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LEGAL SERVICES CORPORATION

**RETURN TO CORPORATION
SECRETARY ARCHIVES FILE**

- - -

OPERATIONS AND REGULATIONS

COMMITTEE

- - -

MEETING

- - -

August 23, 1983

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The Committee met in the G.S.A. Auditorium,
18th and F Streets, N.W., Washington, D.C., at 10:00 a.m.,
DANIEL RATHBUN, Committee Chairman, presiding.

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PRESENT:

DANIEL RATHBUN	Committee Chairman
ROBERT E. McCARTHY	Committee Member

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1 ALSO PRESENT:

2 DONALD P. BOGARD President, L.S.C.
3 DENNIS DAUGHERTY Vice President, Operations
4 CHARLES RITTER Vice President, Finance
5 LEANNE BERNSTEIN Secretary
6 GREGG HARTLEY Director, Field Services
7 JOHN MEYER Deputy General Counsel
8 ALAN SWENDIMAN General Counsel
9 JAMES STREETER Director, Office of Government
Relations

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P R O C E E D I N G S

10:15 a.m.

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3 CHAIRMAN RATHBUN: I'd like to call the meeting
4 to order, please.

5 I apologize for the delay. The meeting of the
6 Committee on Operations and Regulations. Present is
7 the Chairman of the Board and Committee Member Robert
8 McCarthy. I'm Daniel Rathbun to chair this meeting.

9 I call your attention to the Agenda that you
10 have pursuant to the publication of the Federal Register.
11 I'd like to start off and entertain a motion for adoption
12 of the Agenda.

13 MR. McCARTHY: I would move that the Agenda as
14 published be adopted by this Committee.

15 CHAIRMAN RATHBUN: I would second that. The
16 motion is made and seconded. All in favor.

17 (CHORUS OF AYES.)

18 CHAIRMAN RATHBUN: Motion passes for adoption
19 of the Agenda.

20 The first order of business, Matters to be
21 Considered, is the passing for publication of the proposed
22 eligibility regulations.

23 At this time I would entertain a motion for the
24 passage of the -- for publication of the proposed eligi-
25 bility regulations.

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1 MR. McCARTHY: Dan, prior to a motion on that,
2 is this the one that we had discussed in the prior meeting
3 in Phoenix?

4 MR. BOGARD: If I may, Mr. Chairman, there have
5 been some modifications to what was presented at the
6 Committee meeting in Phoenix. There have been some dis-
7 cussions with some of the parties that indicated an
8 interest in making some suggestions to us. The staff
9 has reworked them. So I would think it would be appro-
10 priate at this time to have a presentation by staff as to
11 the changes of the -- in the regulation.

12 CHAIRMAN RATHBUN: Do we have a member of the
13 staff to explain the modification to us?

14 MR. BOGARD: Yes. I think Alan and John and
15 Gregg ought to be involved in that.

16 MR. McCARTHY: A preliminary question: The
17 changes that have been made by staff since we last
18 reviewed this -- are they the ones indicated by the
19 underlining?

20 MR. SWENDIMAN: Yes. Actually, the regulations
21 in toto have been -- Inclusions have been shown by under-
22 lining, and deletions have been shown by brackets in order
23 to assist you and the public in terms of understanding
24 and being able to read through without flipping from one
25 document to another.

1 What I thought I would do is not only discuss
2 the modifications but discuss some of the changes that
3 were presented to the Board in Phoenix. I will do this
4 by a section by section analysis.

5 I should preface the remarks by saying that
6 the eligibility question and the eligibility regulations
7 are something that has been considered actually for more
8 than a year. It goes back to early or mid-1982, some-
9 thing that apparently the staff has been looking at since
10 that time.

11 The changes, starting with -- Let's see, start-
12 ing with 1611.3. We have deleted the reference to the
13 O.M.B. and referred to the Federal Poverty Income guide-
14 lines.

15 Last year O.M.B. delegated this responsibility
16 to the Department of Health and Human Services, in terms
17 of this standard; and the proposed modification simply
18 is intended to permit the Corporation to use the current
19 Federal guidelines without regard to whether they've been
20 prepared by O.M.B. or some other agency to whom it's been
21 delegated.

22 16.4. We had a reference clarification, first
23 of all, to gross income. I would dare say that most of
24 the programs have been referring or using gross income as
25 the standard. There have been, or at least I'm advised

1 that there are -- have been instances where programs
2 have used net income in determining eligibility, and
3 this simply is a matter of clarification.

4 Again, my information is that most of the pro-
5 grams have, in fact, been using that standard all along.

6 There is also an increase in the threshold
7 to 150 percent with regard to whom services may be
8 rendered. This limit of 150 percent is a modification
9 and an additon.

10 1611.5 refers to the determination of eligi-
11 bility. Under the previous regulation -- I should say,
12 the current regulation -- there are a number of factors
13 that are listed in determining eligibility; but the
14 factors cut both ways.

15 In other words, there are several factors that
16 are to be used in disqualifying and several factors to
17 be used in permitting legal services to be afforded.

18 There was some confusion on this, and this is
19 actually a confusion that apparently has gone on for some
20 six -- five, six years.

21 Alice Daniel, my predecessor, back in the late
22 Seventies, for example, was addressing problems as to
23 programs which rendered assistance simply because the
24 individuals were over the age of sixty or sixty-five,
25 despite the fact that the income of those particular

1 persons, in this one instance, was approximately \$26,000.

2 What we have attempted to do here is to break
3 down the factors and indicate ones that should be included
4 or should be considered in determining whether legal
5 assistance should be afforded, and factors that should
6 be considered in excluding.

7 You will note that under (b), for example,
8 most of the number of the factors remain the same, with
9 the addition of number (f) -- I should say, letter (f).
10 The other distinction or qualification that has been made
11 is in terms of fixed debts and obligations, number (b) on
12 page -- Number (c), I'm sorry, on page 5.

13 This again, was to clarify those situations for
14 programs that have been using net income as a standard
15 rather than gross income in referring to Federal-State
16 multiple taxes. We're talking about taxes that are unpaid
17 for prior years, not current obligations.

18 In terms of assets -- I should say, factors to
19 be considered in denying assistance, they're set out at
20 the bottom of page 5, carried over to page 6. Several
21 of them are the same as the current regulations.

22 There is a major change with regard to
23 number (d), the existence of assets including both liquid
24 and nonliquid. The reference to that appears in terms of
25 the standard is 1611.6.

1 A number of the informal comments that were
2 received indicated that, as originally presented to the
3 Committee in Phoenix, it was a little unclear as to what
4 substantial assets--what the word substantial meant and
5 what was substantial assets.

6 The staff has attempted to clarify that in 1611.6,
7 and 1611.6 in the main dovetails or adopts the regulations
8 for food stamps. There are several limits or modifications
9 that have been made to those standards which have been
10 utilized, specifically, reference No. (c) on page 8, in
11 terms of the equity in a home, the reference to work-
12 related equipment, No. 5 on page 10; but in the main,
13 track or follow the regulation for the food stamp eligi-
14 bility.

