I'm going to propose that we
20 take a vote on 1610 and 1611 and get them up before the board
21 and frankly deal with the issue of C which is Mr. Houseman's
22 issue and the retroactivity at that level. I think Mr. Houseman

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1 and Mr. Wear are correct.

2 We agree in principal whether there's a transitional
3 rule or 1610 or it's retroactivity, I don't know. I hope
4 between now and the time the board deals with this, I'll be
5 prepared to support some sort of language on it.

6 MOTION

7 I would move 1610 and 1611 to be reported to the board
8 in the form that they appear in Mr. Shea's memo of April 11.

9 MS. SWAFFORD: I'll second that motion.

10 CHAIRMAN VALOIS: Those in favor of reporting 1610 and
11 1611 to the board in this form, signify by saying "aye."

12 (A chorus of ayes.)

13 CHAIRMAN VALOIS: Those opposed?

14 (Ms. Miller.)

15 CHAIRMAN VALOIS: You are opposing, okay. The motion
16 to report these to the board in this form carries.

17 1610, Mr. Houseman, if you make yourself available to
18 Mr. Shea, I would like to work out something on that on the
19 transition.

20 MR. WEAR: Mr. Chairman, if I might suggest, we could
21 go ahead with whatever other comments there are on this reg. We
22 will have some time between now and tomorrow morning to work

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1 with Mr. Houseman on this transition.

2 CHAIRMAN VALOIS: We're done with 1610 and 1611. We
3 can go on with --

4 MR. WEAR: I beg your pardon. You're exactly right.

5 CHAIRMAN VALOIS: The next item on our agenda is on
6 redistricting.

7 MS. SWAFFORD: Before you get started on this, Mr.
8 Chairman, could I make a comment? Mr. Mendez is not a member of
9 this committee; is that right?

10 CHAIRMAN VALOIS: That's correct.

11 MS. SWAFFORD: I wonder as vice chairman -- under my
12 powers as vice chairman -- could I appoint him as a member of
13 this committee just for today for purposes of a quorum at this
14 meeting?

15 MR. MENDEZ: Okay, that's fine.

16 MS. SWAFFORD: Thank you.

17 CHAIRMAN VALOIS: Ms. Swafford has to leave for a
18 short period of time. We are now on the fifth item on the
19 agenda, 45 C.F.R. Part 1632, Redistricting, which has been
20 published in the federal register.

21 We have received comments. Comments have been
22 distributed to the board. Are there any members of the public

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1 who wish to address 1632, Redistricting, and get some idea of
2 what kind of time we need? Alan? Anybody else? Okay, Mr.
3 Shea?

4 MR. SHEA: Thank you, Mr. Chairman. On Tuesday, March
5 14th, we published the new proposed rule that was identified as
6 45 C.F.R. 1632, titled Redistricting. The tenor of this rule is
7 that LSC recipient programs would be prohibited from undertaking
8 any redistricting activities, whether they be lobbying or
9 litigations or other consultations for that matter, relating to
10 redistricting.

11 The comment period, I might add, was, of course, for
12 30 days. I think it ends today. We have available sets of
13 comments here. So far, we've received -- well, my memo from
14 last evening indicates 25.

15 There were some that I xeroxed this morning that I
16 got late last night. So, it's probably around 28 or maybe close
17 to 30 by this point. Let me explain very briefly by way of
18 background the basis for the rule.

19 Under Section 1007(a)(2)(c) of the LSC act, the
20 corporation has authority to establish goals for the provision
21 of services for the use of the resources of our LSC recipients.
22 The rule, 1632, as proposed is based on that authority.

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1 The tenor of the proposal is that redistricting for
2 various kinds of reasons, which I'll address very shortly,
3 constitutes such an inefficient and marginal use of program
4 resources that it shouldn't be undertaken.

5 It is so distant from provision of basic day-to-day
6 legal services that no program resources should be used for that
7 undertaking.

8 MR. MENDEZ: Tim, before you go any further, have any
9 of the comments caused you to change any of the language that
10 was published or proposed?

11 MR. SHEA: They haven't. I will tell you in part,
12 first of all, we're so -- the comment period is just closing
13 now. To be perfectly honest, we haven't had the comments for a
14 lot of time.

15 I might add, though, that the rule in a sense is a
16 pretty simple one. There were a number of the comments -- and
17 perhaps I'm getting ahead of it a little bit -- most of the
18 comments did not argue whether the rules

19 MR. MENDEZ: Comments went to philosophy, I think, is
20 that a fair statement?

21 MR. SHEA: That's right. The tenor of most of the
22 rules was basically that they thought it was bad policy and a

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1 bad idea. They didn't argue -- there was a fair amount of
2 recognition, though, that certain redistricting activities may
3 be political.

4 For instance, if you read the ABA comments, the ABA
5 comments say at the outset well, redistricting of votes of
6 certain -- and this is my gloss -- clear partisanship. I think
7 there is some suggestion that there may be something to that.

8 They suggest that the rule goes to far but I don't
9 have any --

10 MR. MENDEZ: This is not one where you can say half
11 the country is going to be subject and the other half not.

12 MR. SHEA: I was just going to say they don't offer
13 much by way of specifics as to how it goes too far. So I will
14 tell you then, there haven't been an awful lot of comments
15 suggesting refinements.

16 Perhaps the only refinement is that there was a
17 certain amount of argument that there are localities where there
18 are very local issues about provision of municipal services and
19 things like that that suggest that that's very close to home.

20 Maybe larger redistricting issues would more likely be
21 partisan but on the most elemental level of municipal
22 governments, things are different. So if you're looking for

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1 gradations and all this, first of all, the rule is a very simple
2 one and there's not an awful lot of opportunity, I think, for
3 gradations such as it's written.

4 The only one that I perceived was the notion that
5 maybe some local districts or political units where the
6 situation may be somewhat different. I suppose that's the only,
7 I'd say, refinement that I perceive out of the comments.

8 Does that help?

9 MR. MENDEZ: Yes, that's what I was wondering about.

10 MR. SHEA: Basically, the comments oppose a provision.
11 They don't --

12 MR. MENDEZ: Pardon me?

13 MR. SHEA: Basically, the comments oppose the
14 proposal. I think there was one comment that approved of it.

15 MR. MENDEZ: Mr. Conte?

16 MR. SHEA: Yes, from Winthrop, Massachusetts. Let's
17 see, I got ahead of myself. Anyway, the authority for the rule
18 then is -- the corporation's authority to provide goals for
19 recipient programs.

20 Likewise, the general proposition, of course, is that
21 the corporation is responsible for effective and efficient
22 delivery of legal services. As sent out in my notice, there are

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1 several indicia that are relied upon for the recommendation.

2 First of all, redistricting by definition affects
3 entire communities. Except in what may be the very rare cases
4 where a community consists overwhelmingly of what are really
5 eligible poor, redistricting cases then ordinarily would affect
6 both poor and non-poor.

7 Since poor people really represent something less than
8 15 percent or so of the nation at large, redistricting cases--
9 and I would submit -- really are run to the benefit, at least
10 across the board, of non-poor as a general proposition.

11 That, of course, suggests to things. One is that
12 maybe other people and other interests that are in a position to
13 advance redistricting cases. Secondly, as sent out in our
14 notice, even to the extent that these are matters that relate to
15 -- and they commonly do deal with issues of insular minorities,
16 there are other legal defense funds and lawyer's organizations
17 who have special interest in redistricting matters.

18 CHAIRMAN VALOIS: And law firms.

19 MR. SHEA: The legal defense fund, the ACLU, the
20 Lawyer's Committee for Civil Rights, and likewise, attorneys who
21 may be associated with them as well will be available to pursue
22 those types of cases.

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1 MS. SWAFFORD: Question. If those cases are
2 successful, is there a provision for the successful attorney?

3 MR. SHEA: Well, the answer is -- I think ordinarily
4 the answer is yes. I might add, if the case is brought under
5 the Voting Rights Act, you can get attorney's fees. If it may
6 be brought under Civil Rights Act, likewise you may be able to
7 get attorney's fees.

8 There are other alternate theories under which you
9 might not, but I would think that the savvy council would
10 ordinarily include accounts that permit recovery of fees.
11 Anyway, insofar as -- poor people represent essentially a
12 minority of the country as a whole.

13 These kinds of cases then are -- again as a general
14 proposition -- represent matters that are not peculiar to the
15 poor. There were certainly some comments that there are or
16 maybe cases where an affected group may consist overwhelmingly
17 of poor people.

18 I, of course, can't say that there aren't such
19 enclaves around, but this is a general rule. Insofar as -- I
20 mean, I don't think that there was really much argument that in
21 the ordinary case, there are substantial numbers of non-poor
22 that are effected by these kinds of matters.

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1 The second leg of the suggestion -- the second leg of
2 our discussion in this regard cites the fact that there are a
3 number of alternative organizations, as I've already started to
4 discuss, that are available to take on such matters; the
5 Mexican/American Legal Defense Fund; Lawyer's Committee for
6 Civil Rights; Legal Women Voters, and the like. Of course,
7 there is the opportunity for getting fees.

8 The third matter is there is a study which we cite
9 that reflects that in the past there have been abuses by LSC
10 programs of redistricting cases. There were situations where
11 programs were undertaking redistricting cases in order to garner
12 what may be political support for some -- maybe a larger agenda,
13 one that wasn't really generated by the client's interest, maybe
14 larger political matters.

15 That's set out in a report in 1984 that was submitted
16 by the corporation to congress. I believe that's been made
17 available -- I don't think we have copies of that available
18 here, but I believe that's been available to board members
19 generally.

20 The study indicates that certain programs may have
21 been opportunistic in selecting clients to pursue cases that
22 they felt were within their own interests. In fact, there were

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1 specific cases where there were candidates and that the programs
2 sought -- futures of programs sought to advance.

3 Finally, this is suggested I guess by the same
4 discussion, there is a risk of undue political entanglement in
5 redistricting matters. It's well established that
6 redistricting, per se -- and that is in the legislative sense--
7 can be highly partisan, highly political.

8 In fact, I don't think that most of our commentators
9 resisted that proposition. I should note that Section 1612, our
10 lobbying regulation, identifies what I think is called a
11 reapportionment, lobbying on reapportionment as political
12 activity.

13 Much of the argument that we got in comments addressed
14 the proposition that litigating such issues isn't necessarily
15 such. I'll deal with that in a moment. There's no question
16 that, as least as a comment, the Supreme Court is -- I note here
17 the Supreme Court has indicated politics and political
18 considerations are inseparable from redistricting and
19 apportionment.

20 LSC programs -- and there's no question that the -- as
21 we note here, in separate instance, LSC recipients were
22 involved in reapportionment cases where counsel for Democratic

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1 and Republican parties were involved.

2 It's not surprising, first of all, that there are
3 political parties who are involved in redistricting to begin
4 with; and in many respects, they are in a position to litigate
5 issues which may be more in their self interest perhaps than
6 some of our client programs and that the --

7 To the extent that the programs get involved in
8 litigation, there is at least the prospect that they will find
9 themselves aligned with one of the -- some partisan politics
10 about where and how a line should be drawn.

11 Let me turn, if I can, very briefly to the comments.
12 Let me dig out my memorandum here for a moment.

13 MS. SWAFFORD: Are you giving us a summary of the
14 comments?

15 MR. SHEA: Yes. I didn't dare to do that without
16 getting my paper out. Basically, the comments oppose a new rule
17 on, I don't know, what may be about four principal grounds.
18 First of all, commentators suggested that the corporation lacks
19 organic authority in the LSC Act to undertake this kind of
20 prohibition, especially with the use of private funds.

21 Secondly, because the rule would prohibit programs
22 entire activities, it would do all their activities with LSC and

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1 private funds. They urge as well that the justifications that
2 were offered in support of the prohibition don't withstand
3 analysis.

4 The pros rule conflicts with other statutory authority
5 in the LSC Act. The effect of the rule would be to deny
6 fundamental legitimate legal rights to poor people. I might
7 add, also by way of background, and perhaps I should have noted
8 that when I was discussing our notice, we make reference in the
9 notice to --

10 There have been some other legislative attempts to
11 deal with this. In S2409, the bill was introduced to the Senate
12 in 1986 to reauthorize Legal Services Corporation sponsored by
13 Senators Hatch and Rudman.

14 There was a prohibition on use of LSC recipient
15 resources for redistricting or reapportionment at any level of
16 government. Actually, it was that text that was used as the
17 basic draft for the prohibition as we have it in this rule.

18 So the idea isn't necessarily new. As for the matter
19 of what organic authority we have, the commentators -- and Alan
20 Houseman makes this point, I think, very forcefully and very
21 articulately as usual.

22 He urges that the provision on which we rely, relating

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1 to goals, contemplates only that the general goals could be
2 established by the corporation and that there is no authority
3 under that provision that would permit the corporation to
4 prohibit programs for undertaking specific litigation, specific
5 subject matter litigation, as this proposal does.

6 Actually, I think that's a bottom semantical argument
7 about what is a goal and what is not a goal. I think that
8 ultimately our goal, in terms of the rule, is to direct program
9 resources to the provision of basis day to day legal
10 representation.

11 That is the ultimate goal. This rule would constrain
12 programs in a fairly narrow and specific way. In the sense that
13 -- to the extent then that program resources aren't made
14 available to what I'm urging is a marginal activity, then
15 there'd be more resources available for the matters that this
16 board has urged our recipients should be putting their resources
17 into.

18 So in that sense, it is a goal. Even though it's a
19 prohibition, it's a goal. It is negative in that respect, but
20 it still nevertheless advances the general goal. I might add
21 the comments generally did not urge in any specific way that
22 programs -- there was a lot of involvement by programs in these

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1 cases.

2 One of the things we recite in our notice is that
3 there are -- none of the programs identify redistricting
4 activity as a priority in their 1620 list of priorities. Many
5 of the commentators urged or noted that they have turned down
6 redistricting cases and they don't bother with them because they
7 are time consuming and they are undesirable for one reason or
8 another.

9 They resisted though the proposition that they should
10 be precluded by the corporation from undertaking such cases in
11 the event an appropriate one appeared. There was no large -- I
12 think it is fair to say there is no large human cry that there
13 were a lot of cases pending or that were anticipated that this
14 rule would affect.

