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LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS MEETING

TRANSCRIPT OF PROCEEDINGS

TAKEN AT: 255 South West Temple; The Sheraton Hotel,
Salt Lake City, Utah

DATE: August 2, 1985

REPORTED BY: Carolyn Sullivan
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A P P E A R A N C E S

BOARD OF DIRECTORS:

Robert A. Valois

James Wentzel - President

Lorain Miller

Basile J. Uddo

Hortencia Benavidez

Pepe J. Mendez

Leaane Bernstein

Michael B. Wallace

W. Clark Durant III

Paul Eaglin

1 FRIDAY, AUGUST 2, 1985, 10:10 A.M.

2
3 LEGAL SERVICES CORPORATION

4 BOARD OF DIRECTORS MEETING

5
6 MR. DURANT: The Board meeting for the Legal
7 Services Corporation scheduled for August 2nd is now in
8 order. Before we begin, I am going to ask the Reverend
9 Carol West of the Mt. Tabor Lutheran Church to give us the
10 invocation.

11 (Invocation)

12 MR. DURANT: The first item is the approval of the
13 agenda. Are there any comments or questions or motions?

14 MR. EAGLIN: Yes. Mr. Chairman, with respect to
15 the agenda, in the past there has been a provision there
16 for a report from the president. It's been used as an
17 opportunity expressing any concerns that we have to him.
18 Do we have anything like that?

19 MR. DURANT: We do have a report from the
20 president, but that's added to the agenda.

21 MR. EAGLIN: Where, at the end?

22 MR. DURANT: Well, it should be after item No. 6.

23 MR. EAGLIN: In that case, with that addition, I
24 would move to approve.

25 MR. MENDEZ: Mr. Chairman, the personnel and

1 personal matters, the litigation and investigative matters
2 are both closed to the public. And I would move that those
3 be put at the last of the agenda so that we can carry out
4 the public portion of our meeting at this time.

5 MR. DURANT: Mr. Eaglin, would you take that as a
6 friendly amendment?

7 MR. EAGLIN: What's the sequence, then?

8 MR. DURANT: The approval of the agenda and the
9 minutes, the PAI and the report of the Operations and
10 Regulations Committee, and then the report from Audit and
11 Appropriations then the report from the president, and then
12 the closed session. Friendly amendment.

13 MR. EAGLIN: Okay.

14 MR. DURANT: Any discussion? All those in favor
15 say aye. Opposed? So moved.

16 The next item is the approval of the minutes. Why
17 don't we just take a second to have those reviewed.

18 MR. EAGLIN: Mr. Chairman, I'm going to abstain on
19 that. I wasn't there.

20 MR. MENDEZ: Mr. Chairman, I've had time to review
21 these minutes previously, and believe on page 8 there are
22 two corrections that need to be made.

23 MR. DURANT: They are?

24 MR. MENDEZ: At the top of page 8 -- let's start
25 at the bottom of page 7 and the top of page 8. The

1 definition of the performance criteria to be determined by
2 the Board at later date. But upon further staff
3 recommendation, we also invite public comment.

4 MR. DURANT: So you would want to insert that
5 public comment was invited?

6 MR. MENDEZ: Yes, most definitely, because we've
7 asked the public -- we specifically want public comment.

8 MR. DURANT: Mr. Daugherty?

9 MR. DURANT: Do you move that addition then after
10 "staff recommendation." And before "Mrs. Bernstein
11 seconded the motion."

12 MR. MENDEZ: In the next paragraph down, "Mr.
13 Durant inquired into the membership of the committee of
14 field personnel advising LSC on case service report
15 revisions." The list is correct except that down below,
16 ten lines down, we list the corporation members. And then
17 after that, Mr. Durant asks the staff to consult this group.
18 This doesn't make any sense. I think that we should move
19 the corporation names down below or set a separate sentence
20 out to show that the staff is not to consult itself. It is
21 to consult the field.

22 MR. DURANT: You make those in the form of a
23 motion?

24 MR. MENDEZ: Just as corrections.

25 MR. DURANT: Any other corrections, additions or

1 deletions?

2 MR. DAUGHERTY: There's a correction required on
3 page 2, Mr. Chairman. The last paragraph, Mr. Bagenstos'
4 certification came after the meeting. It should read --
5 should add prior to the paragraph, "following the meeting."
6 And following the word certified insert the words "in
7 writing." I apologize for the quality of the transcript.
8 It was unclear whether Mr. Bagenstos had been called upon.
9 His recollection is he was not. And he submitted a
10 certification.

11 MR. MENDEZ: He was there, and he certified. I
12 guess his recollection isn't the same as mine. I recall
13 that he certified that right at that time. And we
14 recognize that that transcript wasn't very good. But I'd
15 like to ask the rest of the Board that was there. But my
16 recollection is that right after Leanne and Bob made their
17 motion, he certified it.

18 MS. BERNSTEIN: That's what I remember, too, but --

19 MR. MENDEZ: That's my recollection. Unless I
20 have somebody specifically that says no, my recollection is
21 that. I want to have it stay the same.

22 MR. DAUGHERTY: Well, the effect is the same. He
23 has certified.

24 MR. MENDEZ: But my recollection is that he did it
25 right at that time. That's our standard procedure unless

1 we do something --

2 MS. BERNSTEIN: Dennis, the transcript showed that
3 he did do it at that time.

4 MR. DAUGHERTY: No, the transcript does not.
5 That's one of many things the transcript does not show.

6 MR. MENDEZ: This is a transcript that is it error.
7 But our standard procedure is that as soon as the motion is
8 done, that we ask it to be certified. And my specific
9 recollection was that he did that.

10 MR. VALOIS: For whatever it's worth, I have no
11 recollection to the contrary.

12 MR. DURANT: Well, I think what we'll do is to
13 consult the record of that particular meeting, because Mr.
14 Mendez is quite correct. That is our custom to do it in
15 that particular fashion.

16 MR. MENDEZ: It's not only our custom, that's my
17 specific recollection.

18 MR. DURANT: Any other corrections to the minutes?
19 I think we will leave that in abeyance and leave it as it
20 is until we check the record.

21 Any other amendments to the minutes? May I have a
22 motion then to accept the minutes with the changes noted.

23 MS. BERNSTEIN: So moved.

24 MR. VALOIS: Second.

25 MR. DURANT: All in favor say aye. Opposed?

1 MR. MENDEZ: Mr. Chairman, I just have one
2 question. On page 5 we asked Mr. Willy Cook to submit the
3 written response on the recruitment. I would ask Mr.
4 Valois, has he provided that response at this time?

5 MR. VALOIS: Frankly, I'm a little disappointed.
6 I have not heard anything from Mr. Cook since our meeting
7 in Detroit.

8 MR. MENDEZ: Mr. Chairman, I move to authorize
9 that portion of the Board meeting scheduled for today to be
10 closed --

11 MR. WALLACE: Wednesday, September 4th.

12 MR. MENDEZ: For Wednesday September 4th in
13 Washington be closed to discuss personnel, personal,
14 litigation and investigatory matters under the government
15 Sunshine Act 5 U.S.C. 552b(c)(2), (6), (7), (9)(B), and
16 (10) and 45 CFR 1622.5(a), (e), (f), (g), and (h).