15 The next appears on 1611.7. I believe this
16 was a matter that was brought before the Committee in
17 Phoenix. The change being made-- The modification being
18 made begins on page 13 under No. (c), in which information
19 furnished to the recipient becomes available to the
20 Corporation.

21 This Section was drafted very, very carefully
22 to keep in mind the attorney-client privilege and the
23 strictures of the Act.

24 You will note that the information to be
25 obtained is only in those instances where there is an

1 allegation that questions the financial eligibility of
2 a previously identified client and the recipient's repre-
3 sentation of that client; and that information sought
4 by the Corporation relates solely to the financial
5 eligibility of that client.

6 The information sought by the Corporation is
7 necessary to confirm or deny specific allegations as to
8 that particular client's financial eligibility and the
9 recipient's representation; and that the specific infor-
10 mation sought is not protected by the attorney-client
11 privilege.

12 Some concern has been expressed concerning
13 this particular provision. My information -- I am
14 advised that the Corporation in the past has long been
15 provided this information when such allegations have
16 come up.

17 In fact, it has been the Corporation's long-
18 standing policy to obtain such information when allega-
19 tions have been made. That policy was articulated by
20 Mr. Bucky Askew when he was Acting Director of the Office
21 of Field Services in June of 1982.

22 The Code of Professional Responsibility, I
23 believe, is met by the existing or proposed regulation,
24 I should say. The privilege of attorney-client is waived
25 in the instance of where there is a crime that has been

1 committed or a fraud perpetrated. Therefore, it is not
2 applicable in that situation where there are allegations
3 of financial ineligibility.

4 It is also very interesting to note that the
5 American Bar Association published and adopted, I should
6 say, a new model Rules of Professional Conduct. Rule 1.6
7 states that a lawyer may reveal such information to the
8 extent the lawyer believes necessary to establish a
9 defense to a criminal charge or civil claim against the
10 lawyer based upon conduct in which the client was
11 involved, or to respond to allegations in any proceeding
12 concerning a lawyer's representation of the client.

13 The rule which was adopted by American Bar
14 Association, in fact, expands the instances in which a
15 revelation of information is permitted. It is interest-
16 ing to note that, in comments to Rule 1.6, the information
17 that a lawyer has a right to respond to when the allega-
18 tion is made -- that is, that the lawyer does not have
19 to wait for the commencement of any action or proceeding,
20 so that the defense or the information can be disclosed
21 by responding directly to a third party who has made the
22 assertion.

23 In any event, for those reasons enunciated,
24 the staff believes that the regulation which has been
25 carefully drafted meets the concerns with respect to the

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1 legal ethics.

2 Section 1611.8 is a new section. It provides
3 for the execution, preparation of a written retainer
4 agreement. A number of the comments that we received
5 from insurance carriers seemed to indicate that one of
6 the sources for malpractice claims against programs is
7 that there is a misunderstanding between the recipient
8 and the attorney as to what services are being provided,
9 what can the client expect and, in fact, what the recipi-
10 ent agreed to provide.

11 The best way of trying to mitigate that problem
12 is the provision for a retainer agreement. Of course,
13 this is not unknown in terms of the private bar. In
14 fact, there are a number of programs that provide for
15 such retainer agreements.

16 I think that Mr. Hartley could comment in
17 terms of the scope of the use of such retainer agreements,
18 but in fact a number of programs do use it. I have seen
19 it in terms of a 3 x 5 card or a computer card used.
20 So that 1611.8 attempts to address that -- those problems
21 that have arisen in the past.

22 The reference under Legal Services Eligibility
23 at the bottom of page 14, we did not bother to repeat
24 the current table which is in the regulations, but were
25 referring to that table there.

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1 I believe this concludes presentation of the
2 regulations as proposed, and I'll be glad to answer what
3 questions you might have. Mr. Hartley is here to address
4 them, as well as Mr. Meyer.

5 CHAIRMAN RATHBUN: Any discussion?

6 The committee at this time would like to
7 entertain any public comments on the regulations.

8 Is anyone here? Please just come up and
9 identify yourself.

10 MR. RHUDY: I'm Bob Rhudy with the Coalition
11 for Legal Services.

12 We do have a number of concerns with these
13 proposed changes in 1611. I'll go through them briefly
14 and not in detail, because we will be commenting on the
15 regulations within the comment period.

16 The new provision that -- the change in 1611.4
17 regarding authorized exceptions. That now places a cap
18 on the income to not in excess of 150 percent of the
19 Federal poverty threshold. That will cause significant
20 problems in some instances with persons, for instance,
21 particularly in areas of high unemployment where there
22 has been in the past a substantial family income, one of
23 the persons, one of the primary providers, is currently
24 unemployed, has been unemployed for a substantial period
25 of time, and they are facing a great deal of debt.

1 I've seen a large number of clients in that
2 category, laid off from the auto industry; and I think
3 placing a flat cap of 150 percent may exclude some people
4 with a substantial legal need under some of the other
5 tests.

6 It's a fact that should be considered, what
7 may be three or four dollars over the income now.

8 There's been a deletion in 1611.4, the deletion
9 of Part (c), which previously would have allowed persons
10 to be eligible but for the receipt of benefits from a
11 Governmental income maintenance program.

12 These are persons that the Government has deter-
13 mined are certainly needy. They're receiving food stamps,
14 supplemental security income, other assets, and are per-
15 sons that clearly, by other Governmental determinations,
16 are near low income, are the elderly. And excluding
17 this type of benefit, such as food stamps, again creating
18 a person that may be three or four dollars over the
19 income amount, I think, is an unreasonable exclusion at
20 this time.

21 It appears to me -- and I think there needs to
22 be perhaps more information program by program -- that the
23 change from -- that the clarification that what is intended
24 is gross income may be a change in many instances. I
25 think there needs to be information of what the programs

1 are doing across the country. It's my impression that
2 a number of programs have used the past language of the
3 regulation to indicate that the income levels used by
4 excluding taxes, in fact, is a net income test.

5 So I question at this point whether this is a
6 clarification or, in fact, will represent change in
7 policy for a number of programs across the country.

8 You're adopting the language indicated -- I
9 haven't had a chance to read through it in detail -- the
10 language of the food stamp regs regarding liquid and
11 nonliquid assets. I've had opportunity personally repre-
12 senting clients to challenge the implementation of those
13 regs regarding assets that were theoretically liquid and,
14 in fact, are nonliquifiable.

15 Items in one particular instance -- an elderly
16 woman who was leasing out a trailer while she was living
17 with a daughter. The trailer lease was counted by the
18 food stamp people as being a liquid asset. In fact, it
19 was impossible to liquify that asset, to sell that asset;
20 and the person had been excluded from food stamps as a
21 result.

22 We were able, in my representation, to reverse
23 that in a fair hearing process; but the flat language of
24 the reg, I think, created a problem. I think that it
25 needs to be looked at carefully, to see what you're really

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1 your attention. I think it's an area that certainly can
2 cause problems.