15 The fundamental argument on authority then centers on
16 the purpose, first of all, what is mean by a provision of the
17 act that permits the corporation to set goals. My position is
18 simply that even though this is subject matter specific, it
19 nevertheless advances a goal.

20 A goal is general. It just so happens that the way of
21 realizing it in this case is subject matter specific. As for
22 the matter of private funds, the prohibition or actually the

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1 provision from which I'm relying, which is 1007(a)(2), runs to
2 the programs generally, as does our regulation which is 1620.

3 That runs both -- in other words, it runs to all
4 program resources which are LSC and private. Hence, to the
5 extent that this regulation would constrain expenditure of
6 private funds, it doesn't enlarge the authority that we've
7 invoked already with respect to 1620 or as to program priorities
8 generally.

9 Moreover, I would suggest the corporation has -- and
10 there was -- Alan argues, and others perhaps as well argue, that
11 the corporation doesn't have authority to promulgate legislative
12 rules, that is, rules that are not based on an explicit
13 provision of the act.

14 I think the corporation has in the past promulgated a
15 legislative rule, so I think we have ample authority to do that.
16 I think given the broad discretion as accorded to the board to
17 insure effective and efficient delivery of legal services by our
18 recipients, that the corporation simply must have that authority
19 to be able to pursue appropriate ways of realizing that goal.
20 That's what this regulation is about.

21 As for the next matter, there was again a certain
22 amount of argument that these justifications -- maybe I should

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1 deal with that last. Those are some policy arguments, really,
2 that essentially the justification don't withstand analysis.
3 I'll deal with those perhaps, in a sense, on the policy side.

4 Alan Houseman offered a statutory analysis for the
5 proposition -- a legislative history analysis for the
6 proposition that the Legal Services Corporation Act contemplated
7 that LSC recipients should undertake actions under the Voting
8 Rights Act.

9 Now there's no question that there was debate along
10 those lines. There's no question that the provisions of--
11 let's see. I tried to address this in my memorandum on page 6.
12 In Section 1007(a)(6) of the LSC Act, there's a general
13 prohibition on certain kinds of political activity.

14 Now that was the subject of a considerable amount of
15 debate in the crafting of the LSC Act. There was a certain
16 amount of back and forth, both in the House and the Senate, as
17 to whether there should be exceptions for legal advice and
18 representation.

19 Fundamentally under -- and I set the statutory
20 provision out at the bottom of page 6 of my memorandum. The
21 corporation is enjoying to refrain from any political activity,
22 any activity to provide voters with transportation at the polls

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1 or provide similar assistance in connection with an election
2 other than legal advice or any voter registration activity
3 other than legal advice.

4 We set out a certain amount of debate here in the
5 Senate about what the perception is of the principal offers of
6 this exception, that is for legal advice and representation,
7 what they contemplate.

8 There's no question -- and Alan is correct in noting--
9 - that Voting Rights Act litigation was contemplated in
10 connection with this. This proposed regulation would permit a
11 lot of Voting Rights Act litigation.

12 The only thing that it would prohibit is Voting Rights
13 Act litigation that would result in redistricting or that seeks
14 redistricting. In substance, that's what my discussion amounts
15 to.

16 There was a certain amount of -- there was a large
17 measure of concern about activity that was quite political. The
18 sense of the language that resulted from all of this was that
19 certainly litigation relating to access to vote, which may deal
20 with the physical access or other availability of maybe poll tax
21 issues or something like that, that, it was certainly
22 contemplated, could be pursued under the Voting Rights Act.

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1 This proposed regulation wouldn't interfere with that.
2 So in that regard, I don't regard the proposed rule as
3 inconsistent with that discussion and certainly with a tenor of
4 the act.

5 Programs can still provide advice and representation
6 with respect to voter access issues. They can rely on the Voter
7 Rights Act or any other provision act, law, that they see fit as
8 long as it doesn't seek this as a remedy.

9 Similarly -- and I think I've already touched on it--
10 there was a fair amount of discussion about the regulation of
11 private funds. Insofar as 1620 already regulates private funds,
12 this is not an extension or extrapolation of our existing
13 authority.

14 In fact, this relies on the same provision of the LSC
15 Act on which our priorities regulation is based. Let me then
16 turn to the arguments that the justifications don't warrant this
17 rule and that the rule itself constitutes bad policy, because I
18 think basically they are related.

19 As for the discussion of allocation of resources, some
20 commentors argued that there are cases where there are indeed
21 enclaves of very substantial -- where there are high population
22 of poor and indeed eligible poor under the argument.

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1 To the extent that there are -- they have urged to the
2 extent that there are such places, it is very difficult to find
3 counsel through any of the defense funds or otherwise to take on
4 such cases.

5 Again, we have no data and we can't offer any data to
6 say that there are no such places, but this is a general rule.
7 I think at the national level, as sufficient to the corporation,
8 that as a general proposition, these matters are not peculiar to
9 the poor and there are other non-poor available to pursue such
10 matters.

11 Surely to the extent that there are enclaves where
12 there is substantial populations of minorities, it would prevent
13 people from seeking redistricting relief. Nevertheless,
14 though, the other concerns that are articulated in the rule
15 remain issues of undo political entanglement and the matters of
16 whether such litigation is subject to abuse as has been
17 indicated by at least some experience with corporation
18 recipients in the past.

19 As for alternative resources, a number of the
20 commentators indicated that -- and these were some -- the Legal
21 Defense Fund and I believe the Legal Women Voters have urged
22 that even though they and other organizations are available to

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1 pursue selected cases, they don't have all the resources around
2 to take on any good case that appears.

3 I don't know again that -- we have no way of
4 demonstrating otherwise. I don't think it's essential to our
5 proposition that they be able to take on all such cases. It's
6 clear that they take on a number of cases and they associate
7 with local council and help them either with consultation or
8 with resources to pursue cases throughout the country.

9 Again, that's not the exclusive basis of proceeding on
10 the rule.

11 CHAIRMAN VALOIS: But it still does not follow even if
12 all of that is so, does it, that the federal government ought to
13 be financing these cases?

14 MR. SHEA: That's not the exclusive basis for the
15 rule. I mean, if we were arguing only that there are other
16 people available to do it, that argument would have more weight.
17 That's not the sole basis of the argument.

18 Likewise, with respect to the matter of substitute
19 abuse, some people have argued in a generic sense that the past
20 abuses indicated in the extensive study in 1984 were either
21 undocumented or overstated.

22 To the extent that that is so, those arguments are

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1 general and they haven't really offered an awful lot by way of
2 substance about those abuses. So frankly, I think the substance
3 of that LSC report essentially remains in tact.

4 Finally is the matter of undo political entanglement.
5 Again, basically, there was a large amount of comment that the
6 policy that resisted -- basically the policy of the rule--
7 commentators urged that there would be these -- there are places
8 where the poor would be underserved by -- and mostly to the
9 extent this comment was urged -- various kinds of political--
10 by local political units.

11 Redistricting was an essential and important way of
12 vindicating the rights of people to seek political redress.
13 That again doesn't -- that, I think, in a sense is consistent
14 with the argument that redistricting itself has a strong element
15 of politics, whether it's in the litigation atmosphere or
16 certainly in the pre-litigation atmosphere in terms of
17 affirmatively drawing lines. There's no question it's well
18 established that that has a large element of politics in it.

19 I think, really, those are the main things I have to
20 address. It occurs to me as well that there was some
21 commentary about the tenor -- the reach of the rule to cover
22 personnel of programs as well as the programs themselves.

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1 I might remind you that program employees are hatched
2 in the sense that they are covered by the Hatch Act. So they
3 can't be involved in the partisan political activities already,
4 number one.

5 Number two, most of this discussion has to do really
6 with litigation activities, and there is under the corporation
7 outside practice of law rule, they can't engage in outside
8 practice of law as a general proposition anyway.

9 So I don't see at least that feature of the rule as
10 extending in any particular way that -- any substantial way in
11 that respect, anyway, the prohibitions that program employees
12 already bind them.

13 Is there any -- I don't have anything further.

14 CHAIRMAN VALOIS: I think, Mr. Shea, if it pleases you
15 -- it would please the court reporter if we take about a fifteen
16 minute break and members of the audience would reconvene shortly
17 at 11:00.

18 (A short recess was taken.)

19 CHAIRMAN VALOIS: We are going to resume now. Mr.
20 Shea, did you want to continue?

21 MR. SHEA: At this point, I don't think I have
22 anything further to say unless you have some questions, Mr.

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1 Chairman.

2 CHAIRMAN VALOIS: I don't have any questions at the
3 moment.

4 MR. SHEA: Maybe I should then recede for public
5 comment, then.

6 CHAIRMAN VALOIS: Mr. Houseman is the only one who has
7 indicated he has some comment.

8 MR. MENDEZ: He said he was going to do it in 30
9 seconds or less.

10 MR. HOUSEMAN: I'd be glad to. I'll make sure the
11 record notes it, though.

12 MR. MENDEZ: As usual, he'll bring some pearls with
13 him. In 30 seconds or less he can deliver every pearl.

14 CHAIRMAN VALOIS: Well, he filed a written set of
15 pearls.

16 MS. MILLER: Did you send us anything?

17 MR. HOUSEMAN: Yes. It is sent out. I didn't send it
18 ahead of time.

19 MS. MILLER: Okay. I knew I hadn't seen anything. I
20 was just wondering.

21 CHAIRMAN VALOIS: Is this different?

22 MR. HOUSEMAN: No, it's the same comment.

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1 MR. HOUSEMAN: I'm not sure whether I'm the fox in the
2 chicken coop or the other way around. I want to --

3 CHAIRMAN VALOIS: I'm sure you're the fox; certainly
4 not the chicken.

5 MR. HOUSEMAN: I want to first talk about the legal
6 issues and then talk about the policy issues, but let's be quite
7 clear about what we're doing here.

8 This is the first time that LSC has ever sought to
9 impose a substantive prohibition on activity by programs that is
10 totally unsupported by any provision in the LSC Act and, as I
11 will argue, is illegal under the LSC Act.

12 Whether it's illegal or not, it's the first time that
13 LSC has ever sought to impose a substantive prohibition.
14 Secondly, this provision does not just affect LSC funds. Let's
15 be quite clear about that.

16 It affects the private funds of recipients and sub-
17 recipients without regard to any qualifying language. It
18 affects employees of recipients and of sub-recipients acting on
19 their own time.

20 MR. MENDEZ: Alan, could I ask a question first?

21 MR. HOUSEMAN: Yes.

22 MR. MENDEZ: Do you agree with the comment that Mr.

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1 Shea made that he employees recipients are subject to the Hatch
2 Act?

3 MR. HOUSEMAN: The employees of -- some employees of
4 recipients are subject to the little Hatch Act which is the
5 state and local governmental Hatch Act. That Hatch Act only
6 prohibit certain narrowly defined set of activities.

7 In fact the Hatch Act, both the big Hatch Act and the
8 narrow Hatch Act permits all activities involving redistricting,
9 census and any of the things in this regulation.

10 MR. MENDEZ: Do you also agree that --

11 MR. HOUSEMAN: Wait a minute. What I said was it's
12 the little Hatch Act. It only prohibits running for partisan
13 election. Let's be quite clear. It's reach is very limited,
14 the little Hatch Act.

15 MR. MENDEZ: I understand. Do you also agree that it
16 restricts sub-recipients?

17 MR. HOUSEMAN: No, I don't agree that it restricts
18 sub-recipients.

19 MR. MENDEZ: The little Hatch Act?

20 MR. HOUSEMAN: No, I don't agree that the reach of the
21 statute goes to sub-recipients. I don't think there's anything
22 in the statute that authorizes a reach to sub-recipients in the

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1 little Hatch Act. There's never been anything that I've seen
2 that suggests it does.

3 What we're talking about here, furthermore, and I'll
4 elaborate on this, is not some small, tiny little part of the
5 Voting Rights Act. The heart of Section 2 of the Voting Rights
6 Act, the heart of Section 5 of the Voting Rights Act deals with
7 the type of election system, the districting if you wish.

8 The major debate in congress in 1982 over the
9 extension of the Voting Rights Act was about whether we were
10 going to prohibit and restrict redistricting at the local,
11 county and state level, whether we were going to prohibit and
12 enforce effectively racial gerrymandering, throwing boundary
13 lines for legislative districts in a way that discriminates
14 against minorities.

15 That's the heart of the act. Both Section 2 and
16 Section 5 address that. The entire preclusion process is based
17 primarily and virtually all of the cases under preclusion
18 around redistricting issues.

19 So you cannot fairly characterize this regulation as
20 dealing with only a peripheral part of the Voting Rights Act.
21 This regulation prohibits the major activity that the Voting
22 Rights Act, enacted by congress, signed by the president,

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1 authorizes, permits and encourages in order to enforce statutory
2 and constitutional rights.

3 That's what this is all about. Now, just for the
4 record, the comment period ends today. We haven't seen all the
5 comments. I can't imagine you can possibly read and consider
6 them, but I suppose you will claim you have.

7 They are going to be coming in more today. Our
8 comments don't begin to cover the waterfront. I, frankly, as a
9 procedural matter, don't see how you can act on this today or
10 tomorrow, but let's go to the merits.

11 First, I don't think, and our analysis addresses this
12 point very clearly, that LSC has the legal authority to prohibit
13 certain types of cases. Clearly today, as general counsels of
14 this corporation, have recognized for a number of years in
15 writing, in opinions, is perfectly legal to undertake
16 redistricting, reapportionment cases.

17 There is no prohibition in the LSC Act, never has been
18 on such cases. The corporation asserts as authority for its
19 ability to make this limitation Section 1007(a)(2)(c).
20 Conveniently the preamble and conveniently Mr. Shea's
21 presentation fails to make reference to the key legislative
22 history on this section.

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1 I have outlined this legislative history which goes
2 unopposed. There is nothing on the other side of this, nothing,
3 not one shred of testimony, comment or anything on the other
4 side of this which says the reference to goals, which is what
5 you are relying upon, is not intended to detract from the
6 rightful role of local programs to set priorities concerning
7 substantive law matters to which scarce program resources are to
8 be allocated.