17 MR. DURANT: Is there a second to that?

18 MS. BENAVIDEZ: I second it.

19 MR. DURANT: Any discussion?

20 MR. VALOIS: Is that going to be a continuation of
21 the meeting we had last Wednesday? Does that mean we're
22 not going to meet later today?

23 MR. DURANT: Well, we are going to meet later
24 today as a continuation of that meeting.

25 MR. EAGLIN: Say that again what you just said.

1 MR. DURANT: The executive committee meeting that
2 was held Wednesday night has not been concluded. It will
3 be continued at approximately lunch time or whenever we
4 have it on our agenda here. So this is authorization to
5 the meeting that will take place in September.

6 MR. EAGLIN: Well, what will be the purpose or
7 subject of that in general? Is it a continuation of what
8 has been dealt with this week?

9 MR. DURANT: It will be personnel and litigation
10 matters.

11 MR. MENDEZ: To discuss the personnel and
12 litigation matters.

13 MR. DURANT: And I suspect that some of the items
14 that are presently were on the agenda this time will be
15 continued.

16 MR. WALLACE: I understand this concern, I think,
17 because we were redoing the Sunshine regulations. We were
18 trying to decide how much detail you need to know before
19 you can vote on it. We really just basically said we'd
20 have to resolve that on an informal basis. People would
21 have to inform each other of what we intend to disclose in
22 these meetings. And I think that's where we are.

23 MR. DURANT: One of the things that we might do
24 that would be helpful, and we haven't done it in the past,
25 is to try to prepare an agenda that we will touch on and

1 mail it to the Board members two weeks or so before.

2 MR. EAGLIN: We used to get that, I remember.

3 MR. WALLACE: The problem, Mr. Chairman, is that
4 we do have to vote today on whether we're going to close
5 the meeting a month from now. And most of us that were
6 here on Wednesday night know the things that are on our
7 platter. But Mr. Eaglin wasn't here Wednesday night, which
8 puts him in a difficult position to vote.

9 MR. MENDEZ: General matters are litigation and
10 some personnel matters. And we're performing several
11 investigations that would be inappropriate to make public
12 at this time. Now, I would be -- I don't have any personal
13 matters to discuss in the closed session in September. But
14 I think there are in the other three categories that I
15 mentioned specifically items that are not appropriate for
16 public disclosure at this time. And I would be willing to
17 delete personal.

18 MS. BERNSTEIN: Pepe, could I say that I think
19 that in the personnel discussions that there would be
20 matters that would be considered personal matters that
21 would not be appropriate for public discussion.

22 MR. MENDEZ: Do you feel comfortable asserting
23 personal matters, then?

24 MS. BERNSTEIN: Yes.

25 MR. DURANT: Any other discussion? All right.

1 Then all those in favor -- and we have to do this on a roll
2 call.

3 MR. VALOIS: Aye.

4 MS. BERNSTEIN: Aye.

5 MS. MILLER: Aye.

6 MS. BENAVIDEZ: Aye.

7 MR. MENDEZ: Aye.

8 MR. DURANT: Aye.

9 MR. WALLACE: Aye.

10 MR. UDDO: Aye.

11 MS. SWAFFORD: Aye.

12 MR. EAGLIN: I'll abstain, Mr. Chairman. I'm also
13 not sure that I can make that meeting.

14 MR. DURANT: The next item on our agenda is a
15 report from the Operations and Regulations Committee
16 regarding private attorney involvement.

17 MR. WALLACE: Mr. Chairman, I'm going to ask Tom
18 Bovard to come on up to the table on that.

19 We reported at the Board meeting in Detroit. My
20 committee at long last finished its deliberations in
21 Detroit.

22 MR. DURANT: Mr. Bagenstos, would you certificate
23 regarding the closed session.

24 MR. BAGENSTOS: As a matter of fact, the general
25 practice generally is to certify the closing of the meeting

1 at the end of the meeting that you're holding. The
2 practice in Detroit was something that was a variation of
3 procedure. Therefore, that's why my recollection is as it
4 is.

5 MR. MENDEZ: My recollection is that we certified
6 it just at the time.

7 MR. BAGENSTOS: A majority of the member of the
8 Board of Directors of Legal Services Corporation have
9 approved a portion of the close meeting to be held on
10 Wednesday the 4th of September, 1984. I certificate that
11 in my opinion, the closing is authorized by the government
12 in the Sunshine Act, Title 5 U.S.C. 552b(c)(2), (6), (7),
13 (9)(B), and (10) and the Legal Services Corporation
14 regulations 45 CFR 1622.5(a), (e), (f), (g) and (h).

15 MR. DURANT: Thank you, Mr. Bagenstos.

16 MR. WALLACE: As we would say, we did finish this
17 in Detroit. My committee has got a recommendation to make
18 to the Board today. Before I make it, I would like to
19 thank the members of my committee that put in a lot of
20 meetings on this matter. We worked very hard on this. I
21 do recognize the members of our staff that put in many
22 hours. Tom Bovard and Pat Paquette from one of the numbers
23 crunching offices put in a lot of time getting the
24 expenditure data straight on PAI. And we had a lot of
25 input from a lot of witnesses over a period of months. We

1 worked very hard.

2 When we started this process, Mr. Chairman, you
3 asked interested groups to get together and give us a
4 document. They did so. Their attorney, Mr. Houseman, has
5 worked long and hard with us. We did not agree on
6 everything, and I think he's prepared to tell the commit
7 about those things. But we've operated in a professional
8 fashion. I just want to thank everybody that's put in a
9 lot of long and hard hours in getting where we are on this.
10 I'm not going to go through this line by line because a lot
11 of you have sat in on our meetings and will have an idea
12 where we are. But they're available to circulate and
13 answer questions on anything you may have with regard to
14 PAI.

15 There was really one major contention here and a
16 lot of minor contentions. The major contention was whether
17 we were going to keep a regulation that mandates 12 1/2
18 percent of our grant or an amount equal to 12 1/2 percent
19 of our grant to be spent on private lawyer involvement or
20 whether we were going to use a guideline of 10 percent.
21 Existing regulation mandates 12 1/2. After long and
22 arduous research, we have continued to maintain that same
23 standard. That was not without consent on our committee.
24 I regret that Mr. Smegal is not here to review his reasons
25 for supporting the position that we should go back to a 10

1 percent guideline standard. But it was the determination
2 of the committee that we should stay with the acts of the
3 previous Board and have a 12 1/2 percent mandate.

4 We have, however, permitted, we believe, more
5 flexibility to those programs that have difficulty in
6 meeting 12 1/2 percent guideline. There has been a waiver
7 provision in the old Act. And you can see it on page 15 of
8 our Board book because we've struck it out. We have a much
9 more extensive paragraph position. It used to say that the
10 corporation may in exceptional circumstances grant a waiver
11 upon application and a demonstration to the satisfaction of
12 OFS that, because of the nature of the population served,
13 the recipient is unable to comply with the requirement.
14 That's a very narrow waiver.