3 Thank you.

4 CHAIRMAN RATHBUN: Thank you very much.

5 MR. SWENDIMAN: If I may just respond just
6 very briefly, Mr. Rhudy. Apparently on No. (c) on page 6,
7 the original language was omitted, but apparently -- I
8 don't know the reason why, but the brackets aren't there
9 so I didn't pick that up in presentation to the Committee.
10 But we'll put that back in, in terms of publi-- if the
11 Committee decides to publish No. (c).

12 MR. RHUDY: That is, the groups primarily
13 interested in the concerns of low income people?

14 MR. SWEENDIMAN: No. I'm saying that it's being
15 put in to show that the language has been deleted. What
16 we've attempted to do throughout this document is to
17 show the original language, additions and modifications;
18 and in No. (c) on page 6, for some reason, the original
19 language which would have been bracketed does not appear.

20 We'll have to make that correction when and if
21 it goes to publication. I'm not going to respond to each
22 comment made, but I do want to make reference to one, in
23 terms of a gross income.

24 That is, my understanding has been it has been
25 gross income throughout, that each general counsel in

1 fact has stated that the standard is gross income going
2 back to 1979. So if there is some confusion, I don't
3 know where it has arisen; but the General Counsel's
4 office information that I've seen has been consistent in
5 saying that the term income refers to gross income.

6 John, do you have a response?

7 MR. MEYER: I just want to point out two
8 things. One is that the -- on the income cap, it's not
9 150 percent of the Federal poverty income guidelines --
10 150 percent of the recipient's income guideline which is
11 the absolute maximum.

12 That can be up to 192 percent of the poverty
13 guideline. There are always disadvantages to a flat cap,
14 but the fact that it's that much higher, I think, miti-
15 gates a lot of those disadvantages.

16 The other thing I wanted to point out is: On
17 the guidelines concerning assets, these were guidelines
18 to determine what is substantial assets.

19 Once an asset is substantial, the recipient
20 has to consider it in giving legal assistance. So if
21 the asset is substantial but unreachable, in fact, even
22 though it might theoretically be reachable, the recipient
23 can consider the fact it can't be reached and still a
24 client get legal assistance, because this is just one of
25 those factors the recipient has to consider in not giving

1 legal assistance to a person that would otherwise be
2 income eligible.

3 Consider doesn't mean definitely decide they
4 don't aid these persons.

5 MR. RHUDY: The language that was used -- There
6 were a couple of shelves that seemed to be mandatory in
7 terms of exclusion. So if the comments would indicate
8 that clearly, I think it would be useful.

9 MR. MEYER: No, no. It shall be considered.
10 It's mandatory considerate. That doesn't mean it's
11 mandatory to exclude.

12 CHAIRMAN RATHBUN: Any further comment?

13 Any discussion?

14 (WHEREUPON, Chairman Rathbun and Mr. McCarthy
15 conferred.)

16 MR. McCARTHY: I'd like to thank you gentlemen.
17 I think the staff did an excellent job. We had a few
18 loose ends there in Phoenix. Bernie helped us out quite
19 a bit, and I think you've accomplished all the comments
20 that my notes show.

21 I wonder, Bernie, if you have any other comment
22 because you were very helpful there?

23 MR. VENEY: I'm Bernie Veney from the National
24 Client Council.

25 Bob, I had not planned to comment, because it

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1 is not my nature to be vituperative; but clearly, this
2 is so outrageous that I just presume that this is not
3 the forum to deal with it.

4 Clearly, the concept of a legal services pro-
5 gram established to assist poor people in vindicating
6 rights -- you would adopt even in modified form the
7 food stamp eligibility guidelines is mindboggling to me.

8 I simply cannot understand what it is you're
9 attempting to correct. I seldom find myself at a loss
10 for words, but in truth -- I mean, I find nothing in the--
11 other than a rising sense of anger, that I think makes
12 me hesitate to speak further.

13 I have all the respect in the world for
14 Alan's skills. My informal comments to Alan indicated
15 that, while I viewed the Code of Professional Responsi-
16 bility as somewhat in flux and change at this moment in
17 time, in simple point of fact the exclusions that he
18 talks about deal with an attorney and a client and the
19 attorney-client relationship. It does not include a
20 situation, I don't believe, where the attorney is not
21 trying to collect a fee or the client is not complaining
22 about the work of the attorney.

23 Suddenly, we find that a client is to be
24 treated like a criminal. And I suggested even in my
25 earlier comments that perhaps you ought to draft a

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1 Miranda warning so that clients would understand that,
2 by entering into a relationship with a legal services
3 attorney, they might in fact be jeopardizing something
4 in the future; that the legal services attorney might in
5 fact turn over information to the Corporation and, since
6 the Corporation cannot establish anything like a client-
7 attorney relationship, you might find Dan Rathbun or
8 Alan Swendiman testifying about the fact that Bernie Veney
9 provided information which is going to later be used to
10 charge Bernie Veney with welfare fraud or some other
11 crime.

12 I just -- I would hope that my thoughts about
13 this regulation and the sense behind it are wrong. You
14 are contemplating that the person who is facing eviction,
15 from a brief reading of this, would cash in the insurance
16 policy so that they would be able to pay a private
17 attorney to avoid an eviction.

18 I mean, because that's what this says. I'm
19 not quite sure that you understand that. Dan, you were
20 an eligible client at one point in time. You may still
21 be, and I don't want to personalize this; but if you had
22 a legal problem while you were down there in Front Royal,
23 what this says essentially is, if you had any equity in
24 your family's home or if you had an insurance policy,
25 and you had a legal problem, you couldn't turn to the

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1 Legal Services program. You, in fact, would have had to
2 go home, cash that insurance policy in, and get yourself
3 a private attorney, no matter how much of an emergency
4 might have been there.

5 If the school had decided to hold up your check
6 that was coming from a student loan, if a bank had dis-
7 criminated against you-- This says what you will do is,
8 you will cash in the insurance policy. Any nonliquid
9 asset that you may have.

10 Now I do thank you for dealing with the exclu-
11 sion of one's personal home and one's car; but then the
12 bankruptcy courts exclude those kinds of things, too.

13 Gentlemen, I suggest to you that you are sup-
14 posed to be running a program to benefit low income
15 people. Mr. McCarthy, I don't really want to make you
16 sorry you ever asked me if I had any remarks, but I just
17 would sum up by saying, the publication of this will send
18 what I think you may want to send, and that is a clear
19 message that you're running a welfare program; that you
20 want to be considered the local welfare authority; that
21 you are going to, in fact, be as punitive as the local
22 welfare authorities; and that you have now opened a
23 Pandora's box.

24 That is just amazing, because if I were opposing
25 counsel, I would in point of fact complain about everybody

1 represented by this program, simply because in this
2 document I can find a reason to find everybody in the
3 world ineligible.

4 The prior administration of the Legal Services
5 program, be they appointed by Republican Presidents or
6 Democratic Presidents, have in fact always taken the
7 position that this was a program designed to assist low
8 income people vindicate rights.

9 That's no longer the case, and the publication
10 of this will demonstrate that.

11 I thank you. If you have any questions of me,
12 obviously, I'd be glad to answer them before I walk back
13 to my seat.