9 That's said in the House report. That's said in the
10 Senate report. That's said in the conference report. That's
11 said on the floor. That's repeated over and over and over
12 again.

13 The corporation, when it urged this provision in 1977,
14 specifically indicated to the congress that they would never set
15 and interfere with subject matter priorities. But it's clear to
16 me that Section 1007(a)(2)(c) does not justify the imposition
17 of restrictions on subject matter priorities. The legislative
18 history is overwhelmingly clear on that.

19 MR. MENDEZ: Alan, read the next sentence.

20 MR. HOUSEMAN: What sentence?

21 MR. MENDEZ: The next sentence after the reference to
22 the -- is not intended to attract from the rightful role of

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1 local programs to set priorities concerning substantive -- read
2 the next sentence.

3 This does not require the corporation to establish
4 goals that authorize the corporation to do so if it finds it
5 appropriate.

6 MR. HOUSEMAN: That's right. This says it can
7 establish goals but not subject matter priority goals. That's
8 the point. That is, it's quite clear that when congress talked
9 about goals, they were not talking about subject matter priority
10 goals.

11 That's what this says. The reference to goals does
12 not include subject matter priority goals.

13 CHAIRMAN VALOIS: What is your argument that congress
14 did mean when they used the phrase or when this -- this is not
15 congress; this is a report -- what it said meant?

16 MR. HOUSEMAN: It meant things like done in the
17 delivery system study. It's goals were high quality
18 representation, impact representation, cost effective
19 representation, those kind of goals. That's what the
20 legislative history references.

21 CHAIRMAN VALOIS: How about directing resources to
22 serve the greatest number of the poor?

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1 MR. HOUSEMAN: That's certainly a goal. I can
2 address that now. There's an issue about what that goals means.
3 There's an issue about whether you can exclude other goals under
4 the LSC Act.

5 CHAIRMAN VALOIS: If we made it finding or had
6 information, a substantial number of hours that were being
7 diverted to redistricting cases, wouldn't it be consistent with
8 a goal to stop that diversion?

9 MR. HOUSEMAN: No.

10 CHAIRMAN VALOIS: Why wouldn't it?

11 MR. HOUSEMAN: Because -- well, there's two answers to
12 that. The first answer is factually, there's not very many
13 hours going into it. The second answer is that the goal of
14 providing basic legal services is met by enforcing the Voting
15 Rights Act.

16 MR. WEAR: Alan, if we accepted your analysis that the
17 programs are not restricted in setting up subject matter
18 priorities, doesn't that really obviate the purpose of the
19 corporation as far as regulating the programs, insofar as
20 supervising --

21 MR. HOUSEMAN: No, because --

22 MR. WEAR: -- the legal services programs? In effect,

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1 the corporation will have no supervisory authority at all under
2 that.

3 MR. HOUSEMAN: That's absolutely wrong. The
4 corporation has all kinds of supervisory authority to make sure
5 that the act and the regulations are enforced. The programs are
6 carrying out high quality, effective professional
7 representation. The programs are fiscally sound.

8 It does not have the authority to decide which kind of
9 cases local programs can take. That clearly and unequivocally
10 was left to local programs in the act and there's no question
11 about that.

12 MR. WEAR: Well, again, I don't think that's accurate
13 either.

14 CHAIRMAN VALOIS: It's not entirely left to local
15 programs.

16 MR. HOUSEMAN: Congress indicated certain categories
17 of cases. The congressional scheme was congress indicated
18 certain categories of cases. Then local programs decided how to
19 allocate resources among the rest.

20 There was nothing ever mentioned that the corporation
21 could assume the congressional role of deciding which kinds of
22 cases they should and should not take. I cannot find one bit

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1 of legislative history that suggests that. I'd like to see it
2 if there is.

3 MR. WEAR: Well, have you had an opportunity to review
4 Mr. Shea's memo --

5 MR. HOUSEMAN: He doesn't cite one bit of legislative
6 history.

7 MR. WEAR: -- on the floor debate? There is a floor
8 debate there on the '77 amendments. Are you referring to the
9 '74?

10 MR. HOUSEMAN: No, I'm referring to the '77 amendment.
11 His references is in his memo don't talk about 1077(a)(2)(c).

12 MR. WEAR: It's the same subject.

13 CHAIRMAN VALOIS: Yes he does on page 3, paragraph 2.

14 MR. HOUSEMAN: First of all, I just got this this
15 morning.

16 MR. WEAR: I appreciate that you may not have had an
17 opportunity to review it in detail.

18 MR. HOUSEMAN: Where are you talking about? There's
19 no legislative history discussed here.

20 CHAIRMAN VALOIS: No, you said he didn't talk about
21 1007(a)(2)(c).

22 MR. HOUSEMAN: I said the question was legislative

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1 history. Was there legislative history that the corporation had
2 the right to set subject matter priorities? I said there is
3 none and he doesn't cite any.

4 CHAIRMAN VALOIS: Look at page 4 where he argues to
5 you that the legislative history supports the proposition that--
6 - and so forth. He may not be citing the same legislative
7 history that you are to support his proposition that you are
8 arguing to support your proposition, but it's not correct to say
9 that he does not --

10 MR. HOUSEMAN: This doesn't have anything to do with
11 1007(a)(2)(c), his legislative history. What this legislative
12 history that he's talking about here, which is the '74
13 amendment, which were changed by the '77 amendment, the phrase
14 in the '77 amendments that he's making reference to here, they
15 deleted that phrase. Secondly, this doesn't say that at all.

16 What this says is that the corporation has established
17 priorities to assure that the most poor people get served, not
18 that certain poor people with certain legal problems get served
19 and other poor people don't.

20 It doesn't suggest in the slightest that the
21 corporation has the authority to tell local programs they can't
22 bring certain kinds of cases. They clearly have the authority

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1 to set a maximum eligibility standard. That's what this is
2 dealing with.

3 This phrase that he's relating to that was in the '74
4 act solely related to the maximum income eligibility standards.
5 The '77 amendments eliminated this phrase and added the priority
6 setting process. There's nothing here that he quotes that in
7 any way contradicts or suggests that my position is incorrect.

8 CHAIRMAN VALOIS: He does argue that the corporation
9 has the authority for other reasons than the ones you argue.

10 MR. HOUSEMAN: He argues primarily that it has the
11 authority under tenor to -- I'll get to those.

12 CHAIRMAN VALOIS: Okay.

13 MR. HOUSEMAN: The second issue is that the original
14 preamble, the original discussion left out a key statutory
15 section. I don't think it's the only relevant statutory
16 section, but it is some relevance, which is 1007(a)(6).

17 He discusses that in the memo. Careful reading of the
18 legislative history around 1007(a)(6), if you look at page 5
19 and 6 of my comments, which was the key part, makes it quite
20 clear that 1007(a)(6) permits representation of eligible clients
21 on a range of voting rights issues including the electoral
22 process.

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1 There is no distinction in this legislative history
2 between certain parts to Voting Rights Act and other parts of
3 the Voting Rights Act. As I said at the outset, the heart of
4 the Voting Rights Act is the electoral process and
5 discrimination in the electoral process.

6 Finally, with regard to corporation general authority,
7 I don't think the corporation has the authority unless specified
8 by congress to enact legislative rules; that is, rules that
9 create new rights and new obligations that aren't authorized by
10 statute unless congress has given it that authority.

11 CHAIRMAN VALOIS: How are we creating new rights or
12 obligations if we pass this?

13 MR. HOUSEMAN: You're eliminating rights and
14 obligations.

15 CHAIRMAN VALOIS: Okay.

16 MR. HOUSEMAN: Which is the same as a rule. A rule
17 either creates or eliminates rights and obligations. I don't
18 think you have the authority under the act, and I cannot find
19 any section of the act which gives you that authority, to
20 legislate, that is, legislative rules in this area.

21 There is no general rulemaking authority under the LSC
22 Act, unlike many other federal statutes. There is specific

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1 legislative rulemaking authority for specific sections which
2 I've cited on page 6 of my memorandum.

3 There's no general legislative authority. With
4 possibly one exception, you have never legislated. As I said
5 before, you certainly have never attempted to limit subject
6 matter jurisdiction.

7 Finally, let's turn to private funds issues. Mr.
8 Shea argues that you have the authority to regulate the private
9 funds of recipients with regard to redistricting cases on the
10 basis of 1007(a)(2)(c).

11 He completely ignores in this discussion, first of
12 all, 1010(c). 1010(c) is limited to purposes prohibited by the
13 LSC act. We've been over this ground many times. We've agreed
14 many times that 1010(c) does not reach private funds given for
15 activities that are not prohibited by the LSC Act.

16 For example, your regulation 1626 permits the use of
17 private funds to represent aliens. Aliens are restricted only
18 in the appropriation rider and not in the LSC act. It's crystal
19 clear. The analysis on page 7 deals with this.

20 Mr. Shea's argument -- the first time I've seen it was
21 this morning -- is that 1007(a)(2)(c) somehow addresses private
22 funds. 1007(a)(2)(c) does not address private funds. The

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1 introduction to 1007(a)(2)(c) talks about the provision of legal
2 assistance to eligible clients under this title.

3 Then the relevant section talks about setting
4 priorities for the provision of such assistance; that is, legal
5 assistance under this title. Throughout 1007(a)(2) and
6 particularly 1007(a)(2)(c), we are talking about the provisional
7 legal assistance eligible clients under this title.

8 It's the same reference as in 1010(c). So you have no
9 legal authority to extend a redistricting provision to private
10 funds.

11 Finally, as to employees, I don't think you have any
12 authority to extend it to employees. I think if you tried to
13 extend this to employees it would be unconstitutional, unlike
14 the Hatch Act provision.

15 I've cited the cases to deal with this. The small
16 Hatch Act doesn't begin to reach --

17 MR. MENDEZ: Which page are you on, Alan?

18 MR. HOUSEMAN: Seven and eight of my memorandum, the
19 bottom of page 7, the top of page 8. The little Hatch Act
20 doesn't begin to reach these activities. It's absolutely clear
21 under the little Hatch Act or the big Hatch Act that you can
22 engage in privately in redistricting activities.

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1 There's absolutely no prohibition in either the small
2 or the little Hatch Act on that. The decisions by the Supreme
3 Court that upheld the Hatch Act made explicit exception for a
4 range of first amendment activities including participating in
5 redistricting activities.

6 It said that had they attempted to regulate those,
7 those would pose serious first amendment issues. Not only do I
8 think you not have the authority, if you tried to exercise the
9 authority with regard to employees, I think you'd be acting
10 unconstitutional. So for those legal reasons, I don't think you
11 have the legal authority to do what your proposing to do here.

12 Now let me turn, if I might, unless you have
13 questions, the arguments that are asserted by LSC in the
14 preamble to this. As I count them up, there are five
15 justifications for this.

16 The first -- and I will take them up in order -- the
17 first justification is that somehow this representation is not
18 peculiar to the interest to the poor. Peculiar is a peculiar
19 word, I might add.

20 What we know is that the client class in virtually all
21 cases brought by legal services are indigent clients. In many
22 areas, in many -- and the comments discuss this at some length,

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1 not just one or two, but many -- point out that in many areas
2 where these cases are brought, the people affected are composed
3 entirely or almost substantially of poor people.

4 A number of the comments point out that the statement
5 is just factually inaccurate. There is nothing in this record
6 that suggests otherwise. All that we have is assertions without
7 any -- no factual basis. Somehow poor people are not the
8 primary beneficiaries of this representation.

9 Secondly, the majority of cases that legal services
10 brings involve election processes for local school boards, local
11 county commissions, local taxing districts, local government
12 entities.

13 All of these entities exert a major influence in the
14 legal rights, the quality of justice, the quality of housing,
15 consumer protection, transportation, education, public
16 assistance, the poor people in that area.

17 Many of these elections and many of these issues are
18 non-partisan. The voting rights issue is at the heart of this
19 it seems to me. Voting rights cases challenge racially motivated
20 gerrymandering of local election districts or at-large elections
21 of local government representatives.

22 These are challenged because they impermissibly dilute

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1 minority voting rights strength and discriminate against
2 minorities. In the cases that legal services has brought, they
3 have represented black minorities, hispanic minorities who were
4 poor.

5 They brought those cases to vindicate rights under the
6 Voting Rights Act. They are at the heart of the Voting Rights
7 Act. So in terms of the argument that somehow this
8 representation isn't directed to the poor, a) there's no factual
9 basis for that position, and b) the comments overwhelmingly
10 suggest and show -- and the evidence is entirely consistent with
11 the comments -- that that is not the case.

12 For example, this great Hatch report that we keep
13 making reference to, which I'll talk about in a second, 95
14 percent of the cases that are cited in the appendix of the Hatch
15 report are cases involving local districts.

16 In all of those cases that I was able to check a
17 couple of years ago when I looked at this, the not only majority
18 but the substantial majority of the clients were poor. So I
19 don't think there's anything that suggests otherwise. I think
20 the assertion was without basis and nothing has been presented
21 that undercuts the comments or what I'm saying.

22 Finally, the LSC definition in this proposed

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1 regulation reaches far beyond redistricting. It also would
2 prohibit suits to influence the timing or manner of taking a
3 census.

4 I don't see at all, in the first place, that the two
5 are related. Let's be quite clear what this would do. The
6 census data is used to determine allocation of federal and often
7 state funds for a variety of programs; health, education, job
8 training, low income housing. I could go on and on.

9 It is often -- these programs are often targeted
10 specifically at poor or specialized population groups like the
11 elderly, disabled, the institutionalized, non-English speaking,
12 et cetera.

13 What this would do is say that legal services programs
14 couldn't be involved at any level in dealing with census data
15 that might undercount particular groups or that might have
16 impact on the federal state funds that are going to particular
17 groups and their local.

18 That's what this would do. There's no basis in my
19 view for extending the reach of this to that. There's nothing
20 anywhere in the legislative history, in the statute or anything
21 else suggests that such litigation or representation on behalf
22 of legal services is limit prohibited.

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1 As a policy matter, I think it would be crazy to
2 prohibit such representation. It may have a vital impact on
3 many poor people in many communities.

4 Second argument. The second argument is that aside
5 from the statutory issue in priority setting, the second
6 argument is that national priorities don't include redistricting
7 cases.