15 If you will look at subsection 6 of our
16 recommendation, which is on page 29 through 32 of the Board
17 book, you will see --

18 MS. BERNSTEIN: Excuse me. Mike, the Board book
19 for the public is not the same pages, I don't think. At
20 least the one I'm dealing with. You're talking about the
21 pages of the book itself. The bottom of the page. The
22 numbers at the top of the page are left over from drafts we
23 worked on for a hundred years.

24 MR. BOVARD: The numbers at the bottom of the page
25 are the Board book.

1 MR. WALLACE: Anyway, we have several waiver
2 provisions in here which we believe cover most of the
3 possible situations. I hope all of the possible situations
4 in which flexibility will be required and justified.

5 We have a certain amount of concern as to whether
6 or not these waivers will be impossible to administer. I
7 don't believe they will. We have two reasons. One, there
8 aren't a lot of groups that needed waivers in the past. I
9 think our statistics show that 12, 15 percent of our
10 programs have not met the requirement. I think that is a
11 sufficient number to cause concern and to justify our
12 keeping the mandatory requirement. On the other hand, in
13 absolute numbers, I think we're talking about 25 or 30
14 programs. We would be needing 25 or 30 waivers during the
15 course of the year.

16 We have put a 30-day requirement on it for our
17 office. We believe that requirement can be met. If our
18 office cannot rule on a waiver within 30 days, you get your
19 waiver. The situation I envision happening in most cases
20 is a program that gets half way or three-quarters of the
21 way through its fiscal year and thought it was going to
22 make its requirement and sees that it is not going to make
23 the requirement and notifies the corporation and asks for
24 help. When you're in that situation with three or four
25 months left in the fiscal year, you need a ruling out of a

1 corporation within 30 days. Because if you're not going to
2 get your waiver, you've only got a couple months to do
3 something about it. We believe the 30-day requirement is
4 not only a reasonable burden on ourselves, but an absolute
5 necessity for the programs that are counting on us to act
6 in a speedy fashion in order to carry out their mandate.
7 So we don't believe there will be a lot of waiver requests.

8 We don't believe that the ones that there are are
9 going to be difficult to deal with. But they're going to
10 be dealt with, and they're going to be dealt with fast.
11 And if it turns out that we have trouble with that, we'll
12 come back and deal with this subject later. But it is our
13 anticipation that given the volume of waiver requests we
14 expect and the time limits we have placed on ourselves in
15 dealing with those requests, this system will work and it
16 will provide the flexibility that the previous system
17 really didn't have.

18 One sentence that you may apply for a waiver if
19 it's impossible to meet it, doesn't tell you how fast we're
20 going to answer it, doesn't tell you what criteria we're
21 going to apply. We've solved that. I don't think it's a
22 bureaucratic nightmare. We're setting forth criteria that
23 our grantees can understand. If the Board wishes, we'll go
24 over them one by one. But that's really all I intend to
25 say about waivers at this point. So we have kept it

1 mandatory, we've kept it 12 1/2. We've added flexibility
2 through the waiver system.

3 I think the other requirement that there was a
4 great deal of justified concern about in the field was the
5 record keeping provisions. In order to determine whether
6 12 1/2 percent had been met, we were requiring a lot of
7 documentation, time sheets for paralegals and secretaries,
8 everybody in the office. We're not doing that any more. I
9 asked our audit department, Dan Nusbaum, to sit down and
10 rewrite the record keeping provisions so that we would be
11 requiring exactly what he needs and nothing more. And
12 we've done that. And you'll find those on pages 24, 25 and
13 26 of our Board book. This is section 1614.3(e). I'm not
14 going to go over that in detail.

15 I will tell you that we're not requiring
16 secretaries to keep time sheets any more in order to have
17 their time accounted for. We do require time sheets from
18 lawyers and paralegals because I think that's a reasonable
19 management requirement that most programs ought to be doing
20 anyway so they know where their people are. But if they
21 want their time credited to PAI, they need time sheets.
22 Other staff, no time sheets. I think Mr. Nusbaum is here,
23 and if anybody has any questions about audit, I'll let him
24 explain. I think we have relieved some of the record
25 keeping burdens.

1 One thing that we have permitted that used to be
2 permitted and then was taken out in the regulation is joint
3 ventures. I understand Mrs. Bernstein had an amendment
4 that she wished to propose that will clarify matters. And
5 I'll support her when that time comes. But joint ventures
6 of neighboring programs had been permitted in the past. It
7 was eliminated from the existing regulation. While there
8 may be potential for abuse in joint ventures if they're not
9 watched closely, I think our staff can watch them closely.
10 You can't have a joint venture if OFS approves it unless
11 everybody is a bona fide participant. But we have put this
12 back in with some clarifying language, and I think we've
13 got more clarifying language to vote on in a few minutes so.
14 That is back in.

15 One other thing that we've done is to mandate
16 direct delivery. Under the old regulation, we had a whole
17 laundry list of things that PAI could include. We've taken
18 one thing off the laundry list and made it mandatory, and
19 that's direct delivery. Whatever else you do in PAI, we
20 have not said how much. We're not going to go in and say,
21 you're devoting 3 percent, and it should have been 5.
22 We're going to leave that flexibility to the local programs.
23 But we believe direct delivery is our priority, and we
24 believe everybody in PAI ought to be involved in direct
25 delivery. These are the highlights of this -- well,

1 they're more than the highlights, actually. We've covered
2 a great deal of it without going through word for word.

3 The final section is new section .7. And that's
4 failure to comply. It is in some senses modeled on already
5 existing construction on setoff. And it comes even closer
6 to what may be a new regulation on setoff. But I want to
7 tell you how it works. We are telling people, we want you
8 to spend 12 1/2 percent. If you don't spend 12 1/2 percent
9 and you don't ask for a waiver, you're in trouble. We are
10 going to figure out what you did spend. We're going to
11 figure out what you should have spent, and we'll take the
12 difference out of your grant and give it to somebody else.
13 All in the world you have to do to avoid losing our money
14 is ask for a waiver. You don't have to get it. You don't
15 have to even have good cause for asking for it. All you
16 have to do is call up OFS and say, we want a waiver. Well,
17 excuse me for saying call up. We are going to add a
18 section.

19 Mr. Bovard and I have been working on this, and
20 we'll discuss it with the Board in a few minutes to say
21 that waivers must be received within a particular time.
22 And perhaps we ought to say this ought to be in writing. I
23 don't think we have it in here anywhere, but it will be
24 easy to add.

25 The objective is you get a letter to OFS before

1 the end of your fiscal year to say, we're in trouble, help,
2 and you're not going to have your money jerked out from
3 under you. Now, if it turns out that you weren't entitled
4 to the waiver, you should have spent it and you didn't,
5 we're not going to take the money away from you, but we're
6 going to require that you spend that money in the next year.
7 If you should have spent 12 1/2 percent and in fact you
8 spent 11 percent, the next year you're going to spend 14
9 percent. That money is going to stay in your community,
10 and it's going to be spent on PAI. But if you don't bother
11 to ask, we're going to take that money and give it to
12 somebody else that will spend it. That's all we ask out of
13 our recipients, is that if you've got a problem, let us
14 know. If you don't let us know, then that money is going
15 to be taken away. And frankly it would seem to me that if
16 that's a recurring problem with several recipients, we
17 ought to get new recipients. So that is essentially how
18 the compliance language works. All you've got to do is ask.
19 And if there's a technical problem, you spend that money
20 next year. But if you don't ask, that money is going to
21 somebody else that will spend it on PAI. And that is the
22 intent of our committee.