14 I presume that you don't, but I presume also
15 that, if you have gotten this as recently as we have,
16 given the wholesale addition of 1611.6, you won't pub-
17 lish this.

18 You certainly have not had -- unless you got
19 it before I did -- certainly have not had the opportunity
20 to digest this and to understand what it means.

21 When I first read it, I thought that a factor
22 in determining eligibility was whether a native American
23 lived on Trust lands, and that he would be asked to cash
24 in his or her share of the Trust. I later re-read it
25 a little more carefully, and found that wasn't the case.

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1 I again bow and thank you for the fact that
2 you haven't decided that a native American has to get
3 out of a Trust arrangement; but I mean the whole thing
4 is just ridiculous, gentlemen.

5 It is an absolute indicator of a mind set that
6 says that you don't give a damn about poor people. It
7 is a mind set that says what you're going to be is
8 punitive. It is a mind set that says, here is the per-
9 fect way to keep welfare departments, to keep housing
10 authorities, to keep fraudulent land dealers. Here is
11 a way to keep all of these folks happy, because you have
12 cut poor people off from access to legal services.

13 CHAIRMAN RATHBUN: Thank you, Bernie.

14 Would General Counsel like to address any of
15 this?

16 MR. SWENDIMAN: Well, I'm not going to go into
17 specifics, and I appreciate Mr. Veney's comments. The
18 one thing that will occur, of course, is that, if the
19 Committee decides to publish it, there will be a thirty-
20 day comment period in which more careful analysis can
21 be given members of the public. Of course, the General
22 Counsel's office will encourage comments on it.

23 Let me just make two -- three, very brief
24 points. The model code does not simply refer to the
25 attorney and client. The comments that are made specifically

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1 refer to a third party.

2 I don't think that that represents a radical
3 change from the Code of Professional Responsibility in
4 terms of the fact that attorney-client -- at least
5 according McCormack and Wigmore -- have no application
6 when there has been a crime or fraud occur.

7 In any event, the model Code does specifically
8 refer to third parties, in terms of the confidential
9 and attorney-client.

10 The attempt of 1611.6 was to clarify, because
11 there was a problem with what were substantial assets.
12 There has been -- Concern was that has been brought to
13 the Corporation's attention of instances where individuals
14 owned substantial real property but had no cash assets,
15 property that may have been valued somewhere between
16 a hundred, two hundred thousand, in terms of equity; and
17 yet the individual did not -- was qualified in terms of
18 Legal Services.

19 Again, there was an attempt to try to clarify,
20 and certainly the comment period will allow for greater
21 elucidation.

22 In terms of just a personal remark on the --
23 with regard to homes and bankruptcy courts. It obviously
24 depends upon the State, but some of the jurisdictions in
25 which I practice the home is not exempted at all.

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1 In one State the home is exempted up to about
2 \$4500 in equity, and in most instances the home does go
3 by -- does become part of the bankrupt estate and, in
4 fact, it is sold.

5 Again, 1611.6 is an attempt to clarify. We
6 certainly will await comments from interested parties.

7 CHAIRMAN RATHBUN: Thank you, Alan. Yes, ma'am?
8 Please identify yourself.

9 MS. BONNER: Yes. My name is Hazel Bonner.
10 I am a client of a grantee, Black Hills Legal Services,
11 from 'way out in Rapid City, South Dakota.

12 I have a few comments that have not been made
13 yet, particularly concerning Section 1611.5, the new
14 subsection (2), where an otherwise eligible client can
15 be denied because of the factors listed.

16 I agree with Bernie that a person wishing to
17 pick on a Legal Services grantee could find everyone of
18 their clients ineligible under this Section.

19 I really think you're opening a Pandora's box.
20 One of the things I did want to point out to you is
21 something I'm sure you're aware of. Each Legal Services
22 grantee is required to go through priority setting.

23 Our program took this very seriously, and
24 through the priority setting process, I believe, has
25 eliminated cases that are of a concern here, those cases

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1 that we, through that process which involved clients,
2 attorneys on the Board who are appointed by the private
3 Bar, staff attorneys and the public -- cases that we
4 identified as being of the least consequence to clients.

5 I do believe that that's the forum where these
6 decisions should be made, not in a regulation on client
7 eligibility.

8 Since you do require local grantees to go
9 through priority setting and because of the huge cutback
10 in legal services funds, this process belongs, I believe,
11 with the local grantee, involving all of the people that
12 I mentioned.

13 Our program, for instance, eliminated routine
14 divorces where there is no battering involved. Those
15 are referred out to private attorneys.

16 We also took a look at the cost of obtaining
17 legal services from private attorneys in our area in
18 determining which cases would be eliminated.

19 So by virtue of the fact that the funds have
20 been cut considerably for the local grantee, they can
21 no longer handle every case that walks in the door, we
22 have gone through this process locally; and I believe
23 that that forum is the proper forum to make these
24 determinations.

25 If the purpose of these changes was because of

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1 complaints on representing ineligible clients, then this
2 Section certainly opens up an avenue where anyone who is
3 disgruntled with a legal services grantee could question
4 virtually any client.

5 Also, I immediately recognized the outset
6 language as primarily that of the food stamp program.

7 I also agree with Bernie on that.

8 That has led to numerous problems for clients.
9 I'm not sure that some important language from the food
10 stamp definition of nonliquid assets has not been left
11 out of this.

12 I would need to spend some more time. I just
13 received this this morning. But I'm really concerned
14 that Legal Services is using this same nonliquid asset
15 determination, and am concerned that that's then going
16 to include a whole application form, a whole new -- The
17 food stamp application form, by the way, is nine pages
18 long.

19 Somewhere in here, you mentioned "...shall
20 determine in a..." you know, in a simple manner, a
21 manner that's easy for the clients.

22 I don't believe you can find out all of this
23 information in a simple manner. I think you've really
24 complicated the situation. But my primary concern is
25 this section, Subsection (2) in 1611.5.

1 I believe that's being handled by the local
2 priority setting process, and I believe that's where it
3 belongs.

4 Thank you.

5 CHAIRMAN RATHBUN: Thank you very much.

6 MS. GARRETT: My name is Clara Garrett. I'm
7 from the Legal Service program in Philadelphia. I'm
8 an eligible client.

9 I came here to day to make a few comments and
10 listen to what was happening. So I'd like to thank you
11 gentlemen for listening to me, and please bear with me
12 because when I get nervous and mad, I get a little
13 carried away.

14 I've been sitting here, and had gotten more
15 and more upset, the more I've heard.

16 I'd like to talk about the 150 percent Federal
17 guidelines which are a little unclear to me. You just
18 made a comment -- the staff -- that it talked about
19 192 percent. This is something that a client has to
20 find out.

21 We have no inkling as to 192 percent. We're
22 talking about 150 percent Federal guidelines cap, and
23 I think that's a little out of line.

24 Also I'd like to talk about the seasonal
25 workers who like to upgrade their lives, and when they

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1 get an opportunity, they work. They may work six months
2 out of the year and work twelve hours a day and, there-
3 fore, their income is higher with the benefit than your
4 eligibility guidelines allow.