8 The way the argument is presented, of course, is very
9 misleading because it only looks at the broad or broad
10 categories of cases. It says that 78 percent of the cases fall
11 in the family housing consumer income maintenance. Therefore,
12 only 22 percent of the cases fall outside of that nationally.

13 It doesn't discuss statistically anything else nor
14 does the fact book. Well, the facts are somewhat misleading,
15 but the fact of the matter is totally irrelevant what the
16 national priorities are.

17 The issue is what local programs decide not what some
18 national priorities are. Many local programs in the south and
19 the southwest -- and there are comments from a number of them in
20 here -- have voting rights as a priority.

21 Their client community through a priority setting
22 process has decided to do voting rights. They have them as a

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1 priority. What this would do is say to those communities that
2 you cannot have those cases as a priority.

3 We will prohibit you from bringing those cases. If
4 that's the case, then local needs become meaningless. Client
5 access to legal services becomes seriously compromised. That's
6 what this --

7 MR. MENDEZ: I don't follow your argument. Let's see
8 if I understand what you're saying. We have looked -- and the
9 priority setting doesn't show it in ours, in the grants, the
10 grant applications that there's no priority for that.

11 MR. HOUSEMAN: No, it doesn't say that. The
12 priorities -- your grant applications show that there are
13 priorities for redistricting cases. Some programs have those as
14 priorities.

15 MR. MENDEZ: They do?

16 MR. HOUSEMAN: Yes, there's no question about that.
17 The question is that it is not the majority. It isn't. Of
18 course it isn't. A very small percentage of the cases are
19 voting rights cases or redistricting cases. Some programs have
20 those in priorities. Nothing in your data suggests the
21 contrary.

22 MR. MENDEZ: Can you cite me a program or two that has

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1 that as a priority?

2 MR. HOUSEMAN: Sure. Legal Services in North
3 Carolina. How about half of the smaller --

4 MR. MENDEZ: Would you agree that anybody that has
5 this as a priority has to list it on their grant application?

6 MR. HOUSEMAN: Sure. I'm not sure of the grant
7 application.

8 MR. SHEA: I don't think -- not on the grant
9 application.

10 MR. HOUSEMAN: Not on the grant. I'm not sure they
11 list them there.

12 MR. MENDEZ: They have to list their priorities in
13 their grant applications.

14 MR. HOUSEMAN: I'm not sure of that. I'd like to see
15 the grant application. I don't think that's right. I think
16 they have to list some of their priorities, their major
17 priorities in the grant application.

18 We don't have the tabulation of the grant applications
19 here. All that we have is a fact book which talks about basic
20 statistics.

21 MR. MENDEZ: I assume -- maybe I'm asking the wrong
22 person the question -- Tim, did you go through the grant

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1 applications to see when you said that?

2 MR. SHEA: We looked at C.S.R. data which is what the
3 basis of the comment is. I don't know that any of the -- which
4 is the basis of what appears in the federal register notice.

5 MR. MENDEZ: Did you look at the grant applications?

6 MR. SHEA: No. Actually, I think the --

7 MR. MENDEZ: Hold it. You've got somebody sitting
8 right next to you.

9 MR. SHEA: Keep in mind, I don't think that the grant
10 application necessary reflect all of their priorities. I think
11 that we do -- we are furnished copies of the priorities.
12 Generally we looked at those. Maybe I should defer to Rob Elgin
13 here.

14 MR. MENDEZ: You better because my understanding when
15 I asked to have those grant applications done, that they were to
16 list all their priorities. If that doesn't have all their
17 priorities, I want those grant applications rewritten.

18 MR. ELGIN: May I speak?

19 CHAIRMAN VALOIS: We can recognize you, Rob, go ahead.

20 MR. ELGIN: It's my understanding that my office
21 reviewed all of the relevant forms and the grant applications
22 and did not find voting rights acts or redistricting cases as a

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1 priority for any of the programs.

2 MR. HOUSEMAN: For any program?

3 MR. ELGIN: For any program --

4 MR. HOUSEMAN: I know that North Carolina --

5 MR. ELGIN: -- listed on the application.

6 MR. HOUSEMAN: I haven't seen the applications. I
7 know two things. I know there's a number of programs that have
8 them as priority. The Legal Services of North Carolina is one;
9 Texas Rural is another. I think there are several other
10 southwestern programs.

11 MR. MENDEZ: I want to see the grant applications for
12 tomorrow of Legal Services of North Carolina and Texas Rural
13 Legal Services.

14 MR. HOUSEMAN: Secondly, the fact that they don't
15 list redistricting cases may not suggest that there aren't
16 priorities like housing or public benefits or health cases that
17 might not involve some kind of redistricting.

18 They could. Some programs may raise civil rights as a
19 priority. That could included redistricting and voting rights
20 cases.

21 CHAIRMAN VALOIS: This regulation doesn't propose to
22 ban all civil rights litigation; does it?

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1 MR. HOUSEMAN: I know that. The question is, are
2 there programs that bring redistricting cases? Yes. Do they
3 act within their priorities? Yes. How they state that priority
4 may not be redistricting.

5 I know there are programs that have redistricting
6 included within their priorities. It may be stated as civil
7 rights cases. Civil rights cases are a statistical number. I
8 don't know what it is; two, three, four percent.

9 Again, the question is, whatever the facts -- I think
10 the facts will bear me out, but whatever the facts, the question
11 is, if the program sets it as a priority, should they be able to
12 do so. That's the legal issue. That's the policy issue. It
13 doesn't matter what other programs do.

14 MR. MENDEZ: Let me ask you a question. You agree
15 that corporations can set national goals?

16 MR. HOUSEMAN: Yes.

17 MR. MENDEZ: Has the corporation set, as far as you
18 know, any formal national goals in the past?

19 MR. HOUSEMAN: Yes.

20 MR. MENDEZ: What are those?

21 MR. HOUSEMAN: The delivery system study adopted by
22 the board and submitted to congress set out for national goals

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1 for legal services representation. Those were high quality
2 representation, cost effective representation, representation
3 consistent with client needs and impact litigation and impact
4 representation.

5 That's the first time they set goals. The second time
6 that LSC set goals was when the board in 1981 adopted what it
7 called a plan for the future. There they set out some national
8 goals which were consistent with the delivery system study goals
9 but more refined.

10 Neither the delivery system study nor the plan for the
11 future have ever been revoked by any board subsequent thereto.

12 MR. MENDEZ: So would it be fair to state that you
13 don't think that the corporation has determined that
14 redistricting activities are not in accord with the
15 corporation's goal of focus, of focusing scarce resources on
16 basic day to day needs of eligible poor individuals that is not
17 a national goal?

18 MR. HOUSEMAN: No, that's a national goal. That could
19 be a national goal. Whether it could be the exclusive --

20 MR. MENDEZ: When was that adopted, though?

21 MR. HOUSEMAN: I don't think it's ever been adopted to
22 my knowledge. I've never found it. I never seen anything

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1 you've ever adopted as a national goal that says that.

2 CHAIRMAN VALOIS: It's certainly been said in several
3 different ways in budget requests; hasn't it?

4 MR. HOUSEMAN: Well, I'll tell you right now, never on
5 the record have you passed a resolution that adopted that as a
6 national goal. Never on the record have you taken any action
7 that repudiates the delivery system study or that repudiates the
8 plan for the future adopted by this board in 1981.

9 CHAIRMAN VALOIS: When we want to establish a goal,
10 Alan -- we're getting into a semantical argument here -- we
11 don't have to pass a regulation. Can't we set a goal and a
12 budget message somehow?

13 MR. HOUSEMAN: You could. I'm not sure that you've
14 ever specifically voted on a budget message that was in front of
15 you for the vote where that initiative was debated. I haven't
16 followed the Audit and Appropriations Committee, so I can't
17 comment on that. I don't believe that's been the case.

18 CHAIRMAN VALOIS: Well, the chairman is here. I take
19 it from my knowledge of what's been done that it certainly has
20 had as a goal the direct use of funds available.

21 MR. HOUSEMAN: There's nothing inconsistent between a
22 goal of direct use of funds or basis daily legal needs of the

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1 poor and redistricting or voting rights cases.

2 CHAIRMAN VALOIS: Are you describing redistricting as
3 a basic daily need of the poor?

4 MR. HOUSEMAN: On voting rights, yes. Enforcement of
5 constitutional and statutory voting rights seems to me -- and in
6 fact is very important for many poor folks as a number of the
7 comments point out -- may be a critical basic legal need.

8 MR. MENDEZ: I agree with that.

9 MR. WEAR: Can't you also, Mr. Houseman, get to those
10 needs, if you will, by foregoing this remedy? Aren't there
11 other remedies that you can use? You're real objection here is
12 that if this remedy is taken away, it will somehow limit a local
13 program's freedom of action.

14 MR. HOUSEMAN: No, my real objection is that poor
15 client that have a problem that could be remedied by the Voting
16 Rights Act are entitled to legal representation under the LSC
17 act.

18 MR. WEAR: They still have that under this reg.

19 MR. HOUSEMAN: You should not take the -- that's
20 absolutely not true.

21 MR. WEAR: No, no. That's not accurate.

22 MR. HOUSEMAN: You cannot go to a legal services

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1 program and get it -- the facts in the record point out that
2 there's not private attorneys available and there's not other
3 organizations that will take those cases.

4 So as a practical matter, if you pass this, poor
5 people will be denied the right to enforce their rights under
6 the Voting Rights Act. There's no question about it. The
7 record completely supports that.

8 You'd have nothing in this record that suggests
9 otherwise, not one piece of information that suggests otherwise.

10 MR. MENDEZ: Just a second, let me explore this. If
11 there was an exception to the -- what would happen if there was
12 an exception written in here to reinforce the rights under
13 specific clients enforcing their rights under the Voting Rights
14 Act? What would happen to this regulation?

15 MR. HOUSEMAN: Well, aside from the census issue,
16 which is a whole other question, I'd have to think about it.

17 MR. MENDEZ: I want you to answer the question.

18 MR. HOUSEMAN: Right, I think it would address many of
19 the issues that we and others have raised.

20 MR. MENDEZ: Now --

21 MR. HOUSEMAN: It would permit the kind of
22 representation that we've been talking about.

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1 MR. WEAR: It would permit all of the cases that were
2 cited in the so-called Hatch Study, or at least most of them; is
3 that accurate?

4 MR. HOUSEMAN: I don't know about all, but most of
5 those cases were brought in under the Voting Rights Act as I
6 pointed out before. Ninety-five percent of those cases had to
7 do with local districts, local school boards, local county
8 commissions, local city councils, et cetera.

9 MR. WEAR: Isn't it also a fact that those cases can
10 be brought under the Voting Rights Act anyway? The only
11 limitation that this rule would provide is that -- the
12 redistricting remedy and the ability to litigate the taking of a
13 census would be removed as a remedy? Isn't that the only thing
14 that this reg is doing?

15 MR. HOUSEMAN: No, I don't think that it does that at
16 all. It seems to me that it says you cannot take a voting
17 rights case that involves any redistricting. It's not purely a
18 matter of remedy. Also, I doubt whether you have the ability to
19 deny remedies. That's another issue entirely, but maybe you
20 think you do.

21 MR. WEAR: As Mr. Shea pointed out in his presentation
22 earlier, there are any number of issues that can be handled

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1 under the Voting Rights Act that don't involve redistricting.

2 MR. HOUSEMAN: I said my initial presentation was that
3 the Voting Rights Act, the heart of it, was electoral districts,
4 electoral gerrymandering. That's what Section 2 and Section 5
5 is all about.

6 That's the heart of the cases that go to the Justice
7 Department and the District Court in D.C. under preclusion. That
8 is what the 1982 amendments and the fight over the 1982
9 amendments was all about.

10 MR. WEAR: That may have been what that particular
11 fight was about, but whether or not that is the heart of the
12 statute, I think, is, I guess, a matter of opinion.

13 MR. HOUSEMAN: What you're doing is saying that poor
14 people who want to us the Voting Rights Act to deal with
15 redistricting that discriminates them can't use it. That's what
16 you're doing.

17 CHAIRMAN VALOIS: Not quite.

18 MR. HOUSEMAN: As a practical matter, that's what
19 you're doing.

20 CHAIRMAN VALOIS: Maybe not. Another issue which you
21 haven't touched on is the availability of other entities, law
22 firms and whatever, to handle these cases.

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1 MR. HOUSEMAN: Yes, I'll touch on that right now. You
2 have comments from the Lawyer's Committee For Civil Rights, the
3 Legal Defense Fund. Those are two premier agencies that do
4 voting rights cases.

5 Those comments both say unequivocally that they do not
6 handle local cases. They do not have the resources to handle
7 local cases and they wouldn't handle legal cases. The legal
8 services representation is essential to voting rights
9 representation and it could not be made up by those
10 organizations.

11 You have a comment from the Legal Women Voters that
12 points out that they don't have a staff available to do
13 representation. The league once in awhile files cases in its
14 own name. It itself doesn't provide representation to others
15 who file cases.

16 That's the record that you have in front of you with
17 regard to organization.

18 CHAIRMAN VALOIS: Not quite. There are many, many
19 other organizations who have commented that they do, in fact,
20 bring these actions even --

21 MR. HOUSEMAN: Not in this record, not that said they
22 wouldn't --

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1 CHAIRMAN VALOIS: They are in the comments. If the
2 comments are in the record, then they are in here too.

3 MR. HOUSEMAN: There is no organization in this record
4 that has come in and said that we will take over the cases that
5 are currently being brought by legal services programs or that
6 has said we have the resources to take over these cases. There's
7 no comment from anybody that suggests that.

8 CHAIRMAN VALOIS: I think you may be correct at what
9 you're saying but there's nobody in here that said if you pass
10 this regulation, we're going to abandon all voting rights cases
11 or all redistricting cases.

12 MR. HOUSEMAN: No, what they say is they have limited
13 resources. They have to take cases at statewide or regional
14 impact or a national priority setting. They can't take the
15 kinds of cases that legal services are predominantly involved
16 in. That's what they say. You can say they are lying, but
17 that's what they say.