23 We believe, Mr. Chairman and members of the Board,
24 that after long and hard labor, we have come up with a
25 fairly decent piece of work. Mr. Houseman has proposed

1 some technical amendments that Mr. Bovard and I have been
2 over. And we'll be happy to go over those with the
3 committee one by one. But there are a couple of other
4 things Mr. Bovard and I have come up with, and Mrs.
5 Bernstein has some language. So we're going to do a little
6 detail work this morning. But before we do that, I would
7 be happy to respond to any questions from the Board on the
8 issues that I have addressed before we get into the details.

9 MR. DURANT: Mr. Wallace, I want to thank you on
10 behalf of the Board for the time that you did spend, Mr.
11 Bovard and others. It's been a difficult issue. I also
12 want to thank Mr. Houseman for his perseverance and his
13 ability to spend an extraordinary amount of time to educate
14 us and discuss with us and debate with us. While there
15 have been changes as a result of that, there have been
16 other things that haven't change. But that discussion has
17 been helpful, and I want to publicly acknowledge it and
18 hope that we'll continue. If there are -- at this point if
19 there are any particular questions from Board members to
20 Mr. Wallace or Mr. Bovard before he goes into more certain
21 specifics that you want to touch on, Mr. Wallace will
22 entertain them now.

23 MR. VALOIS: Mr. Wallace, the regulation as it
24 appears in the book has not yet been proposed to the Board.
25 I'm perfectly willing to wait until such time. I have a

1 little minor amendment.

2 MR. WALLACE: You are correct that I have not yet
3 formally proposed it. I certainly intend to do so. And I
4 will wait on my Board Chairman's pleasure whether we want
5 to discuss it first or whether you want to put a motion on
6 the floor.

7 MR. DURANT: Let's put a motion on the floor.

8 MR. MENDEZ: Before you do that, if you've got
9 minor technical corrections, let's do that first.

10 MR. VALOIS: It may require a vote.

11 MR. WALLACE: I think it would certainly require a
12 vote. And the only thing I'm empowered to do by my
13 committee is to offer what's in the Board book, and I do
14 that at this time.

15 MR. DURANT: Is there a second?

16 MS. BERNSTEIN: It's been seconded. I would
17 propose a little friendly amendment. The first page -- and
18 I'll use the numbering system in the Board book, which is
19 the bottom, it says page 15. But in any event it's section
20 1614.1, purpose. And I would propose that in the second
21 line we strike the word "funding" which appears at the end
22 of the sentence and in the fifth line you strike the words
23 "encourage the" and strike the last syllable in the word "
24 "involvement" so that it becomes "involve" and strike the
25 word "of." So that 1614.1(a) now reads, "This part is

1 designed to ensure that recipients of Legal Services
2 Corporation involve private attorney," etc.

3 That's the extent of my proposed friendly
4 amendment.

5 MR. DURANT: Shouldn't that be recipients?

6 MR. WALLACE: If you're going to take out funding,
7 you need to put "the" in front of legal services.

8 MR. MENDEZ: Are you comfortable with that, Mike?

9 MR. WALLACE: Well, I feel comfortable with
10 changing encourage to involve. The funding we had talked
11 about before, and I'm just not sure. I mean, what you
12 receive from this corporation is funding. I don't think
13 there's anybody that receives anything else from the Legal
14 Services Corporation except maybe grief from time to time.

15 MR. VALOIS: I have no problem with recipients of
16 Legal Services Corporation funds.

17 MR. WALLACE: Funds, fine. Funding is a bad word.

18 MR. VALOIS: Funds involve.

19 MR. WALLACE: Okay. I consider it friendly, but I
20 am not sure that I'm empowered to do so on behalf of my
21 committee. Do it by unanimous consent.

22 MR. DURANT: Is there a unanimous consent to make
23 those changes in 1614.1(a)?

24 MR. HOUSEMAN: I have no problem with that.

25 MR. DURANT: Mrs. Bernstein, I understand you have

1 an amendment.

2 MR. EAGLIN: Excuse me. Mr. Chairman, are you
3 going to go through the technical changes at this point?

4 MR. DURANT: We will do that.

5 MS. BERNSTEIN: Mine's a clarifying. It's not
6 just changes in wording, but it is a clarifying on page 17
7 of the Board book, page 3 of the regs themselves. It would
8 be 1614.2(b)(2). PAI before the semicolon, I would add a
9 period and then an additional sentence. In the case of
10 recipients with adjacent service areas, 12 1/2 percent of
11 each recipient's grant shall be expended on PAI. Then the
12 semicolon and go on. And I'll repeat that. In the case of
13 recipients with adjacent service areas, 12 1/2 percent of
14 each recipient's grant shall be expended on PAI.

15 And like you, Mike, I am in favor --

16 MR. WALLACE: Let me second your motion, and then
17 you can speak to it. I've done so.

18 MS. BERNSTEIN: The joint venture idea is very
19 positive in terms of the cooperation. When the regulation
20 was proposed to the committee, it did not have the word
21 adjacent in there. And adjacent was put in, and I think to
22 some extent it belongs there. But it does cause us
23 additional concern in terms of the import of the service.

24 If you have co-terminous or overlapping service
25 areas, there's a concern that it may not be able to involve

1 the private lawyers in their area to an equal extent. An
2 old legal service may already have involved older attorneys.
3 Another program in a co-terminous or overlapping service
4 area may have trouble getting private lawyers to the extent
5 of 12 1/2 percent. A combination working together seems to
6 be very reasonable, and the aggregate figure of 12 1/2
7 percent seems to be reasonable.

8 When you add the adjacent question to it, then
9 you're saying if you're next to a program that has really
10 gone above and beyond their private attorney involvement,
11 you can latch on. Now, I think it is important for us to
12 allow a joint venture even in adjacent areas because there
13 may be substantial savings in terms of administrative
14 procedures, in terms of recruitment procedures of attorneys.
15 And I think it's important, also, to provide the additional
16 cooperation across service lines. I therefore ask that we
17 add this additional language to require adjacent programs
18 to each spend the 12 1/2 percent.

19 MR. DURANT: I think from my meetings in Boston,
20 where there is a lot of joint venture, it will enhance the
21 cooperation as it already exists and maybe expand it.

22 MR. WALLACE: May I say in support of Mrs.
23 Bernstein's amendment, adjacent was something that was
24 added in Detroit. It was brought up, we looked at it, we
25 said, why not. But there was a concern as to whether all

1 of the funds would be conglomerated in one part of the
2 service area. That one service area program would be
3 carrying most of the load and another program would not be
4 getting much PAI. Mrs. Bernstein's amendment is directed
5 solely to the circumstance where there are adjacent areas.
6 She wants both programs to be spending their 12 1/2 percent.
7 If both programs are spending money, presumably they're
8 going to be involving lawyers in both of their territories.
9 And I think that's a reasonable correction, a reasonable
10 addition to what we added in Detroit.