5 This means, when the person is out of work
6 after six months employment, they may be -- they have
7 tried to pay their high cost utility bills. They have
8 tried to upgrade their clothing and different bills that
9 have been lacking.

10 Then they are not entitled after the six month
11 period to unemployment benefits because it is in a dif-
12 ferent quarter. They have to wait for a specific quarter
13 to collect.

14 They may be on the verge of losing their home.
15 They may be on the verge of anything else. They have no
16 benefits and no income. Now you're saying they will
17 not have Legal Services to help them.

18 I also -- When I came here, I was a little up-
19 set with the proposed regulations. Now I see the food
20 stamp guideline. It was like a smack in the face to me.

21 I thought this program was about equal justice
22 for everyone. You're leaving out the seasonal workers,
23 the elderly, the people that only get summer jobs.
24 You're leaving all these. You're adding it into the
25 income of the entire household when, in fact, there may

1 be a child that's working after school. There may be a
2 child that's putting himself through college. And when
3 you talk about entire incomes of the household, you're
4 deleting that whole household from Legal Services.

5 The low cost attorney fee that you're discuss-
6 ing -- Your perspective of a \$60,000 a year job and low
7 cost and my perspective of a \$100 a week is a lot dif-
8 ferent.

9 Now when I saw the food stamp regulations--
10 I work. I was not a client at all times. I became a
11 client. I've worked.

12 My husband has a bad heart. We carry a life
13 insurance policy. He has had six heart attacks in the
14 last seven months. Now you tell me with my income I
15 should sell his life insurance policy and my burial plot
16 for my family? This is ridiculous.

17 Also, I'd like to speak to the attorney-client
18 relationship. When a client comes in, our Legal Service
19 attorneys are sensitive to the needs of those clients.
20 When a client comes in, he must be felt to speak freely.
21 These are not educated people, people that are used to
22 dealing with attorneys. They have the need for that
23 understanding, that when they speak with their attorneys
24 they may speak freely and give any pertinent facts to
25 their case.

1 The relationship must be there. You are deal-
2 ing with people that are illiterate, uneducated, have
3 language barriers, and people that have no knowledge of
4 the law; or they possibly would not be in the predicament
5 they are in.

6 You're talking about a piece of paper develop-
7 ing a client relationship, and you're talking about that
8 they have no confidentiality like a paying person does.
9 This is not equal justice that you're talking about.
10 This is discrimination against the client relationship.

11 I don't know if I should go on any further,
12 because I'm getting a little too emotional, but I think
13 that you need to really go back and look into these
14 guidelines. I need time to digest the paper that was
15 handed to me this morning, because I'm very, very upset
16 with it. And I think that you really need to go back
17 and research a little bit more.

18 Thank you.

19 CHAIRMAN RATHBUN: Thank you, Ms. Garrett.

20 MR. SWENDIMAN: Let me just make a couple of
21 responses to that.

22 First of all, the attorney-client privilege is
23 not being changed. The disclosure of information only
24 arises in terms of the allegation, in terms of financial
25 ineligibility, and the recipient's representation thereof.

1 The attorney-client privilege isn't being
2 changed, opposed to anybody else. If somebody who was
3 well-to-do and retained an attorney and there were situa-
4 tion of fraud or a crime being committed, the attorney-
5 client privilege wouldn't hold for them either.

6 Again, it's simply in a situation where allega-
7 tions have arisen as to financial ineligibility.

8 One moment.

9 MS. GARRETT: I just would like to ask a
10 question. What are the statistics for the people that
11 have been provided legal services, clients have got
12 legal services that were not eligible?

13 MR. SWENDIMAN: I don't have a definite figure
14 for you right now, but the situation simply is that,
15 having a certain set sum of resources, the Corporation
16 has to make every endeavor to carry out the Congress'
17 intent to make sure that qualified poor people are
18 served. And --

19 MS. GARRETT: I understand that. In our
20 program, we've done research in setting priorities and,
21 according to our eligibility, there was less than two
22 percent that were even questionable. Going back and
23 reviewing them, there was less than one percent of clients
24 that were ineligible that we had served. I think that's
25 a very, very low figure.

1 MR. SWENDIMAN: That may be the case, in which
2 instance would demonstrate the fact that the instances
3 in which this particular Section will be invoked will be
4 quite small.

5 MS. GARRETT: It wouldn't be, because you'll
6 be looking at a different class of people.

7 MR. SWENDIMAN: Well, you're not letting out
8 a different class of people. As I said, the attorney-
9 client privilege still holds for them as well.

10 When you're talking about distinctions, it
11 makes no differences. I mean, currently right now I'm
12 handling personally cases for several Afghan refugees.

13 They would more than meet the qualification of
14 being able to obtain legal services, legal assistance.
15 The attorney-client privilege between those refugees and
16 me still holds and is no different than a client who
17 can pay.

18 It is, in fact, still there. So that it's
19 not a situation of, on its face, a class or ability to
20 pay or not pay.

21 John, do you have a couple of comments?

22 MR. MEYER: Yes, I have a couple of comments.

23 I have a couple of comments concerning numbers.
24 I kind of made them before, but they don't -- but let me
25 see if I made it clear.

1 First, the reason why I came up with 192 per-
2 cent. The recipient sets an income level, which can be
3 as high as 125 percent of the poverty guidelines. If
4 you multiply that, then it's 150 percent of the recipient's
5 income level is the absolute cap.

6 It is a fairly simple multiplication. I agree,
7 some of the clients will not be able to do it, but the
8 program certainly will be able to do it. 125 percent
9 times 150 percent is 192.

10 So that that's why the income cap is not as
11 low as some people are thinking.

12 The second thing is that it is true, the lan-
13 guage is mandatory on all these factors. They shall be
14 considered.

15 That doesn't mean that they shall be a bar to
16 representation. So most of the hard cases you're talking
17 about, the recipient will see them, consider them, take
18 about ten seconds and say, yeah, sure, they can't cash in
19 their life insurance policy or whatever the other
20 instance may be, or this asset is unreachable for six
21 months and we have a problem now.

22 Then they will serve the client. "Shall be
23 considered..." still leaves the recipient to make the
24 judgment. It does mean if they consistently ignore
25 \$100,000 houses or something, then they would have a

1 problem. But in these -- All these food stamp regula-
2 tions are doing, they're setting the minimum. Anything
3 below the food stamp regulation doesn't have to be
4 considered, but once considered that isn't a bar to
5 eligibility. It is only a fact to be considered, not
6 what the reg says and what the statute says.

7 MR. BOGARD: Alan, I'm confused. Bernie and
8 the lady that talked about the life insurance and the
9 burial plot -- As I read this regulation, it says in
10 determining the assets only the following shall be
11 excluded, and that includes burial plots and the cash
12 value of life insurance.

13 Now am I misreading this? Are we excluding it,
14 or are we including it?

15 MR. SWENDIMAN: No, that's correct. That is
16 under No. --

17 MR. BOGARD: It's one burial plot per household
18 member. So if there are ten members of the household,
19 there are ten plots excluded. And the cash value of
20 all life insurance would be excluded. Is that correct?