18 CHAIRMAN VALOIS: I'm not saying they're lying, but I
19 think you're missing the point. These organizations, law firms
20 and a number of organizations that you've mentioned and a number
21 of others that you have not mentioned, say that they are engaged
22 in this kind of litigation.

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1 MR. HOUSEMAN: That's right, but they say they are not
2 doing it in the cases that legal services brings. That's my
3 point.

4 CHAIRMAN VALOIS: That's not true either. Look at
5 page 19 of the comments. There's a letter in there from
6 Charlotte, North Carolina law firm. I direct your attention to
7 page 2 where the writer deals with whether or not it would be
8 easier for him to do it with assistance of the recipients local
9 council. He says it would be.

10 MR. HOUSEMAN: Yes.

11 CHAIRMAN VALOIS: He doesn't say he going to abandon
12 all efforts if he doesn't have the resources of this corporation
13 available to him. I think if you review these, you will see
14 that a number of those say the same thing.

15 MR. HOUSEMAN: Obviously, with a national organization
16 involved in a case, or where something like Judith Chambers'
17 law firm is involved in a case, they are not going to stop that
18 case if the legal services pulls out.

19 CHAIRMAN VALOIS: Exactly.

20 MR. HOUSEMAN: That's not the issue. The issue is,
21 are they going to participate in new cases which currently legal
22 services are bringing. There's nothing in the record that

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1 suggests they are.

2 There's nothing in the record that suggests that--
3 the characterization that alternative resources will fill the
4 gap, there's nothing in the record that supports that
5 characterization.

6 That's your argument. You're argument is alternative
7 resources will fill the gap. there's not one comment that
8 suggests that. There's not one piece of evidence that suggests
9 that. That's a supposition that your making. There's
10 nothing to support it.

11 CHAIRMAN VALOIS: Nor is there any evidence in the
12 record that says that that won't happen.

13 MR. HOUSEMAN: That's right. The Lawyers Committee,
14 LDF, I have to read the letter which I haven't seen, all say
15 that they couldn't fill the gap. All those comments say that.
16 So I think the comments are clear.

17 I'll rest on the comments. We can go read them and
18 I'll be glad to quote line and verse from it if you wish, but
19 they clearly say that.

20 CHAIRMAN VALOIS: Is there anything in here that says
21 that the firm in Charlotte is going to get out of the
22 redistricting business?

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1 opposite.

2 Perhaps it's the firm from Dupland County (phonetic).
3 No, he says, this law firm is one of two or three law firms--
4 that's on page 20 -- in the state that currently handles voting
5 right cases.

6 It says it's the only firm that has handled a
7 significant number. Well, that happens to be true. They are
8 certainly not the only firm. We are dealing with North
9 Carolina. There are a number of other firms in the state who
10 handle such cases.

11 MR. HOUSEMAN: Yes, I'm not disputing that. What I'm
12 saying is your claim is that those firms would jump in and
13 handle the cases currently being brought by legal services and
14 my claim is you haven't produced one scintilla of evidence to
15 suggest that.

16 CHAIRMAN VALOIS: Nor have you produced a scintilla of
17 evidence that that isn't the case.

18 MR. HOUSEMAN: Every one of these comments says they
19 can't do it.

20 CHAIRMAN VALOIS: So far as being an issue of whether
21 there's adequate resources or not, we can debate about that all
22 day. We debate about that every time we have a budget meeting.

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1 MR. HOUSEMAN: No, but they say in that letter, I
2 think, that they cannot handle all the cases that are currently
3 being brought by legal services.

4 CHAIRMAN VALOIS: I'm not sure we should expect them
5 to. Why should we expect one law firm to handle all of the
6 cases?

7 MR. HOUSEMAN: You shouldn't. That's my point. There
8 aren't -- the second point is there aren't private attorneys
9 available to do this. You have comments in the record from
10 private attorneys around the country.

11 Every one of those comments say that there are
12 inadequate resources. We couldn't possibly fill the gap. Some
13 comments point out -- Chris Brown's from Maryland -- he's the
14 only attorney in the state of Maryland doing this work.

15 Other comments point out that while they do a lot of
16 this work, they can't do the kind -- they can't possibly meet
17 the gap that would exist if legal services programs were
18 restricted from participating.

19 CHAIRMAN VALOIS: The firm -- I don't know whether the
20 firm in Maryland is the only one in the firm who does it or not.
21 The comments make it clear that the firm in Charlotte is not the
22 only law firm in Charlotte. In fact, he says exactly the

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1 We debate about that every time we have any kind of meeting,
2 whether or not there are adequate resources.

3 MR. HOUSEMAN: Let the record reflect that the Lawyers
4 Committee for Civil Rights, the Legal Defense Fund for two both
5 say they couldn't fill the gap, both, in writing, say they
6 couldn't fill the gap.

7 CHAIRMAN VALOIS: Is that proof of whether they could
8 or could not?

9 MR. HOUSEMAN: No, but there's no proof that you have
10 in this record. I have a number of comments that say they can't
11 fill the gap. You have nothing. You're acting on a
12 supposition.

13 MR. MENDEZ: Mr. Chairman?

14 CHAIRMAN VALOIS: Mr. Mendez.

15 MR. MENDEZ: Mr. Houseman, after the -- let's say in
16 the last ten or twelve years, how many cases have been brought
17 under the redistricting provision?

18 MR. HOUSEMAN: I don't have the slightest idea. Do
19 you mean on the Voting Rights Act? I'm not an expert. I don't
20 know. I can try to find out, but I have no idea.

21 MR. MENDEZ: I mean from our clients, that our clients
22 have been involved in?

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1 MR. HOUSEMAN: I have no idea of that. The report
2 that was submitted to Senator Hatch claims something like -- and
3 there's tremendous factual disputes about the claim -- but
4 something like 2800 hours, was it, maybe it was more, 28,000
5 over an eight year period.

6 If you divide all that out, by the way, that is about
7 .037 of the cases and possibly the resources brought. So it's a
8 very small number. I'm not arguing that it's a big number. I'm
9 arguing that if a local program decides to make it a priority,
10 they ought to be able to do so and there shouldn't be some
11 national prohibition against it.

12 CHAIRMAN VALOIS: Do you have anything further, Alan?

13 MR. HOUSEMAN: Yes. Finally, there are several
14 arguments about abuses and politics. I want to address those.
15 The report by LSC to Senator Hatch does not establish there was
16 any abuse.

17 There's not one example in that report that shows that
18 there was an activity that was undertaken legally at the time it
19 was undertaken. The general counsel of this corporation
20 reviewed that report and sent a letter to Senator Hatch saying
21 that all these activities were undertaken legally and that it
22 was legal to be involved in doing that.

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1 It makes claims that certain cases were brought by
2 Legal Services which they were not. It charges that activity
3 was undertaken legally and then it backs off, which it was not,
4 and the report or later communications to congress indicated
5 were not undertaken legally.

6 So I don't think that report, somewhat outdated, can
7 support an argument that there was abuse.

8 CHAIRMAN VALOIS: Are you referring to the February
9 17, 1985 letter from Interim President Opsut to Senator Hatch?

10 MR. HOUSEMAN: Yes, I guess.

11 CHAIRMAN VALOIS: Well, are you or are you not?

12 MR. HOUSEMAN: Well, if that's the LSC Hatch Report, I
13 guess it is, yes.

14 CHAIRMAN VALOIS: Do you have a copy of it?

15 MR. HOUSEMAN: I might have here. I'm not sure.

16 CHAIRMAN VALOIS: I think the reports speak for
17 themselves. You are free to characterize them anyway you want,

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1 of course. I don't know if in this forum we can decide whether
2 or not this report is partially accurate or partially
3 inaccurate. It's based upon reports given to the corporation,
4 as I understand it.

5 MR. HOUSEMAN: The report does not find anywhere that
6 there was an illegal activity. In fact, it just doesn't.

7 CHAIRMAN VALOIS: It gives examples, does it not, of
8 activities --

9 MR. HOUSEMAN: Activities, but it doesn't say they
10 were illegal at the time they were undertaken. They were
11 careful not to say that. If you look at the report, if you look
12 at the appendix in that report, you will see that virtually all
13 the cases were, as I described, local, county, city cases.

14 CHAIRMAN VALOIS: What subject are you dealing with
15 now in your presentation to us; the extent of the activity?

16 MR. HOUSEMAN: No, no, no. You made --

17 CHAIRMAN VALOIS: I thought that's what got us off on
18 this tangent here.

19 MR. HOUSEMAN: You make an argument in the preamble
20 that there have been abuses and that this is political
21 entanglement. First I was dealing with the alleged abuses. Now
22 I'll deal with the alleged political entanglement.

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1 That's what I'm referring to. I'm trying to refer to
2 your preamble, your arguments in support of this proposal. I
3 will point out that you have produced not any evidence or proof
4 that shows that legal services sought to support one political
5 philosophy over another, quite the contrary it seems to me.

6 What legal services was doing was enforcing the
7 congressional action signed by the president under the Voting
8 Rights Act. The Voting Rights Act cannot and does not seek any
9 right to a particular political outcome.

10 MR. MENDEZ: Alan, let me ask a question. One of the
11 problems -- and I haven't seen it or at least I don't recall it
12 -- tell me a little bit about how legal services grantees got
13 involved with Senator Gramm's election and why that was such an
14 important thing?

15 MR. HOUSEMAN: I have no idea. I can't tell you a
16 thing about it. I don't know anything about it. I may have
17 some information on it back at the office, but I don't --

18 CHAIRMAN VALOIS: If they did, would that be political
19 entanglement or certainly a severe risk of it?

20 MR. HOUSEMAN: If they were representing clients under
21 the Voting Rights Act who were challenging the electoral
22 district, it may be perfectly fine. I don't know what the facts

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1 are there. I'm sorry; I just don't.

2 There's no reference in the preamble to those facts.
3 I'm not -- they may well have been representing bringing a
4 Voting Rights case and challenging the election process or the
5 election district.

6 I don't know. I don't know what the facts are. I can
7 try to find out, but I don't know. I will point out as our
8 comment does, that all of these quotes about political
9 involvement are taken totally out of context.

10 We've cited to you the full quotes, the rest of the
11 quotes. We've pointed out in our footnotes on pages 11 and 12
12 specifically what these cases did and did not do, who was and
13 who was not involved, what the extent of the involvement was.
14 These are the ones you've cited.

15 Finally, with regard to this goal, I'll just point out
16 that there's two provisions in the LSC Act that seem to me to
17 suggest that you can't limit the goal as you've tried to do to
18 providing basic day to day illegal needs to the exclusion, at
19 least, of cases that might have an impact on anyone beyond the
20 individual client.

21 That is Section 1001(3) and Section 1007(a)(3), both
22 of which talk clearly to actions beyond -- that include an

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1 impact beyond the individual client which is why in the delivery
2 system study and why in the plan for the future the corporation
3 adopted impact as one of several goals.

4 As I said before, voting rights cases to me are, in
5 fact, basis day to day legal need. The problem may be
6 irrelevant in terms of whether you can do other things. You
7 have other goals as well.

8 In short, I think this proposal is illegal. It will
9 not stand up in court. You should not adopt it for that reason.
10 Secondly, I think it's a terrible precedent. To deny poor
11 people the right to bring certain cases, particularly around
12 voting rights, to me, I just can't understand the possible
13 rational and frankly find it very inconsistent with our U.S.
14 government and our philosophy of democratic participation by all
15 sectors of the community in the voting process.

16 So I urge you not to modify it, not to fiddle with it,
17 but to take this off the agenda and move on to other matters.
18 Thank you.

19 CHAIRMAN VALOIS: Thank you, Mr. Houseman. I
20 appreciate your input. Are there any other members of the
21 public that wish to speak at this time?

22 (No response.)

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1 CHAIRMAN VALOIS: Hearing none, do you want to rebut,
2 Mr. Shea?

3 MR. SHEA: If I may very briefly.

4 CHAIRMAN VALOIS: Mr. Shea?

5 MR. SHEA: Yes, sir.

6 CHAIRMAN VALOIS: You have a few words for us or a lot
7 of words for us, whichever.

8 MR. SHEA: I'd like, if I could, to address some of
9 the matters that were raised, particularly dealing with the
10 authority and the scope and the reach of the rule.

11 CHAIRMAN VALOIS: Basically, Mr. Houseman has told us
12 that we would be acting unlawfully if we pass this matter.
13 Your written opinion is that that's not the case. I would
14 appreciate you to address that.

15 MR. SHEA: I think the central dispute here is whether
16 a substantive prohibition can advance a goal. I think the
17 simple answer is yes. There is no dispute nor really can there
18 realistically be a dispute that the corporation has full
19 authority to set goals, which goals will bind recipient
20 programs.

21 Now, Alan, I don't think, has argued in any particular
22 way that there's some formality, some particular formality

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1 that's required to adopt particular goals. The tenor of his
2 argument as I understand it is that the corporation can adopt
3 goals that are generic in form but whatever it is, they can't
4 reach substantive prohibitions.

5 I think that you can have a substantive prohibition
6 that will advance a goal. I think that's simply what this rule
7 is about. The prohibition in the rule cast such as it is, is
8 prohibition that will advance a goal of utilization of resources
9 simply in another area.

10 It will simply require that resources be dedicated to
11 other activities and purposes. I don't think -- there's no
12 question that the legislative history that we discussed clearly
13 contemplates that the corporation has authority to establish
14 goals.

15 In a policy sense, this goal is non-intrusive, in a
16 sense that it says that -- or is minimally intrusive. I
17 shouldn't say it's non intrusive. It permits LSC recipients to
18 set goals as otherwise required by local priorities, but it
19 simply says that they can't allocate resources to these kinds of
20 cases.

21 Otherwise, they have essentially complete freedom to
22 set their local priorities as appropriate. The fundamental

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1 issue about does the corporation have legislative -- have
2 authority --

3 The issue is to whether we can promulgate this kind of
4 prohibition absent a more specific prohibition in the act. I
5 think it reduces the matter of whether we can -- first of all,
6 this is a goal. I argue that a prohibition is a goal or can
7 advance a goal.

8 A prohibition is not itself the goal, but it surely
9 can advance a goal. The matter -- I think the corporation
10 clearly does have authority to adopt legislative rules. That
11 is, in other words, it would be a rule that is not grounded at
12 some specific grant of authority, but that generally does
13 advance the purposes and policy of the act and that is otherwise
14 consistent with the purposes and policy of the act.