11 MS. BERNSTEIN: Mike, let me say in addition, the
12 other reason I think it's important to put this here is
13 obviously this is something that the staff could do. But
14 there's no point in allowing the confusion if we can clear
15 it up now.

16 MR. DURANT: Is that amendment also by unanimous
17 consent?

18 MR. EAGLIN: Mr. Chairman, my difference with it
19 has to do with whether or not the 12 1/2 percent should be
20 mandatory or by guideline. But her language does say "shall
21 expend." That's my difference. It is mandatory, also, in
22 her wording, too.

23 MR. WALLACE: Her wording is mandatory.

24 MR. DURANT: Alan.

25 MR. HOUSEMAN: I think by doing this that you

1 limit two adjacent programs that have a similar bar
2 association. I think you're putting straight jackets on
3 them. You do need to know your provisions 3 and 4 provide
4 ample controls to make sure that the joint venture is
5 providing the opportunity for involvement and that both
6 recipients are bona fide participants in this.

7 And this language, I think, essentially makes
8 adding the word adjacent irrelevant to the existing
9 provision. The reason for adding the word adjacent is that
10 some, and there are a few, service areas that have a bar
11 association that crosses service areas as opposed to
12 programs that cross and overlap. And you have a pro bono
13 program where that crosses service areas. And the reason
14 for adding the word adjacent is to permit the programs to
15 work with one pro bono program or one bar program and work
16 it out in some way that makes sense to the two recipients
17 and meets these other criteria. And by adding these words,
18 they can do that anyway, so that you don't even need the
19 word adjacent in there if you add these words. I don't
20 think that any of the concerns -- the concerns are met by 3
21 and 4.

22 MS. BERNSTEIN: Could I respond to what Mr.
23 Houseman said. I think I understand where Mr. Houseman's
24 coming from. But I still maintain that for clarity, the
25 thrust of the entire regulation is toward encouraging a

1 certain level of private attorney involvement. Now, in the
2 case that nothing in this section negates the waiver
3 provisions -- and if there are particular reasons why two
4 specific adjacent service areas may have an extraordinary
5 problem, we still have the waiver provision. I think this
6 simply makes it clear that the 12 1/2 percent requirement
7 is meant to be taken seriously per service areas, and the
8 co-terminous or overlapping service areas will have the
9 problem he's addressed. I don't think we need to presume
10 that problem in every adjacent service area.

11 MR. DURANT: In the waiver section .6(c) both
12 sections there, it says a partial waiver can be granted
13 where the recipient shows that the population of qualified
14 attorneys is too small.

15 If we do have that situation, let's look at it
16 when the waiver comes in. Because obviously you couldn't
17 double up. And if the numbers -- because it is one bar,
18 then we can look at it. But I think it reaches the point
19 that you're talking about. But I think it's also important
20 to make it clear that it is the 12 1/2 percent of each
21 recipient going out of the gate.

22 MR. HOUSEMAN: I just think that you're adding the
23 word adjacent then to permit more flexibility, and you're
24 talking it away by adding this language.

25 MS. BERNSTEIN: But adjacent makes it clear that

1 we don't want to be in the business of preventing
2 cooperative efforts for administration of a program.

3 MR. DURANT: And also, there may be in the
4 creativity that clearly exists within the field and within
5 the bar programs that you will get joint ventures in an
6 adjacent situation that would be very productive and may
7 not have taken place in a co-terminous or overlapping area.

8 MR. HOUSEMAN: But you're hamstringing the way
9 that those provisions could be set up. Why do it? Why add
10 this requirement which puts additional inhibitions setting
11 up those programs and puts additional requirements on the
12 recipient when you have 3 and 4? Everybody must be a bona
13 fide recipient and must get the approval of OFS and must
14 provide the opportunity in both service areas. I don't
15 think you meant it to address the concerns which have been
16 raised. And I think by doing it, you undermine some
17 flexibility which otherwise would be there.

18 MR. VALOIS: Mr. Houseman, it seems to me this
19 helps that we're telling them in advance that we expect
20 them both to contribute.

21 MR. HOUSEMAN: But there's no doubt that they both
22 have to contribute. But why lock them into each having to
23 contribute 12 1/2 percent if they can work out something
24 between them that in fact the bar in that area works out.
25 Because this would prevent the bar from working it out. If

1 they can work out something that the bar is happy with, why
2 not permit it.

3 MR. VALOIS: I thought you understood it, but
4 maybe we understand it differently. I understand this to
5 mean that if they're adjacent service areas, one
6 participant can't contribute 1 percent and the other 24
7 percent. They each have to participate to the extent of 12
8 1/2 percent of their own funds. Do you agree with that?

9 MR. HOUSEMAN: That's what it does.

10 MR. VALOIS: Yes, I think --

11 MR. HOUSEMAN: But it didn't do that before you
12 added this language. And what I'm saying that what it did
13 before you added this language, is you aggregated the 12
14 1/2 percent figure for both. And you permitted them,
15 whether there was a pro bono or something that covered both,
16 to work out with the bar and with the recipients how they
17 were going to allocate those funds.

18 MR. VALOIS: We understand it the same way. We
19 just disagree about whether it should be done or not.

20 MR. DURANT: Any other questions or comments? All
21 those in favor of the amendment signify by saying aye.
22 Opposed?

23 MR. WALLACE: Mr. Chairman, let me go ahead and do
24 that. I will be happy to do the technical, but it may be --
25 I think that Mr. Eaglin has a much more substantive

1 amendment to offer.

2 MR. EAGLIN: That's why I asked earlier how you
3 wanted to do this.

4 I want to make a proposal that addresses why they
5 would be mandatory or a guideline. And I'm -- do you want
6 me to read my text or to cite it? I think we all have the
7 material written out. I'll be glad to read the language if
8 you'd like me to do it that way. It's in Mr. Houseman's
9 letter to us. It's dated 24 July.

10 MR. WALLACE: I don't think it's in the Board book.

11 MR. EAGLIN: You mailed it to everyone. Do you
12 want me to read the language into the record, Mr. Chairman.

13 MR. DURANT: Which pages are you going to read?

14 MR. EAGLIN: The first page having to do with the
15 very first section of the proposed reg.

16 MR. DURANT: Why don't you read it.

17 MR. EAGLIN: My proposal then for the amendment to
18 the motion would alter the opening of the beginning of
19 section 1614.1(a) to read, "This part is designed to ensure
20 that recipients of Legal Services Corporation funding
21 encourage the involvement of private attorneys in the
22 delivery of legal assistance to eligible clients. Except
23 as provided above, a recipient of Legal Services
24 Corporation funds shall devote a substantial amount of the
25 recipient's LSC annualized basic field award to the

1 involvement of private attorneys in such delivery of legal
2 services. As a guideline, the term 'substantial amount' is
3 defined as monetary resources from any funding source or
4 recognized resource from any private attorney source equal
5 to at least 12 1/2 percent of the recipient's LSC
6 annualized basic field award."