21 MR. SWENDIMAN: That is correct. Picking up
22 on page 8 --

23 MR. BOGARD: Eight and 9.

24 MR. SWENDIMAN: Well, no; but starting off on
25 page 8 where it says (c). In determining the assets of a

1 household, only the following shall be excluded. If
2 you pick up on No. 2, it refers to household goods,
3 personal effects and the cash value of life insurance.
4 The life insurance, in fact, would be excluded.

5 I think there may be a -- While there is -- All
6 these factors are to be considered by the program, yes,
7 I think that they are guidelines, and consequently, are
8 going to have to be followed by the recipients in making
9 a determination of eligibility.

10 The other thing that I would mention is that
11 there is reference to the fact of priority setting among
12 the programs.

13 I am sure that that is going to continue to
14 occur. I might point out that the factors that are to
15 be considered, in fact, exist in the regulations to begin
16 with.

17 They are factors that were or have been or
18 should have been considered since the promulgation of
19 this particular regulation. So that fact that a number
20 of these factors are simply a reordering, I should
21 say, or a clarification as to which -- whether disqualify-
22 ing or qualifying-- are simply a clarification rather
23 than something that's been added.

24 Obviously, Section 1611.6 is a new addition,
25 and an attempt to take care of the situation of what was

The Commission of the European Communities
 has decided to grant a loan of 100 million
 units of account to the Government of the
 Republic of the Congo for the purpose of
 financing the construction of a road
 network in the province of Zaire.
 The loan is to be repaid over a period
 of 10 years, with a grace period of 5
 years. The interest rate is 6% per
 annum. The Commission will provide
 technical assistance in the form of
 experts and consultants. The loan
 will be disbursed in 10 equal
 instalments of 10 million units of
 account each, starting from the
 beginning of 1975. The first
 instalment will be paid in 1975.
 The Commission will also provide
 technical assistance in the form of
 experts and consultants. The loan
 will be disbursed in 10 equal
 instalments of 10 million units of
 account each, starting from the
 beginning of 1975. The first
 instalment will be paid in 1975.

1 meant by substantial assets in the draft that was sub-
2 mitted to the Committee.

3 I should note that, under the current regula-
4 tions (b) (2), factors considered shall include liquid
5 net assets. So that there was some type of assets test
6 in the past, again a factor that was in existence and is
7 in the current regulation.

8 MR. VENEY: I just want to read one section of
9 what we have. It's 1007(b). The citation may be wrong.
10 I'm a little upset to deal with it.

11 "The Corporation shall establish guidelines to
12 ensure that eligibility of clients will be determined by
13 recipients on the basis of factors which include the
14 assets of income level of the client; fixed debts; cost
15 of living in the locality;" and the disqualifying factors
16 of a failure to seek employment except for good cause.

17 Nowhere do I see nonliquid in the statute. I
18 understand, gentlemen, that you in fact have the right
19 to go beyond the statute. I understand that. The court
20 will ultimately determine that, I'm sure. But where
21 does it say that you have to consider nonliquid assets?

22 Mr. Bogard, I thank you for pointing out the
23 fact that I read this too hastily and, in fact, insurance
24 policies are not covered. You got me on that one.

25

1 I was confused about bankruptcy laws. I thought
2 they were Federal, and didn't know they varied from state
3 to state, but you got me on that one.

4 I cop to the fact that I'm not an attorney,
5 folks, but I do read the statute fairly well. And why
6 all the inclusion of the nonliquid assets?

7 There is one major problem. Heretofore, the
8 Corporation has always published, along with draft
9 regulations, its comments which let us outsiders know
10 some of the logic behind the action that you were taking.

11 In the absence of such comment, I have no idea
12 why you're including nonliquid, what basis in law
13 you're using for the inclusion of nonliquid. I don't
14 understand, gentlemen.

15 Could somebody just answer that question for
16 me?

17 MR. SWENDIMAN: I'd like to address that. I
18 think that I did reference the fact that there have been
19 complaints with regard to individuals who have substan-
20 tial nonliquid assets, in the neighborhood of somewhere
21 in between \$100,000-\$200,000 in terms of real estate owned.

22 MR. VENEY: Let me just -- I'm sorry.

23 MR. SWENDIMAN: You asked me for an explana-
24 tion of why nonliquid assets are to be considered, and
25 the staff has made a determination that substantial

1 nonliquid assets, whether it be substantial real estate
2 holdings, when in fact of facing people who might be
3 deemed to be more qualified and given the fact that
4 Congress has appropriated a certain amount of money for
5 legal services to allot to the recipients, that those
6 individuals should be able to obtain legal assistance
7 on their own.

8 MR. VENEY: I just want to make one other
9 brief observation for the Committee's --

10 You may not be familiar with the fact that
11 most legal services programs in this country receive funds
12 other than from the Legal Services Corporation. In any
13 number of instances, those funds are from Title III of
14 the Older Americans Act.

15 The Title III funds say, basically, that if a
16 person has reached a certain chronological age, they are
17 eligible, regardless of assets, regardless of income.
18 If they have reached a chronological age, they are
19 eligible.

20 It is difficult for opposing counsel, it is
21 difficult for the general public, to know whether repre-
22 sentation of a particular individual who may own a
23 \$7 million home was done with Legal Services Corporation
24 money or was done with Title III money.

25 I would suggest to you, gentlemen, that in

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1 simple point of fact what I have heard this morning
2 that says income levels and assets -- you've got to
3 understand that what may be out there from the public
4 perception may in fact not be real.

5 There are Government programs that say people
6 who have reached certain chronological age are eligible
7 for assistance from particular programs, and no means
8 test. So the fact that somebody may own a home, may
9 have in fact an IRA or a Keough or some other things,
10 may not in fact exclude that individual from representa-
11 tion by the program.

12 John Meyer talks about 192 percent as being
13 the level at which clients could be found eligible under
14 this Act, as though -- just as though recipients have,
15 in fact, set their guidelines at the fully allowable
16 amount the Corporation sets, the 125 percent.

17 In point of fact, programs in this country,
18 because they are deluged, when they set their priorities,
19 when they review their eligibility regulations, usually
20 set the maximum income guidelines for that program sig-
21 nificantly below that level which is allowable under
22 the Corporation Act and regulations, simply because to do
23 otherwise would have them inundated.

24 So that the 150 percent of the recipient guide-
25 line may, in fact, when we do the arithmetic, turn out

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1 to be less than the 125 percent currently allowed by
2 the Corporation.

3 CHAIRMAN RATHBUN: Thank you Bernie.

4 MR. LIONES: Dwight Liones of National Organi-
5 zation of Legal Services. I work with District 65,
6 U.S.W.

7 There are a number of very pressing issues that
8 we're concerned about as a union of workers in this
9 country, and mostly recently, I think most of you know
10 we've been representing the workers at your central office
11 in Washington and in the various Regional offices.

12 As I said, there are many issues that concern
13 us, but today I rise to speak basically to the issues
14 before this particular forum on your Agenda.