15 I know Alan has argued that the tenor of this rule is
16 inconsistent with certain exceptions to the political activity
17 portion of the LSC act. Nevertheless, I think the corporation
18 has elsewhere -- it seems to me in 1612 and generally given the
19 broad discretion that is accorded the corporation and certainly
20 its authority to promulgate regulations.

21 It has full authority to promulgate what I would style
22 as legislative rules that are otherwise permissible. I'm very

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1 sure that from a legal point of view they are otherwise
2 permissible; that is, this rule is.

3 That argument addresses really two things. One is the
4 scope of our authority. Two is the extent to which we can
5 affect private funds. Likewise, the argument is to -- I believe
6 it has been our position -- as far as I know, that our 1620
7 rules which deal with priorities govern the entire program.

8 This rule which advances the very same goal also
9 governs all the resources that are available to our recipients
10 whether they are LSC or private. Alan does have a point, and
11 frankly I may have to recede somewhat on the issue of employees.

12 The point I made as to -- this is since Ann
13 enlightened me somewhat on the matter of Hatch Act limitations,
14 I was under the apprehension that Hatch Act limitations -- of
15 course, under the little Hatch Act, LSC employees are prohibited
16 even on their own time from running for partisan political
17 office.

18 I thought that certain other partisan political
19 activities were prohibited as well. She tells me they may
20 perhaps not be. Most of the discussion here today has been
21 about litigation.

22 The LSC outside practice is a provision of the act and

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1 is a provision of our rules that basically prevent outside
2 litigation and representation except for relatives and things
3 like that, and charities.

4 If this rule is about -- if the objection deals with
5 litigation and representation activity, that's -- for
6 redistricting or otherwise -- it's essentially prohibited now
7 unless you are doing it on behalf of a relative.

8 To the extent it's beyond that, you may have a point.
9 That is, if they are purely -- if your employee is advancing
10 essentially their own -- exercising their own first amendment
11 rights, they may well be able to do that.

12 If it's representation, then I think it's probably
13 already prohibited now.

14 MR. MENDEZ: I would really like to have a memo on the
15 Hatch Act and the little Hatch Act and what is prohibited by the
16 employees in that and with the anticipation that you would send
17 that out to the various grantees to advise them what their
18 employees can and can't do.

19 MR. SHEA: We've done that here and there. I could
20 certainly furnish --

21 MR. MENDEZ: Have you sent that in the past to all the
22 grantees?

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1 MR. SHEA: I don't know that we have. I know that
2 we've addressed it from time to time.

3 MR. MENDEZ: Mr. Chairman, I'm sitting on your group
4 by designation, but it seems to me that something like this
5 ought to go out to the various employees. This is something I
6 think that should do that. Before we send it out, I think -- I
7 know for sure I would like to see it.

8 MR. SHEA: Sure, I'd be happy to do that.

9 MR. HOUSEMAN: Can I just interrupt for a second? You
10 do have a regulation called 1608 to prohibit political
11 activity --

12 MR. MENDEZ: I recognize that.

13 MR. HOUSEMAN: That enforces the little Hatch Act
14 provision and incorporates all of this.

15 MR. MENDEZ: Yes, I recognize that we have that
16 specific thing, but I haven't ever really looked at the little
17 Hatch Act either.

18 CHAIRMAN VALOIS: We're going to take a break for 15
19 minutes.

20 MR. MENDEZ: Fifteen minutes? Let's not forget to
21 take a break for lunch.

22 CHAIRMAN VALOIS: Well, we may in 15 minutes decide

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1 whether we are going to come back or not.

2 MR. WEAR: Mr. Chairman, you will be resuming at what
3 time?

4 CHAIRMAN VALOIS: Twenty after or something like that.

5 MR. WEAR: Thanks, Mr. Chairman.

6 (A short recess was taken.)

7 CHAIRMAN VALOIS: It is 12:20. We said we were going
8 to take a break until then. We are now going to recess for
9 lunch. Everybody come back at 1:30 and we'll resume.

10 (A lunch break was taken.)

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CHAIRMAN VALOIS: We are going to resume the hearing.
It's continued with the addition of Mr. Wallace and Mr. Smegal.

MR. WALLACE: Mr. Chairman?

CHAIRMAN VALOIS: Mr. Wallace.

MR. WALLACE: If I could be recognized, I apologize for being late this morning. During the lunch break I read the comments I hadn't read yet. I would like to make a few comments of my own on the matter before the committee if you don't mind.

CHAIRMAN VALOIS: Go ahead.

MR. WALLACE: First of all, in the interest of full disclosure, I ought to get on the record why it is I'm voting on this. I have represented parties in one redistricting litigation, one redistricting lawsuit that otherwise would have come within the scope of this regulation.

During 1983 and '84, I represented the Mississippi Republican party in congressional redistricting case in Mississippi. I have looked at the disqualification statute which is 105(c).

It says that I may not participate in an action which directly benefits such member -- that does not pertain -- or

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1 pertain specifically to any firm or organization with which such
2 members been associated or has been associated within a period
3 of two years.

4 My representation of the party in that litigation
5 ended in 1985. It's now 1989. If you look at the regulation
6 1601.11-81, it talks about what associated means. If you've
7 served within the last two years as an attorney, that's not so
8 or is negotiating or has any arrangements concerning perspective
9 employment therewith, that's not so either.

10 So I think I can vote on this and I intend to vote on
11 this. Just in the interest of full disclosure, if somebody
12 makes my votes no good, it's on the record. You all can do
13 with it as you please.

14 Let me make a couple of remarks about various items.
15 I have looked at Mr. Houseman's -- first of all, I've looked at
16 all the comments. One of the remarkable things to me is that
17 there are so few compared to other regulations that we've had.

18 I think that indicates that there are only a few
19 programs that have the least bit interest in getting involved in
20 what I regard as certainly political activity. Whether it comes
21 within the scope of that term of the act or not, that's what it
22 is.

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1 None of the comments that I've seen except Mr.
2 Houseman's deal head on with the question of our statutory
3 authority to set national goals. He deals with it, but he
4 doesn't deal with it persuasively as far as I'm concerned.

5 The statute gives us authority, I think, where you
6 have authority, then the statute necessarily implies the means
7 to carry that authority out. We've had this discussion before
8 as to whether the corporation has authority past regulations of
9 the substantive nature.

10 It makes no sense to me at all that congress, in
11 creating us as an independent body, would have given us even
12 less authority over our own affairs than a federal agency. That
13 just doesn't make sense.

14 A federal agency generally would have authority to do
15 this sort of regulation. As an independent corporation it
16 follows a fortiori as far as I'm concerned that we have
17 authority to adopt regulations and carry out our statutory
18 powers. So I think this is well within our power.

19 As for the wisdom of it, we have got a report on the
20 massive resources that report into redistricting litigation
21 during the last census cycle. I have no reason to suppose this
22 census cycle will be any different.

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1 I remember before I was ever on this board when an
2 agency in Texas -- I think it was -- this is in the national
3 journal. You can look it up -- suing Phil Gramm to try to block
4 his election to congress. The same people at the same time were
5 complaining to congress that they didn't have enough money to do
6 child support cases.

7 My way of thinking, we ought to make sure there is
8 enough money to do child support cases by not putting 28,000
9 attorney hours and more into redistricting litigation. If there
10 ever was a case for setting a national goal, it seems to me that
11 the ordinary needs of poor people take precedence over the needs
12 of political litigation.

13 I think we have power. I think it's wise. There are
14 three issues that have come up that I've looked at. I've talked
15 to the general counsel about it. I think the general counsel
16 has some language that he'll give to us in a few minutes or
17 maybe the president has some language he'll give to us in a few
18 minutes.

19 One is the question about restrictions on public
20 funds. I'm satisfied by the general counsel's opinions that we
21 can apply this regulation to private funds just like we do our
22 other regulations.

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1 As for public funds, there is a savings provision in
2 the act that if the state of Mississippi wants to give somebody
3 a grant to pursue the state of Mississippi, that's the state of
4 Mississippi's business and we don't intend to interfere with
5 that. So there will be a saving provision for public funds.

6 As for personnel, as I read the language, it prohibits
7 a program making its personnel available for participation in
8 redistricting. It's not a prohibition on personnel making
9 themselves available. It's a prohibition on what the program
10 does.

11 So there is a savings language that will make clear
12 that if you're not using program resources or time, you're
13 acting on your own time, you can go exercising first amendment
14 rights all you like. I don't think that was ever intended in
15 the scope.

16 Also, there will be language made clear that the
17 Voting Rights Act cases can be brought by our programs except
18 where they involved redistricting cases. Redistricting is not
19 the heart of the Voting Rights Act and it was never intended to
20 be the heart of the Voting Rights Act.

21 I have tried for Voting Rights Act cases, only one of
22 which had anything to do with redistricting. So if anybody is

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1 being denied the right to vote because of race, then the Voting
2 Rights -- and they are otherwise eligible -- our programs can
3 represent them. That's no problem.

4 Problems of structural barriers which are mentioned in
5 some of the comments, for instance, the polling places only open
6 at a full moon on leap year day, if it's that hard to register
7 to vote, then that's a structural barrier and you can go after
8 it.

9 What you can't do is get involved in redistricting
10 cases as defined in this regulation. These three amendments are
11 clarifying amendments. They do not change the substance. They
12 just make clear that we don't intend to prohibit what the
13 language never prohibited in the first place.

14 I think it's an important regulation. I think these
15 clarifying amendments will avoid any possible confusion. We have
16 the authority to pass it and we ought to pass it, Mr. Chairman.
17 With that, I appreciate the Chair's indulgence.

18 CHAIRMAN VALOIS: Thank you. I have the proposed
19 amendments before me, and I'm in the process of assembling them.
20 I believe Mr. Smegal wanted to say -- I did not understand Mr.
21 Houseman to say that we could not set goals. In fact, I
22 understand that he said we could set goals.

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1 They take some issue with whether this is or is not a
2 goal we can set or whether or not it is a goal at all I guess.
3 I don't think he argues with whether or not we can -- Mr.
4 Smegal?

5 MR. SMEGAL: Thank you, Mr. Valois. I wasn't here
6 this morning as you've already pointed out. I have several
7 other disadvantages. The material that apparently the rest of
8 you either have had or at least have had the benefit of
9 reviewing is in San Francisco on my desk. It was received in my
10 office after I had to leave yesterday to come to this meeting.

11 I don't have the amendments you talked to me about. I
12 assume at some point I'll have the opportunity to look at those.
13 I assume also I will have an opportunity to look at the material
14 I have just been handed which, even with the speed reading
15 ability, I have not been able to get through much of it.

16 I was interested in Mr. Wallace's comments. I had a
17 lot of trouble finding authority for any of this, certainly the
18 act itself. The particular sections that were pointed to in the
19 summary of what this is all about that appeared in the federal
20 register don't provide support for any of this.

21 I was particularly intrigued with the language that
22 has been used in this purpose. Well, it says the maximum extent

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1 for the delivery of basic day to day legal services to eligible
2 poor individuals, they don't find that in the act anywhere.

3 I also don't find, Mr. Wallace, what you just said a
4 few minutes ago. I wrote it down so I'd get it right. I try to
5 keep accurate notes here. Ordinary needs of poor people, I
6 don't know where that is in the act either, Mr. Wallace.

7 These are interesting terms. I can appreciate the all
8 out different views of what this program should be doing. I
9 think in spite of our individual ideological views or political
10 views, it seems to me what we should be dealing with is with
11 this Legal Service Corporation Act.

12 I for one, from what I've seen of the material that
13 I've been provided so far, feel very strongly that what we are
14 about to do or what your about to do is illegal. There's no
15 authority for what is basically unauthorized by congress and
16 something we shouldn't be doing.

17 CHAIRMAN VALOIS: Let me, if I may, before we go any
18 further so we don't spend time addressing what are not issues at
19 the moment or won't be after we put these proposed amendments or
20 additions, actually, on the table, because they do address the
21 most serious concerns that were raised this morning.

22 Let me just read them. We would have a new 1632.4,

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1 first subdivision, (a). This part shall not prohibit any
2 litigation brought by a recipient of the Legal Services
3 Corporation under the Voting Rights Act of 1965 as amended, 42
4 U.S.C. Section 1971 -- we're relying on somebody's memory that
5 that's the correct citation; if it's not, we will certainly
6 correct it -- provided that such litigation does not involved
7 redistricting. I think that eliminates a lot of the concern.

8 The second section of new 1632.4 would be (b) which
9 will read nothing in this part prohibits the expenditure of
10 public or tribal funds in accordance with the purposes for which
11 they were provided.

12 The third and last section will read (c), nothing in
13 this part prohibits activities undertaken by employees of
14 recipients without the use of program resources including time
15 and without identification with the recipient and outside the
16 context of advice and representation.

17 I think these amendments or proposed new sections
18 would clarify and reduce the objections, at least, that we heard
19 this morning to the issues which they address. Is there any
20 further commentary on these or anything else?

21 MR. WALLACE: Mr. Chairman?

22 CHAIRMAN VALOIS: Yes.

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MOTION

1
2 MR. WALLACE: I would move the adoption of the three
3 amendments in block.

4 MS. SWAFFORD: Second.

5 MR. MENDEZ: Mr. Chairman, I was appointed as sort of
6 an interim to make sure we had a quorum and Hortencia was too.
7 Since there's obviously a quorum here now, I think that my term
8 has expired. (laughter)

9 CHAIRMAN VALOIS: I think your correct. I will so
10 rule if I'm being asked to do that.

11 MS. BENAVIDEZ: I have something to say too.

12 CHAIRMAN VALOIS: Okay.

13 MS. BENAVIDEZ: I think that all this regarding 1632
14 is unnecessary.

15 CHAIRMAN VALOIS: Okay.

16 MR. SMEGAL: I don't quite write as fast as you talk,
17 Bob, so I didn't get it all down. I guess I got the drift of
18 it. What we have on the table now is Mr. Wallace's motion to
19 amend what has been published in the federal register by the
20 addition of .4 and three subsequent -- is that right?