7 And it would then resume with the text for the
8 remainder of that first section.

9 MR. WALLACE: Mr. Chairman, while I intend to
10 support my committee's recommendation, I will second.

11 MR. EAGLIN: That's not all of it. Because I
12 mentioned that I wanted to have the involvement of the
13 private bar, also. Going to section 1614.6(c), adding a 7.

14 MR. WALLACE: Mr. Eaglin, I know what you're going
15 to do. May I ask that we vote on these separately?

16 MR. EAGLIN: Fine.

17 MR. WALLACE: Let me second Mr. Eaglin's motion
18 for the purposes of debate.

19 MR. EAGLIN: And so basically then, Mr. Chairman,
20 the motion puts before the Board the issue of whether PAI
21 should be mandatory or a guideline.

22 MR. DURANT: Is there any further discussion?

23 MR. HOUSEMAN: I really think on this issue there
24 are not only myself but two members representing bar
25 associations here that I think would like to speak to this

1 question. I'm not sure how you want to work the process in
2 terms of voting.

3 MR. DURANT: I promised that those two individuals
4 could address us. I thought what we were going to do is do
5 it at the time that we voted on the committee report. If
6 you want to do it now --

7 MR. WALLACE: This is the vote that counts.

8 MR. DURANT: So if you want to do it now, that's
9 fine.

10 MR. HOUSEMAN: Either you can hold off the vote
11 and go through and get everything or we can get to this
12 issue, which I think makes sense.

13 MR. DURANT: Do you want to bring your two
14 gentlemen up.

15 MR. HOUSEMAN: Let me do an introductory statement.

16 MR. VALOIS: Mr. Chairman, out of deference to the
17 Chair, I will withdraw my call for question to allow the
18 debate, which is what I thought that was all about, anyhow.

19 MR. HOUSEMAN: There are two principal concerns
20 that we have with the current staff draft. And the memo to
21 this committee outlines the concerns we have and some
22 proposed language to address those concerns. Both the
23 committee and our approach, I want to make quite clear, are
24 requirements. That is, we are not suggesting that there
25 not be a PAI requirement. Both the committee and our

1 approach permit flexibility in meeting that requirement on
2 the basis -- but we approach the flexibility differently.

3 The committee's version approaches it through
4 waivers. And what this amendment does consistent with the
5 position we've addressed from the outset, consistent with
6 the position of the American Bar Association, consistent
7 with all but two of the comments that are in the record of
8 this proceeding, this provision permits flexibility up
9 front. It permits programs and the corporation to review
10 compliance not in terms of meeting some arbitrary minimum
11 figure, but in terms of meeting the purposes of the PAI
12 requirement.

13 As I understand those purposes, it is to involve
14 private lawyers, corporation counsel, and other non-staff
15 lawyers to involve them in the assistance of eligible
16 clients. What this language does is address that need not
17 by a compliance approach. It addresses that need with
18 flexibility up front, and addresses that need up front.
19 And addresses that need in a manner that leaves to the
20 local areas the kind of discretion and flexibility they
21 need to make this provision effective. I'm not sure that
22 you received, Mr. Durant, a letter from the New Hampshire
23 Bar Association dated July 30th, a copy of which was sent
24 to me as well as to Mike Wallace.

25 MR. WALLACE: I don't think I received it.

1 MR. HOUSEMAN: I got it, I think, on Wednesday.
2 The letter is from the executive director of the
3 association, Gail Kinney. And I would just like to close
4 my presentation, because most of it is outlined in the memo
5 to you, by reading a few sections of that letter, which I
6 think states this concern in a different way.

7 The letter from the executive director of the New
8 Hampshire Bar Association starts by talking about the
9 purposes of the regulations designed to ensure the
10 involvement of private attorneys, substantial amount of
11 funding to be used to support such encouragement and to
12 spend those funds in an efficient and effective manner. He
13 goes on to state as follows: What any one of these lofty
14 and laudable regulatory goals has to do with the 12 1/2
15 percent of one's LSC grant is absolutely unclear. Long
16 before LSC had ever conceived of its 10 percent PAI
17 requirement and long before that regulation was implemented
18 in 1982, New Hampshire had been consistently spending half
19 on PAI. I clearly believe in PAI. We believe in effective
20 and efficient delivery. We believe in private attorney
21 involvement with staff attorney programs. And most
22 important, we believe in the development and the
23 establishing of viable, long-term, service-delivery
24 partnerships between staff attorney field programs and the
25 organized bar. We fear, however, that the current PAI

1 regulatory proposal has elements which can be seen as
2 arbitrary, capricious, bureaucratic and vindictive. We
3 also fear the concept of a viable, workable, long-term
4 partnership is completely lost to a game of statistics in
5 which there are punitive sanctions imposed for failure to
6 measure up statistically.

7 If LSC were seriously committed to high quality,
8 efficient, economical private attorney involvement within
9 the Corporation's basic field programs, we would suggest
10 that you take the staff and Board energy which has been
11 focusd to date on PAI regulatory controls over local
12 programs and on statistical PAI measures and focus instead
13 on developing and monitoring a firm PAI guideline which
14 emphasizes the quality and the potential for longevity of
15 the PAI partnership.

16 We are also convinced that the cause of PAI would
17 be far better served by a firm LSC guideline (to be
18 monitored or evaluated in accordance with LSC's monitoring
19 and evaluating of all other programmatic components of its
20 field programs) for private attorney involvement in the
21 delivery of legal services. And, rather than targeting for
22 retribution those programs with the weakest resolve in the
23 area of PAI or those having the most difficult time making
24 it work, LSC staff should target those programs for an
25 infusion of some sincere technical assistance.

1 Thus, I urge you to consider the basic approach
2 down the track which we have down gone. And instead of an
3 arbitrary minimum figure, provide through 12 1/2 percent
4 but give the flexibility up front for a guideline. And I
5 think the two people that I know of may want to address
6 this point.

7 MR. DURANT: You want to identify them.

8 MR. HOUSEMAN: Ann is right here.

9 MS. BARTCH: Mr. Durant and members of the Board,
10 good morning. My name is Ann Bartch. I am the director of
11 pro bono for the Oregon State Bar. That position will be
12 beginning September 1st. It's a new program. Before
13 returning to Oregon, I was director for three years of the
14 Minnesota State Bar Association's volunteer training
15 program. So I have had that experience working directly
16 with state and local bar associations on the implementation
17 of the private attorney regulation in the form in which it
18 now is. I should just mention that the Oregon State Bar
19 and the Minnesota Bar, too, for that matter, have long been
20 strong supporters of the corporation's activities and of
21 the activities of the local grantees in those areas.

22 MS. BERNSTEIN: Excuse me. Can I ask. Do you
23 work for the Oregon State Bar? Are you paid by the Oregon
24 State Bar?