15 As an attorney who worked at Harlem Legal
16 Services for over five years, I can tell you that what
17 you're proposing here today will set the attorney and
18 the prospective client at odds with each other.

19 Swendiman speaks of his concern about the
20 Code of Professional Responsibility. At the same time,
21 Meyer speaks of this notion that the assets should be --
22 can be considered and not necessarily included.

23 I suggest that those two things are in diametric
24 conflict. When you get into the process of having to
25 make the kind of determinations that you suggest here

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1 today, it seems to me that you, if not totally destroy
2 the attorney-client relationship, you certainly make it
3 impossible, it seems to me, for most of our clients to
4 have any faith in the attorneys in the programs that
5 represent them.

6 We intend to respond to these proposed regula-
7 tions, if you decide to publish them in more detail; but
8 I would hope that you would have listened to the speakers
9 here today, particularly those clients that come before
10 you and point out the serious problems.

11 CHAIRMAN RATHBUN: Thank you.

12 Yes, Mr. Hartley?

13 MR. HARTLEY: I have to depart, but before I
14 leave I'd like to take this opportunity.

15 The Office of Field Services would recommend
16 from our division that the Committee move forward publi-
17 cation of these regulations as -- for comment, as they
18 have been presented.

19 Thank you, sir.

20 CHAIRMAN RATHBUN: Thank you very much.

21 MS. HOLLEY: My name is Nell Holley. I'm an
22 eligible client from Minneapolis, Minnesota.

23 I just have one question: How do you plan to
24 enforce all this? Because I'm certainly going to tell
25 anyone that I think may be ineligible under these

1 guidelines, and that I know that need legal services,
2 that they'd best be very careful what they tell the
3 program.

4 I mean, I don't understand even in the retainer
5 agreement that you're recommending why the client is not
6 told that this information is going to be available for
7 other sources.

8 First, you collect it. Then you say, if some-
9 one alleges that person is ineligible, we'll go back and
10 tell them that we're going to give it to someone else.

11 That's the Catch 22. Who's going to do the
12 investigation, to determine whether or not the person
13 is eligible. And is that eligibility determination going
14 to be done by the program; and if that's the case, where
15 is the money going to come from to hire the staff to do
16 all of that?

17 This is disgusting.

18 MR. BUCKANAGA: I'm Gene Buckanaga, eligible
19 client from Minneapolis.

20 I'm also an American Indian, Ojibwi from the
21 Leech Lake Reservation in the State of Minnesota.

22 I, too, am appalled at the change in the regu-
23 lations that you are proposing. I'm baffled in terms of
24 who the staff, in terms of recommending the changes --
25 who they're actually working for.

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1 I haven't had an opportunity to go through
2 these, but I do agree with all the testimony that was
3 provided here before you.

4 I am going to go through these. I do have
5 access to the Moccasin Telegraph, if you will, in Indian
6 country across the nation, both reservation and urban.
7 I'm an urban Indian. And it seems to me that these regu-
8 lations further disenfranchise the American Indian people.

9 We have regulations that we are governed by
10 through the Bureau of Indian Affairs which just about
11 daily guide our lives. But then to run into a similar
12 and further restrictions which deny us access to services
13 which we are eligible -- should be eligible for--

14 I will take these back to my people, and we
15 will respond to them.

16 Thank you.

17 CHAIRMAN RATHBUN: Thank you, Mr. Buckanaga.

18 MR. SWENDIMAN: Let me just make two brief
19 comments.

20 First of all, as I believe I have mentioned,
21 the retainer agreement is something that's not foreign
22 to recipients to begin with. Now it's not foreign in
23 the legal world in general, whether if you're a paying
24 client, most law firms require a retainer agreement
25 which sets out the responsibilities.

1 So from that standpoint, it does not represent
2 a greater imposition on a nonpaying client than would
3 be on a paying client.

4 Second, in terms of enforceability the Corpora-
5 tion enforces eligibility to begin with. It audits
6 recipients so that there has always been some type of
7 enforcement mechanism, to begin with.

8 This certainly is not some change .

9 The other thing is in response to giving the
10 information to somebody else. Again, the regulation as
11 drafted provides that the Corporation does not and shall
12 not disclose that information to anybody else.

13 As to the last gentleman, I certainly would
14 encourage his comments concerning the Indian nations.
15 Hopefully, we have made provisions on that score; but
16 certainly, we'll welcome those when they come into the
17 Corporation.

18 I would also urge that the public give careful
19 reflection and review the proposed regulation. I think
20 that, as been pointed out, given the modification, some
21 people have not had the opportunity to review it care-
22 fully. And some of the matters that were thought to be
23 problems, whether it's insurance policies, are in fact
24 excluded. I would at least ask that -- I'm sure the
25 Committee would want the members of the public or

1 interested parties to make that careful, careful review.

2 CHAIRMAN RATHBUN: Thank you, Alan.

3 Are there any further public comments?

4 Thank you for your comments. The Committee
5 looks forward to receiving your written comments during
6 the comment period.

7 I would entertain a motion at this time.

8 MR. McCARTHY: Mr. Chairman, I would move that
9 the regulations as presented by the staff be published
10 for comment during the comment period.

11 CHAIRMAN RATHBUN: I would second that motion.
12 The motion made and seconded. All in favor?

13 (TWO AYES.)

14 CHAIRMAN RATHBUN: Motion passes, for the
15 publication of the regulations as presented in the
16 Federal Register for the comment period.

17 Next order of business is the report from the
18 President.

19 (INAUDIBLE COMMENTS FROM AUDIENCE RE: QUORUM)

20 CHAIRMAN RATHBUN: Alan, do you want to address
21 that, please?

22 MR. SWENDIMAN: I suppose I should let the
23 lawyer do that, sir.

24 MR. MEYER: The requirement for our Committee
25 is the same as for the Board. It is at least fifty

1 percent, and the Committee, as I remember, has three
2 members and two were present. So that's a quorum.

3 CHAIRMAN RATHBUN: We'll go to the next item
4 of business then.

5 MR. BOGARD: I really only have one thing,
6 and that is to bring up a point that was mentioned at
7 the Phoenix Committee meeting.

8 At that time, we talked about the fact that
9 State and National support grants would expire at the
10 end of September, and the members of the Board, all of
11 whom were present, indicated their consensus that those
12 grants should be extended.

13 However, it was not a Board meeting, and so
14 we couldn't take official action at that time to make
15 the extension.

16 The funds currently expire on March 30th,
17 although the funds are reserved for the balance of the
18 year. I would like to suggest that maybe this Committee
19 should suggest that the staff conduct a telephone poll
20 of all of the Board members to get their affirmance that
21 the transfer of funds be made from the reserve category
22 into the expenditure category, so that we can go ahead
23 and extend those grants for State and National support
24 and National Clients Counsel before they expire on
25 September 30th.

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1 As it is now, the last check will be going out
2 September 1st and, if we wait until the next Board
3 meeting, which will be September 27th, we're going to
4 probably create some problems.