21 CHAIRMAN VALOIS: I'm not sure Mr. Wallace is
22 procedurally correct, but I think what he -- the main proposal

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1 is before us but it's not before us in terms of somebody's moved
2 its adoption.

3 I guess procedurally if you want to withdraw your--
4 it wasn't attached to anything.

5 MOTION

6 MR. WALLACE: I will add -- if I may, let me move the
7 adoption of the regulation as printed in the federal register.
8 Then I'll move for amendments after that.

9 CHAIRMAN VALOIS: All right. Do we have a second on
10 that?

11 (No response.)

12 CHAIRMAN VALOIS: I will second it.

13 MOTION

14 MR. WALLACE: That's got the federal register matter
15 before us. I now move the adoption in block of the three
16 amendments that Mr. Valois has just read to the committee.

17 CHAIRMAN VALOIS: Do we have a second on that?

18 MS. SWAFFORD: I'll now second that.

19 CHAIRMAN VALOIS: I guess we'll move the whole
20 question at this point.

21 MR. SMEGAL: Wait a minute. First off, I think you've
22 go to vote separately, Mr. Valois, but also I'd like an

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1 opportunity to speak at some point if we're going to move this
2 matter along.

3 CHAIRMAN VALOIS: You may have that opportunity again.

4 MR. SMEGAL: Thank you very much. I'm looking for
5 what I think I've got earlier on which was something I believe
6 came under cover of a letter and it was referred to as a Hatch
7 report.

8 In that, my recollection is, as Mr. Wallace refreshed
9 a few minutes ago, there was some reference to 28,000 hours time
10 spent on redistricting cases in some period of time long before
11 this particular board existed.

12 What I didn't see in that report was an indication of
13 how much in attorney's fees were collected with respect to those
14 28,000 hours that were spent. Can anybody tell me that? How
15 much was recaptured in attorney's fees, Rob, do you know?

16 MR. ELGIN: Not off the top of my head.

17 MR. SMEGAL: Who did the report? Who did the Hatch
18 report? Did you do it?

19 MR. ELGIN: My predecessor.

20 MR. MENDEZ: It was done in '84.

21 MR. SMEGAL: It doesn't make any difference when it
22 was done. I appreciate it -- I read it as Mr. Wallace had read

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1 it, and I saw the number 28,000 hours and agreed that it's a
2 significant number of hours.

3 I also saw in here an indication that some of these
4 cases generated some return of the LSC investment, if we may
5 call it that, in attorney's fees in these cases. I'm wondering
6 how much of that there was. Are we talking about an expenditure
7 by this corporation or are we not?

8 MR. WALLACE: Mr. Chairman, may I try to answer some
9 of that?

10 CHAIRMAN VALOIS: Part of it is, in fact, answered if
11 somebody would provide Mr. Smegal with a copy of the report.

12 MR. SMEGAL: I read the report, Mr. Valois.

13 MR. WEAR: Mr. President?

14 CHAIRMAN VALOIS: Go ahead. You're the president; I'm
15 the chairman.

16 MR. WEAR: I beg your pardon. I keep forgetting that
17 I'm not in the center anymore.

18 Mr. Chairman, if I might direct Mr. Smegal's attention
19 to the attachment to the so-called Hatch report to which he
20 refers, it's a report attached to a letter dated February 27,
21 1985, signed by interim president Thomas J. Opset.

22 Mr. Smegal, if you look at the attachment to that

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1 report, you'll see some entries for attorney's fees. You'll
2 see, for example, in a case brought by the East Arkansas Legal
3 Services that they received, it appears anyway, \$6,000 in
4 attorney's fees.

5 You'll see another entry on that page for the
6 California Rural Legal Assistance who appeared to have received
7 \$15,323. If you move on through the report, you'll see another
8 entry on the next page, Southeast Louisiana Legal Services
9 Corporation, \$4,500.

10 There are some notes indicating that fees were pending
11 at the time this report was prepared. There are some other
12 entries on other pages as to the amounts of fees that were
13 collected.

14 MR. SMEGAL: That's my very point. Let me go a little
15 further than you went, Mr. Wear. Under a program that Mr.
16 Wallace referred to, without naming it, with the 28,000 hours,
17 back when this report was put together, that 28,000 hours was
18 listed or something was listed here. Maybe it was 1500 hours.

19 Anyway, it's listed as open. Attorney's fees are not
20 there at that point. So I am at a loss to be able to answer my
21 question from this document as you suggested I might.

22 CHAIRMAN VALOIS: Which are you referring to now, Tom?

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1 MR. SMEGAL: West Texas Legal Services. Anyway, my
2 point is that this document is incomplete. It was prepared in
3 1985. There were cases at that point from which this total of
4 28,000 hours comes, as Mr. Wallace has referred to.

5 There were cases that were open when this report was
6 put together. It's incomplete as to how much attorney's fees
7 were recovered. I'd like to know that. The concept here is
8 that somehow we are wasting resources by doing redistricting
9 cases.

10 I don't have any evidence that shows me that. I've
11 got an incomplete report, which I understand isn't even
12 accurate, but nevertheless incomplete in that the data in 1985
13 indicates to me that where there are numbers for hours and
14 costs, cases are still open. Certainly in the last four years
15 something else has happened. Where's the update?

16 CHAIRMAN VALOIS: Let me ask Mr. Wear or Mr. Smegal a
17 question along the same lines that Mr. Smegal has raised. Is
18 there anything in this report that tells us where or how we have
19 recaptured hours?

20 I know about recapturing dollars, but is there
21 anything in here that addresses how it is that we recapture or
22 recreate or create, for that matter, hours, time? I don't know

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1 how you do that.

2 MR. SMEGAL: I guess you get it by submitting a -- the
3 same way I do it, Bob, or you do it in your law firm. You get a
4 situation where there are attorney's fees. You list your hours
5 and you put your hourly rate down and they give you money.

6 CHAIRMAN VALOIS: You missed my point.

7 MR. SMEGAL: I sure did because look at Texas Rural
8 Legal Aid. They've got 200 hours and they've got \$40,000.

9 CHAIRMAN VALOIS: I can pay you for the time that you
10 spent working on my case, Thomas, but how do I recreate the time
11 itself that you've spent on it?

12 MR. SMEGAL: You recreate the time by hiring someone
13 else to spend that money using other time. That's the way you
14 do it, Bob. When you get that money, you go out and hire
15 another lawyer like you and I do in our law firms.

16 You get another \$40,000 and you go hire lawyers.
17 Their hours then are spent doing the same thing that the
18 original hours were doing, helping indigents in civil matters
19 which is what this program is all about.

20 MR. WALLACE: Mr. Chairman?

21 MR. SMEGAL: Ordinary needs of poor people I think is
22 what Wallace told them.

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1 CHAIRMAN VALOIS: In the meantime, you postpone it.
2 Go ahead.

3 MR. WALLACE: Mr. Chairman, there are several
4 problems. If you look at the next to last page in the report,
5 the proverbial bottom line shows only \$348,000 of coverage for
6 those 28,000 hours.

7 I haven't gone through here line by line, but I know
8 from the report that a lot of programs wouldn't tell us anything
9 about anything. There's probably a fairly close relation
10 between the people who reported their hours and the people who
11 reported their money.

12 \$348,000 for 28,000 hours is not a tremendous rate of
13 recoupment. As for the Lawyer's Committee, I know for a fact
14 that they recovered some fees because I was on the other side of
15 one of their cases.

16 The Lawyer's Committee has absolutely refused to give
17 us any accounting of what they did with taxpayer's million
18 dollars or what they got for it. The problem of getting
19 information from the programs has been a recurrent one ever
20 since we've been on this board.

21 We've tried to address it by regulation, most of which
22 Mr. Smegal has opposed. Last month we adopted by a vote of

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1 eight to one a regulation which we hope will impede the process
2 of taking cases in order to make money with the theory that
3 we'll use that money to help somebody else some other day.

4 I think as the chairman has so rightly pointed out,
5 once the time is gone, you can't get it back. The child
6 support cases that weren't being done in 1982 and 1983 while
7 they were suing Phil Gramm are never going to be done regardless
8 of whether attorney's fees are recovered.

9 I think there is plenty here to indicate that there
10 has been a massive misdirection of resources. The mere fact
11 that programs may get money from misdirecting the resources only
12 compounds the problem. It does not ameliorate it.

13 I think we did right last month to pass a regulation
14 against bounty hunting. I think we ought to pass this regulation
15 this money to make sure that resources are properly used in the
16 first instance.

17 I think the court fully supports the action the board
18 is about to take, I hope is about to take. I urge the committee
19 to support the regulation. Thank you, Mr. Chairman.

20 MR. SMEGAL: Mr. Valois, I do have a response, if I
21 may.

22 CHAIRMAN VALOIS: Okay.

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1 MR. SMEGAL: Mr. Wallace is quite effective in his
2 advocacy. I think he just emphasizes and points to the point
3 I'm making. He refers to the fact that the total on the last
4 page is 28,000 hours.

5 We've got programs that told you how many hours they
6 spent on these cases. Of those cases that were litigated, 69,
7 36 were still open when this report was completed. Even at that
8 point there was \$348,000 that Mr. Wallace has so appropriately
9 pointed out.

10 The point is the programs that had provided the hours
11 I'm sure will provide the rest of this data. No one has gone
12 back. No one has asked them. We don't know what the number
13 is.

14 You talk about the resources expended in this
15 particular type of litigation -- and if you'll accept for the
16 moment my view that monies have been returned through attorney's
17 fees and those monies are now available to deliver further
18 litigation for poor people as this program is intended to
19 pursue, it seems to me that's what we do every year.

20 We go in and we ask for more money. We don't ask for
21 money for last year. We don't ask for the cases that weren't
22 handled the year before or two years ago or five years ago. We

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1 ask for money for lawyers to handle cases for the following
2 year, the year after.

3 That's what these attorney's fees are doing, Mr.
4 Wallace. These attorney's fees are providing an opportunity for
5 lawyers to be hired to represent poor people in the future, just
6 like our budget request, granted going down every year but
7 nevertheless our budget requests are proposed to do.

8 That's what we are doing here. We are collecting
9 attorney's fees. With those attorney's fees, we are able to
10 employ additional lawyers or continue to employ the same lawyers
11 to do further legal services for the poor people.

12 I think, Mr. Wallace, my request is a simple one.
13 We've got a database here. The database is those programs that
14 already told you how many hours they'd spend on these particular
15 cases, however we categorize them.

16 It's just a matter of going back to these programs and
17 finding out how much attorney's fees they've collected in the
18 last four years. It's an easy task. There are only 69 of them.
19 They've all already demonstrated their willingness to provide
20 the data.

21 You've got the data. You just didn't complete the
22 data.

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1 MR. WALLACE: Excuse me, Mr. Chairman, I should
2 address the Chair. I apologize.

3 CHAIRMAN VALOIS: The argument doesn't address the
4 issue of what -- although you may be able to take recovered fees
5 and go out and hire lawyers or buy a building or buy a xerox
6 machine.

7 It doesn't address the problem of the eligible client
8 who comes to the program and says, "I have this domestic
9 violence problem," or "I have this housing problem," or "I have
10 this unfair discharge problem" or whatever it is and is told
11 either in words or by action "I'm sorry we can't handle your
12 case today. We're tied up in a very difficult and complex
13 redistricting matter; in fact, the whole office is. Come back
14 and see us in a couple of years when it's over."

15 It doesn't really -- the argument doesn't address
16 that. Mr. Wallace?

17 MR. WALLACE: I think I've said what I've got to say,
18 Mr. Chairman. I thank you, but I have nothing further.

19 CHAIRMAN VALOIS: Is there any further comment?

20 MR. SMEGAL: Yes, there is a further comment. Bob, I
21 don't mind getting tag-teamed by the two of you. I assume if
22 Durant were here or Bernstein were still with us, that the group

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1 would even be bigger. I don't mind it at all.

2 Let's just focus on the 28,000 hours. We've got
3 6,000 -- at some point we had 6,000 lawyers -- let's assume that
4 we have only 4,500 lawyers in the program now. I don't know
5 what time period we are talking about here, but let's assume
6 it's all in one year.

7 What is that, Mr. Wallace, that six hours a lawyer?
8 Now my lawyers are obligated to bill 1,800 a year. You're
9 telling me that resources that involve six hours of a lawyer's
10 time a year are somehow a misuse, a misdirection of our funding,
11 where, in fact, money is being recouped with respect to those
12 six hours per lawyer?

13 MR. WALLACE: I think your argument is facetious.

14 CHAIRMAN VALOIS: Again, if I -- Mr. Mendez?

15 MR. SMEGAL: Is Mr. Mendez on this committee today?

16 CHAIRMAN VALOIS: No, but he's a member of the board.
17 I'm going to let him talk.

18 MR. SMEGAL: I know he is.

19 MR. MENDEZ: Tom, you know I've tried never to make
20 any of my decisions about what funds -- what we give funds to
21 based on how much is coming back to Legal Services and what
22 would come back.

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1 I don't think that any decision or any determination
2 on this issue based on the number of dollars that come back is
3 an appropriate analysis. I think you have to look at what -- at
4 least the way I look at it -- what is the direction and what
5 philosophically should the national board be doing.

6 I think if we focus on the attorney's fees issue that
7 that's not appropriate. That's just plainly not the direction
8 that you'd look. It's fine to have the recoupment and I would
9 hope that they did do well on it, but I just don't think that's
10 the theory that your looking for.

11 Let me just point out one fallacy in your argument.
12 You have 69 groups that are in here. You shouldn't use all
13 4,000 lawyers to make the determination on how much the
14 recoupment was or how much the cost was in percentages. To me,
15 that's not irrelevant.

16 MR. SMEGAL: I didn't bring up the issue of attorney's
17 fees. Mr. Wallace brought it up in his opening statement about
18 what his views -- his ideological views are on the delivery of
19 legal services to the ordinary needs of poor people.

20 What we're talking about here is a program that is
21 intended to provide a full range of legal services to the poor,
22 civil legal services. That's what we're here for. It's not Mr.

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1 Wallace's interpretation. It's not even what this regulation
2 says.

3 There's no statutory authority for the language that
4 starts off in 1632.1, Purpose, maximum extent for the delivery
5 of basic day to day legal services to eligible poor individuals.
6 That's not in the Act. Ordinary needs of poor people, Mr.
7 Wallace's language, that's not in the Act.