25 MS. BARTCH: Yes, I am. The Bar, as I say, is on

1 record supporting the current mission of delivery systems
2 that exists in the state of Oregon with strong emphasis on
3 staff programs and pro bono. Through my experience in
4 working with state bars, I want first to echo the language
5 I hadn't heard before, but the views of Gail Kinney of the
6 New Hampshire State Bar Association. I think she captured
7 it very well. The needs of the private bar in working in
8 this area are pretty much twofold. They want to see
9 private attorney regulation that stresses respect for and
10 trust in their local efforts and knowledge of their local
11 situation. And that includes maximum flexibility to meet
12 particular needs in service areas. Neither of the
13 interests is particularly served by the corporation's
14 imposition of the requirement as opposed to a guideline
15 that a particular figure be spent on private attorney
16 involvement. Again, Gail has very well summarized the
17 overriding objections. But let me just give you a couple
18 of practical consequences of the existence of a requirement
19 as opposed to a guideline.

20 What the requirement seems to produce in my
21 experience is an excessive concentration on the part of our
22 grantee programs with hitting that particular figure and,
23 quite frankly, fear of the consequences of what will happen
24 to them if they don't hit it on the nose. It takes them
25 away from concentration on what they would ordinarily be

1 concentrating on, namely, the best and most effective
2 delivery of services to clients.

3 The imposition of the requirement imposes a
4 parallel frustration, too, on the private attorneys. And
5 that's where my main concern is, I would say. From private
6 lawyers the question up here is, why doesn't the
7 corporation trust us? If they believed that we were
8 sincere about these efforts, why are they imposing an
9 absolute requirement with so little flexibility on us? Is
10 the corporation trying to fiddle with a delivery system
11 that we have approved in this state and that we have as a
12 private bar assisted in developing?

13 And I think that you would find that the more
14 closely private lawyers work with the programs, as has been
15 mandated under other corporation regulations and as smart
16 programs are already doing, the more private lawyers
17 closely work with these programs, the stronger the
18 frustrations are. Lawyers in private practice know what
19 the costs are of doing this kind of work and how the money
20 could be used most effectively. And they really resent
21 seeing local programs they respect forced to spend money in
22 ways that they do not see as necessarily the most cost
23 effective ways to provide the services.

24 That is the sum of my argument. I would simply
25 urge you to recognize at this time that your predecessor

1 Board's switch in November '83 from a guideline which was
2 working to an absolute requirement that was not necessary
3 at that time. It was a mistake at that time. I think this
4 would be a good point for you as a new Board to show some
5 flexibility, to show that you are willing to reach out to
6 the private bar community, which is attempting very hard to
7 work with your local grantees, and show them that you do
8 trust and have faith in their efforts. Thank you very much.

9 MS. BERNSTEIN: I have a question. Do you feel
10 that most bar associations feel as you do?

11 MS. BARTCH: I can only speak for the two that I
12 have worked with. Again, Gail's opinion is similar to my
13 own. And of course, it's backed up by the ABS.

14 MS. BERNSTEIN: But we received a letter from
15 Reese Smith telling us that if it were not a requirement
16 that most programs wouldn't do it.

17 MS. BARTCH: I myself would have to disagree with
18 Reese on that one. I should point out that I am not saying
19 that there should not be a guideline -- or indeed perhaps I
20 won't use the word requirement, but I will use the phrase
21 guideline with teeth, perhaps, an enforceable guideline. I
22 think the objection is to having an absolute dollar figure
23 that must be hit.

24 MR. UDDO: Miss Bartch, don't the waiver
25 provisions really solve most of the problems that you're

1 concerned about? The new regulation I think has clearly
2 thought out waiver provisions that would seem to meet most
3 of the situations you're talking about.

4 MS. BARTCH: I would say that if you're not going
5 to accept the major premise that a guideline is preferable
6 to a requirement, your waiver provisions are responsive to
7 the need. And I, by the way, commend the committee for its
8 work in this area. I think it's gone a long way to put in
9 the flexibility that's needed. I know this is not before
10 you at the moment. But I think there is one important
11 waiver provision that has been left out, and Mr. Eaglin
12 will put that in.

13 MR. MENDEZ: Well, I, like Mr. Uddo, have the same
14 difficulty. If we have 25 -- I think -- is that about
15 right, Mike, that haven't complied with the 12 1/2 percent?

16 MR. WALLACE: Looking back in the minutes, it's 20
17 percent of the 180 programs. So it's more like 35.

18 MR. MENDEZ: Some of them are down around 2 and 3
19 percent. That doesn't look to me like they're making any
20 kind of effort. And it seems to me that we ought to have
21 something with teeth in it for those specific groups.

22 MS. BARTCH: I think I'm saying that you can have
23 teeth. You put teeth in in a way that does not scare to
24 death the rest of your grantees -- or that's an unfair
25 phrase. That does not unfairly restrict or unduly restrict

1 the activity of the rest of the your grantees who are
2 attempting to comply.

3 MR. MENDEZ: You really can't say that the waiver
4 provisions we have now really unduly restricts the grantees.

5 MS. BARTCH: Now, you're assuming that this has
6 already passed and this would be in place. That's what I'm
7 trying to convince you should not happen. If it were in
8 place, your waiver provisions are better than the existing
9 regulation.

10 MR. MENDEZ: And with these waiver provisions,
11 you're saying that it will scare these grantees to death?

12 MS. BARTCH: I withdraw that implication, but you
13 see my point.

14 MR. DURANT: Any other questions?

15 Ann, could you stay. I think there's one other
16 speaker. In case there are other questions.

17 MS. SWAFFORD: I do have a question.

18 This has to do with -- I know that the American
19 Bar Association is a recipient of the corporation. Are
20 state bar associations recipients of the corporation? And
21 if so, is this program a recipient of the corporation?

22 MS. BARTCH: Is my program a recipient of the
23 corporation? We do not receive corporation funds directly.
24 The program will reopen. It is not at this time but will
25 be supported eventually by the kind of joint efforts with

1 our local grantees.

2 MS. SWAFFORD: Would that be strictly in the area
3 of pro bono?

4 MS. BARTCH: Yes.

5 MS. SWAFFORD: Okay.

6 MR. HANSEN: Mr. Chairman, members of the Board.
7 Thank you for letting me speak here today. My name is Max
8 Hansen, and I'm here from Montana. I'm here representing
9 the State Bar of Montana. I am on the Board of Trustees of
10 that organization, and for the last two years I've been the
11 chairman of the Board. It's not often I get to speak to a
12 group such as this, and I probably revised my comments
13 about 15 times in the course of sitting here this morning
14 and listening to the ebb and flow of the conversations that
15 have been taking place up here. I think that this thing
16 has been amply supported by Mr. Houseman and this lady
17 sitting here to my left.

18 I think what I want to do today is to just
19 encourage you and buttress the statements made by the
20 others and show you that our bar association is doing a
21 number of very positive things, we think, to promote pro
22 bono services in our state. That pro bono is not dead in
23 the state of Montana. And I'm assuming that such is the
24 case in a number of other states, particularly rural states.