5 So I would like for this Committee to give us
6 direction to conduct a telephone poll of all Board mem-
7 bers -- and it would be all four, since that would be
8 necessary for action -- to get consensus to move the
9 money from the reserve account.

10 CHAIRMAN RATHBUN: I would wish that to be a
11 desire of this Committee.

12 MR. McCARTHY: I would think that I would
13 prefer to have that as a motion, authorizing and directing
14 the President and the staff of this Corporation to make
15 telephone inquiry of the full Board in conformance with
16 the Charter By-Laws and the requirements of the District
17 of Columbia so that it's appropriately done, to inquire
18 as to whether it's the Board's -- full Board's wishes to
19 extend these funds.

20 CHAIRMAN RATHBUN: Is that the motion?

21 MR. McCARTHY: That is the motion.

22 CHAIRMAN RATHBUN: The motion is seconded.

23 Motion made and seconded. All in favor?

24 (CHORUS OF AYES.)

25 CHAIRMAN RATHBUN: Motion passes.

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1 MR. BOGARD: Thank you.

2 The only other thing is that there has been
3 a representation hearing before the N.L.R.B. That has
4 been concluded. The briefs are due by both sides on
5 the 15th of September, I believe. There will be a
6 decision sometime after that on that matter.

7 CHAIRMAN RATHBUN: Further discussions?

8 Thank you, Mr. President.

9 We'll move to the next order of business,
10 which is a report from the Office of Government Relations.

11 MR. STREETER: Thank you.

12 Still no definitive action of Congress. The
13 Reauthorization Bill has passed the House Judiciary
14 Committee. No action is scheduled on the floor as yet.
15 That bill, H.R. 2909, provides 296 in authorization and
16 such sums as are necessary for the two future years.

17 It provides for Board compensation; that is,
18 compensation plus expenses for attendance at Board meet-
19 ings, and expenses only for visits to recipients.

20 It repeals Section 1011, a presumptive funding
21 provision. It permits lobbying under certain circum-
22 stances, and it establishes guidelines for local Board
23 composition. That is, they are to be appointed --
24 a majority of the Board members appointed by Bar Associa-
25 tions, the combined membership of which constitutes a

1 majority fo the areas served.

2 The House Appropriations Bill has similarly
3 passed out of Committee, and is not yet scheduled for
4 floor action. It also provides 296 for the upcoming
5 Fiscal Year, and has the same restriction as in the
6 authorizing bill.

7 That is being delayed because of controversy
8 on an unrelated measure, the Radio Marti issue, and
9 we are told that the appropriations bill will probably
10 not come up until the Radio Marti issue is resolved,
11 although occasionally I hear that it may come up in any
12 event. But the Committee members say it will probably
13 not come up until the Radio Marti issue is resolved.

14 In the Senate, the Senate Appropriations Com-
15 mittee has marked up the bill for the upcoming Fiscal
16 Year. It provides \$257 million.

17 It drops the restriction on local Board compen-
18 sation. It provides a complex funding formula whereby
19 no program gets less than their current amount. If
20 there's any money left over after that, all programs are
21 brought up to \$620 level, and if there's money left after
22 that, the programs are given an increase based on the
23 percentage of -- a fixed percentage of the amount their
24 program falls below funding at \$12.40.

25 It prohibits grassroots lobbying, but permits

1 lobbying otherwise. The House traditionally acts first
2 on appropriations bills, and nothing is scheduled for
3 the Senate floor action on the State/Justice/Commerce
4 appropriations.

5 There is a possibility that the Senate Appro-
6 priations Committee will hold further hearings on the
7 bill.

8 In the Senate Authorizing Committee, there has
9 been no bill marked up. Two days were set aside for a
10 mark-up, but it was not accomplished. Still pending
11 before the Committee. There is an Eagleton bill and
12 the possibility of a bill by Senator Hatch, although he
13 has not yet drafted that bill.

14 Further hearings could be held in the Senate
15 Labor Committee in September, but September is a very
16 difficult time for authorizing legislation, the time of
17 the end of the Fiscal Year. The Budget Act requires
18 certain budget procedures. Appropriations bills are
19 approaching their deadlines. So it's very difficult for
20 an Authorizing Committee to move on the floor during
21 September.

22 It raises the possibility, perhaps even the
23 likelihood, that at least for the beginning of the next
24 Fiscal Year we will be on a continuing resolution rather
25 than appropriations bill.

1 In addition, outside of Congress there is the
2 General Accounting Office report due fairly soon on the
3 Board compensation issue, and another G.A.O. report
4 recently started to see if there were any violations by
5 Legal Services of the restriction such as lobbying.

6 In addition to that, there is a request from
7 Senator Hatch and Denton and several others to the
8 Justice Department that they investigate the Legal Ser-
9 vices Corporation for any possible violations.

10 CHAIRMAN RATHBUN: Any discussion?

11 MR. BOGARD: May I ask a question?

12 You indicated that the Senate fund level is 257
13 and the house is 296, but yet there's a possibility that
14 we would move into next year under a continuing. If
15 that happens, could you give any estimate of what the
16 funding level might be?

17 MR. STREETER: There's a strong precedent
18 requiring that continuing resolutions be -- that there
19 not be an increase in funds in a continuing resolution.
20 So the most likely course would be 241, if we go into a
21 continuing resolution.

22 What's uncertain is whether it would be a
23 continuing resolution for the entire Fiscal Year or one
24 for sixty days or something like that.

25 MR. BOGARD: So if they don't move by

1 September 30th, you would anticipate, what?, 241 again
2 for at least the next few months?

3 MR. STREETER: Yes.

4 MR. BOGARD: Would that carry forward, if a
5 second continuing would come up then in December?

6 MR. STREETER: There is a strong precedent for
7 not giving increases. It's not an ironclad rule, and it
8 is possible that it could be more or less; but tradi-
9 tionally, continuing resolutions are at the level that
10 was funded previously.

11 There is a -- If there were floor action in
12 both Houses but no conference had worked out the differ-
13 ences, then the continuing resolution most likely would
14 pick the lower of the two figures of the bill that
15 passed the two Houses.

16 MR. BOGARD: Thank you.

17 CHAIRMAN RATHBUN: Any further business?

18 At this time I would like to thank all of you who made it
19 here today for your comments, and especially thank those
20 clients who made it all the way from Philadelphia and
21 South Dakota and Minnesota for your comments today.

22 We look forward to yours and others written
23 comments during the comment period.

24 With that, I would like to entertain a motion
25 to adjourn.

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1 MR. McCARTHY: I would move that this meeting
2 be adjourned.

3 CHAIRMAN RATHBUN: I would second that motion.
4 All in favor?

5 (CHORUS OF AYES.)

6 CHAIRMAN RATHBUN: The Committee stands
7 adjourned. Thank you very much.

8 (WHEREUPON, the Committee adjourned at
9 11:37 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Operations and Regulations Committee
Meeting

Before: Legal Services Corporation

Date: August 23, 1983

Place: G.S.A. Auditorium
18th & F. Street, N.W.
Washington, D.C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.

Neal R. Gross

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