8 These are activities that lawyers engage in for
9 clients. They are part of a representation of clients. We've
10 got a red herring with Mr. Wallace's 28,000 hours. I just
11 pointed out to you why it's a red herring.

12 Pepe, it's not my issue. The issue is what this
13 program should be doing. We've got provisions in the act that
14 say local discretion as to what is important to a local program,
15 what's important to a local community of poor people.

16 We cannot tell them how they can litigate. We've been
17 doing it for several years, I must admit, I must acknowledge
18 sometimes more ineffectively than others, but nevertheless,
19 that's what's going on here. I think we all have to just
20 recognize it.

21 MR. WALLACE: Mr. Chairman?

22 CHAIRMAN VALOIS: Mr. Wallace.

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1 MR. WALLACE: A couple of things come to my mind. I
2 think Mr. Mendez has properly pointed out this is 28,000 hours
3 by a limited number of programs, programs who themselves were
4 complaining that they didn't have enough money to meet ordinary
5 needs of poor people while they were doing political litigation.

6 The causity of comments compared to other regulations
7 indicates to me that for most of our programs, this regulation
8 will pose no hardships whatsoever. There are a limited number
9 of programs that are deeply involved in political litigation to
10 the exclusion of other matters. That's what this regulation is
11 intended to stop.

12 Mr. Smegal has attempted to place this on
13 philosophical grounds. It's philosophy if you like it, it's
14 ideology if you don't. I won't get into the semantic argument,
15 but I will say that this statute quite clearly gives us the
16 authority to set goals.

17 It says so. No, you won't find my language in the
18 statute, but then you won't find the language about a full range
19 of legal services in the statute. Again, that's committee
20 report stuff that people beat over the head with at confirmation
21 hearings.

22 People disagree on what the scope of this corporation

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1 ought to be. The very members of congress who voted for it
2 disagree on what the scope of this corporation ought to be.
3 They have delegated to this board in their wisdom the right to
4 set national goals.

5 That is what we are doing here today. If the
6 authorities who have been elected to govern this country
7 disagree with what we're doing with the authority that has been
8 duly conferred on us by the President of the United States bind
9 with the advice and consent of the Senate, then the elected
10 authorities will soon enough have an opportunity to replace it,
11 replace us, and it can't come too soon for me.

12 As long as this authority -- or for anybody else in
13 this room, I imagine. As long as we have this authority, then I
14 don't think we can escape the responsibility to use it.

15 If Mr. Smegal doesn't understand the long term
16 disagreement between the function of law reform and law
17 enforcement, he can go read Mr. Houseman's excellent book on the
18 History of Legal Services. I enjoyed it very much. It
19 illuminates the issues very well.

20 I come down on the side against law reform and for
21 ordinary basic day to day needs of poor people. As long as I
22 have the statutory authority to set national goals, that's my

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1 national goal. That's why my vote on this regulation will be
2 "aye."

3 CHAIRMAN VALOIS: If you all don't stop this debate,
4 you won't have anything to say tomorrow.

5 MR. SMEGAL: Well, we're rehearsing for tomorrow.
6 (laughter)

7 CHAIRMAN VALOIS: I see. Would anybody like to
8 address these proposals on the table?

9 MR. SMEGAL: Well, I don't have them in front of me so
10 I have a lot of trouble. I have to speak from memory, Mr.
11 Valois. I do have one comment.

12 Mr. Wallace indicated that in the committee report
13 that accompanied this act, I guess, that there was language with
14 respect to supporting the full range of legal services. I think
15 maybe Mr. Houseman has given us the benefit of that information
16 in his report.

17 I didn't hear you refer specifically to this committee
18 report, Mr. Wallace, to your language or that language that I
19 find in Section 1, the basic -- is that in the committee report,
20 too?

21 MR. WALLACE: No.

22 MR. SMEGAL: None of that is there, huh?

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1 MR. WALLACE: No.

2 MR. SMEGAL: So we do have support for a full range of
3 legal services in the House and Senate Committee, but we don't
4 have any support for what we have in this proposed part that
5 appeared in the federal register or in what you said earlier?

6 MR. WALLACE: Mr. Chairman, if I may respond, we have
7 statutory support and that's all that counts. We have statutory
8 support to set national goals. That's what we're doing.

9 CHAIRMAN VALOIS: There are other restrictions on us
10 as we've discussed this morning.

11 MR. SMEGAL: I just want to know about the committee
12 reports. I thought I heard Mr. Wallace say that the full range
13 of legal services are supported in the committee report. I
14 understand that his interpretation of what this program should
15 be doing or what Part 1632.1 sets out as a purpose is not in any
16 committee report. It's in some broad omnibus act language which
17 is not in this federal register either, I might add.

18 CHAIRMAN VALOIS: That may be so, but as was discussed
19 this morning in the absence of both of the debaters here, was
20 the fact that the congress has taken certain other things out
21 of the full range of legal services which we might want to
22 provide.

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1 Are there any other comments on this regulation?

2 MR. SMEGAL: I do have a comment specific for the
3 regulation, Mr. Valois.

4 CHAIRMAN VALOIS: Please.

5 MR. SMEGAL: If I understand the term redistricting,
6 it is broad in this context. It involves legislative, judicial,
7 schoolboards and things like that?

8 CHAIRMAN VALOIS: That's correct.

9 MR. SMEGAL: Any district to which people are elected
10 either by a partisan or bipartisan election? Is that right?
11 Tim, is that what we're talking about?

12 MR. SHEA: Yes.

13 MR. SMEGAL: Any district, any state, any governmental
14 district irrespective of it's purposes?

15 MR. SHEA: Any governmental unit, that's correct.

16 MR. SMEGAL: Fire district, police district, whatever
17 they are.

18 MR. SHEA: Dog catcher district if they have them.

19 CHAIRMAN VALOIS: Water districts?

20 MR. HOUSEMAN: Yes, it would apply to water districts.

21 CHAIRMAN VALOIS: That, I think, comes in 1632.3, Mr.
22 Smegal, where it says any level of government.

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1 Wear points out which is 1632.3(a).

2 MR. SMEGAL: None of that is modified by the
3 1632.4(a), (b) and (c), part of which I was able to write down?

4 CHAIRMAN VALOIS: Not that part of it, no. We
5 addressed the other concerns. Is there anything further?

6 (No response.)

7 CHAIRMAN VALOIS: Very briefly, Alan Houseman, very
8 briefly.

9 MR. HOUSEMAN: I just want to say a couple of things
10 for the record. One, PAG/NLADA do not accept the qualification
11 with regard to limiting the Voting Rights Act. There's no doubt
12 that the Voting Rights Act explicitly covers gerrymandering of
13 election districts, some forms of redistricting that are
14 racially discriminatory.

15 This proposal would exclude poor people with legal
16 services or private funds and subrecipients from engaging in
17 representation on behalf of those people who were discriminated
18 against. That's what this does.

19 Secondly, I think it should be clear that my argument
20 on the statutory authority is far broader than just the
21 legislative regulatory issue which wasn't adequately answered.
22 The statutory section of which everybody is relying.

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1 legislative regulatory issue which wasn't adequately answered.
2 The statutory section of which everybody is relying.

3 The legislative history is crystal clear that it did
4 not give the corporation the right to make subject matter of law
5 priorities. That's precisely what you're doing anyway you cut
6 it.

7 There's no dispute about that. There's no legislative
8 history that suggests otherwise. I don't think there's any
9 doubt about it. So I urge you again to not adopt this
10 regulation in any event, either modified or not.

11 CHAIRMAN VALOIS: Thank you, Mr. Houseman. We
12 appreciate your opinion. We will now take --

13 MR. SMEGAL: No, we won't -- I have one more comment.

14 CHAIRMAN VALOIS: Mr. Smegal.

15 MR. SMEGAL: Thanks, Mr. Valois. Mr. Wallace
16 commented on the paucity of responses to publication in the
17 federal register. I don't know particularly why any individual
18 person did not respond. Mr. Wallace seems to have a view.

19 I can't be prophetic in my pronunciation of the
20 absence of responses. I might point out to this board that I
21 were one sitting out there looking at another federal register
22 proposed regulation, having been one of 567 who responded

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1 several months ago, all in the negative, and seeing the board's
2 record of ignoring responses and writing in public testimony
3 that we received, I don't know why we got 25. I'm surprised.

4 Mr. Houseman should be complemented on his ability to
5 get anyone to respond to anything we put in the federal register
6 when it's just ignored in any event.

7 MS. SWAFFORD: I have a question of Mr. Smegal, Mr.
8 Chairman.

9 CHAIRMAN VALOIS: If Mr. Smegal would answer I
10 question, I'm sure --

11 MS. SWAFFORD: Well, I was just interested that you
12 said Mr. Houseman should be complemented for getting a
13 response. It's Mr. Houseman's job to always go out and get
14 these negative responses? If so, maybe we should just hear from
15 him and not worry about the comments.

16 MR. SMEGAL: I think you heard from him, didn't you,
17 Claude? I wasn't here this morning.

18 MS. SWAFFORD: Yes, yes, we did. You indicated that
19 all the comments are just a reflection of what Mr. Houseman --

20 MR. SMEGAL: No, that isn't what I said.

21 MS. SWAFFORD: Oh, I thought that's what you said.

22 MR. SMEGAL: Listen more carefully, Claude.

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1 CHAIRMAN VALOIS: Now, now.

2 MR. SMEGAL: What I said was Mr. Houseman should be
3 complemented. He's here. He's given us a report. There are
4 others -- he represents a group that were invited to make
5 comments.

6 They've had the experience of making comments to this
7 board that are totally ignored irrespective of what the
8 magnitude of the response is, 500 or 600 responses.

9 CHAIRMAN VALOIS: I'll congratulate Mr. Houseman on
10 getting those responses.

11 MS. SWAFFORD: Well that, Mr. Chairman, was the point
12 that I was interested in clarifying.

13 MR. HOUSEMAN: For the record, I didn't get those
14 responses. (laughter) By the way, for the record, the comment
15 period doesn't end until 5:00 this evening. So you are about to
16 vote on something which you don't have the comments for.

17 CHAIRMAN VALOIS: I'm sure they will all be available
18 to the board tomorrow.

19 MR. SMEGAL: A technical question: Is it necessary to
20 republish this now that you've added a section? It had three
21 sections now it has got 33 percent more.

22 CHAIRMAN VALOIS: It's not the number of sections. I

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1 think we're receding a little bit. Go ahead.

2 MR. SHEA: These are -- the amendments actually recede
3 from the scope -- and I think are really clarifying. We'd only
4 have to republish if any changes are a logical outgrowth of the
5 original -- I think in the D.C. circuit anyway -- as long as
6 it's a logical outgrowth of your basic notice, it's perfectly
7 permissible. In effect, that's what this process is about,
8 making appropriate changes to the respond to comments.

9 CHAIRMAN VALOIS: I didn't expect Mr. Houseman to
10 endorse these. In fact, he's told us all along he wasn't going
11 to endorse any of this regardless of what we said. He opposed
12 the entire thing.

13 I must say that they do meet the major objections
14 other than whether we should do it or not, that he raised this
15 morning. Now, can we have a vote?

16 MR. HOUSEMAN: Not the federal rights act stuff. If
17 you limit it -- if you'd said the Voting Rights Act, you would
18 have --

19 MR. MENDEZ: We've never had a deal since we've been
20 here.

21 MR. HOUSEMAN: No.

22 MR. WALLACE: Mr. Chairman, let the record reflect we

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1 got an 11-0 deal on lobbying which got slam dunked in the
2 appropriations bill, at least to a certain extent.

3 CHAIRMAN VALOIS: Let's go ahead and vote on the
4 amendment first or the addition really. That's properly what it
5 is. I have read it once. We are voting now on
6 1632.4(a),(b),(c) which we've read. The voting members of the
7 committee are myself, Mr. Wallace, Mr. Smegal, Lorraine Miller,
8 and Claude Swafford.

9 Ms. Miller, how do you vote?

10 MS. MILLER: No.

11 CHAIRMAN VALOIS: Mr. Smegal?

12 MR. SMEGAL: No.

13 CHAIRMAN VALOIS: I vote aye. Ms. Swafford?

14 MS. SWAFFORD: Yes.

15 CHAIRMAN VALOIS: Mr. Wallace?

16 MR. WALLACE: Aye.

17 CHAIRMAN VALOIS: The addition passes two to three.
18 We will now take up the main 1632 as published in the federal
19 register with the amendments. Ms. Miller, how do you vote on
20 that?

21 MS. MILLER: No.

22 CHAIRMAN VALOIS: Mr. Smegal?

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1 MR. SMEGAL: No.

2 MR. WALLACE: I vote aye. Ms. Swafford?

3 MS. SWAFFORD: Aye.

4 CHAIRMAN VALOIS: Mr. Wallace?

5 MR. WALLACE: Aye.

6 CHAIRMAN VALOIS: It passes three to two.

7 MR. WALLACE: Mr. Chairman?

8 CHAIRMAN VALOIS: Ms. Benavidez?

9 MS. BENAVIDEZ: This morning I said I would like to
10 join you. Am I not permitted to vote?

11 CHAIRMAN VALOIS: No, you are not permitted to vote on
12 this. As I announced earlier with the constitution of the
13 entire committee, Mr. Mendez and you were off the committee for
14 the day.

15 A PARTICIPANT: The full board will have an
16 opportunity to vote tomorrow.

17 MS. BENAVIDEZ: You did talk to him but not to me.

18 CHAIRMAN VALOIS: Well, immediately prior to the vote
19 I announced who the voting members were. Mr. Wallace?

20 MR. WALLACE: Mr. Chairman, I ask unanimous consent
21 that the staff be authorized to make a technical and conforming
22 amendments to the language overnight in case there are any

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1 details. They can bring us a clean, typed up copy in the
2 morning.

3 CHAIRMAN VALOIS: Without objection, that will be
4 permitted. With nothing further to come before this committee,
5 we stand adjourned.

6 (Whereupon, the meeting of the Legal Services
7 Operations and Regulations Committee was adjourned at 2:29 p.m.)

8 * * * * *

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