25 Montana has an active attorney roll of

1 approximately 1,600 attorneys. From that, you can see that
2 our attorney-client ratio is approximately one to 500
3 people. In the state of Montana, we have nine field
4 offices, Legal Services or Legal Aid Association of Montana.
5 And those field offices are typically in the larger cities
6 of Montana, which are small towns to you folks that live in
7 some of the more urban areas. This means there are a
8 number of large areas in our state that are without any
9 representation by legal services associations in our state.
10 Consequently, the state bar association has worked very
11 actively with the Legal Services Association in Montana to
12 provide legal services to the poor. We have a pro bono
13 committee that is very active in the state bar association.
14 And one of the problems that we've seen is that in addition
15 to promoting pro bono work, we also have to have a group of
16 attorneys out there that can provide people with the
17 knowledge and the intelligence concerning specific matters
18 that have to do with the poor in our state. And
19 consequently, our bar association has worked very closely
20 with Legal Services Association to provide continuing legal
21 aid in concerns such as social security, SSI disability.
22 We feel that's a very important program, and we plan to
23 continue that.

24 Another thing that we've done just recently is
25 provided to the general practitioners in our state members

1 of the bar association a handbook outlining some of the
2 things that have to be done in providing legal services to
3 the elderly. The director of Montana Legal Services
4 Association is also very active in promoting pro bono work.
5 He's constantly on the move in Montana throughout the
6 different areas and different communities talking to
7 attorneys in those communities and promoting the idea of
8 pro bono. We have attempted to use Adjudicare programs in
9 our state. But we've found that those programs are not as
10 effective as programs or services of staff attorneys that
11 are employed by Montana Legal Services. We have found that
12 in our pro bono program we have approximately 50 percent
13 participation in the rural areas. That means that 50
14 percent of the people that are contacted to do legal
15 services in those areas do provide legal services to the
16 poor. We're not doing as well in some of the larger urban
17 areas, but we see nothing to indicate that that's not going
18 to improve. In fact, we plan on making it improve.

19 The other thing is that we have a great deal of
20 participation by attorneys in pro bono programs that really
21 don't have a label put on them. I come from a town -- I'm
22 the sole practitioner in a town that has a population of
23 3,800 people. Some of the people that live in my county
24 would take approximately six hours round trip to get to a
25 Montana Legal Services office to get legal assistance. And

1 consequently, there's a number of attorneys like myself in
2 my county that end up providing legal services to people
3 knowing full well that we're not going to get reimbursed
4 for that.

5 We have a good working relationship with legal
6 services associations. They call us up and have a client
7 that needs some help. Because they don't meet some of
8 their requirements, they'll ask us to represent them for
9 reduced fees or no fees at all.

10 My apologies to the committee because I have a
11 worked on a lot of committees with the state bar
12 association, and I know how much work it takes. And one
13 thing that I think that bothered me from time to time was
14 that you spend a lot of time on a particular area on
15 revised drafts, and you have somebody that second guesses
16 you.

17 MR. DURANT: That somebody is a lot.

18 MR. WALLACE: And we knew it was coming.

19 MR. HANSEN: But I really think you folks are
20 concerned I'm sure about getting the best deal for your
21 dollar. And I maintain that by establishing strict guidelines,
22 this 12 1/2 percent guideline, that the Legal Services
23 Corporation is not going to get the best deal for your
24 dollar in the state of Montana. I think that that money
25 would be better spent trying to promote some type of

1 extended travel for people that you have in staff positions
2 to get to those outlying areas. I think it would be better
3 spent by putting a branch office in Boseman, Montana, which
4 is a town of approximately 20,000 people that has a branch
5 in Montana University there. Tremendous need for legal
6 services, and there is nobody within 120 miles of that city
7 that represents Montana Legal Services Association.

8 MR. MENDEZ: Max, first of all, I want to thank
9 you for coming down. Part of the reason we are holding
10 these meetings in the West is so that people like yourself --
11 I'm from Colorado -- and get other individuals other than
12 the Easterners with their Eastern accent. We can address
13 these large travel questions. Montana, like Colorado, has
14 vast areas. I don't know how well you've had a chance to
15 go through these regulations, but there's just a couple
16 things I'd like to address.

17 Montana -- we had testimony yesterday they are
18 obviously very concerned about travel costs. And if that
19 can make a really good case, we have these waiver
20 provisions which would allow us to comply with the very
21 directions that you're doing.

22 The case I'm really worried about is not the case
23 where it's close or where they're making a good effort.
24 The case I'm worried about is where they're making no
25 effort or next to no effort at all. And that's what the

1 requirements are. The waiver addresses your -- I think
2 addresses all of the issues that you have. If it doesn't,
3 I would like to have you tell me why the waivers do not.

4 MR. HANSEN: I would support the comments made by
5 the two other folks that have testified previously here.
6 Number one, I think that by adopting the guideline
7 amendment that Mr. Eaglin has suggested or proposed, that
8 you're adopting a positive approach, not looking at this in
9 a negative sense.

10 The problem I see with the paragraph waiver or
11 depending upon the waiver system to get some of these
12 people out of trouble that are on the borderline that
13 you're not really concerned about is that you turn these
14 people into paper shufflers. Attorneys out there that are
15 trying to provide legal services to poor people and elderly
16 people. You turn them into paper shufflers that are more
17 worried about meeting a quota. And some of the things have
18 to take a back seat. I can see the problems with trying to
19 comply to a waiver when you're right down to the end of
20 your fiscal year and you see you're not going to make that
21 requirement. And perhaps everybody on this Board has no
22 problem with adopting a real loose waiver policy. But
23 who's to say what that policy is going to be like ten years
24 from now or five years from now. I think that adopting a
25 guideline approach shifts the direction of this program

1 back to what the spirit and intent of the program has been
2 from the very outset.

3 And I would just close by saying that I support
4 Mr. Houseman's proposal and the amendment that's been
5 proposed by Mr. Eaglin and would tell you that our bar
6 association and the Montana Legal Services Association for
7 the State of Montana is wholeheartedly in support of that
8 amendment.

9 MR. MENDEZ: I just have one other comment. You
10 made some mention about the elderly and special interests
11 in Montana. I asked the gentleman to come up, and I would
12 like you to talk to him a little bit about it because they
13 have some grant funds that you might be interested in. He
14 might be able to advise you. Because I know if you're here,
15 I'd like to give you access to individuals that might be
16 able to give you some grant or some other alternative ideas
17 that might be able to help the Montana Board.

18 MR. HANSEN: Thank you very much. I appreciate
19 that. Thank you very much for letting me testify today.

20 MR. WALLACE: Mr. Chairman, if I may respond on
21 behalf of my committee to the points that have been raised
22 here.

23 There are a couple of reasons why we decided to
24 make this mandatory. Most of the them have been touched on
25 here in the comments and questions from members of the

1 Board.

2 The first point, it seems to me, is that at least
3 in past years, there has been a history of resistance by
4 staff programs to the extensive involvement of private
5 attorneys in the operations of Legal Services Corporation.
6 The letter from Reese Smith that Mrs. Bernstein cited
7 states his sense that that resistance is still present
8 today, although not to the extent that it may have been in
9 the past. But it's there. And it's only natural. We are
10 in a time when staff programs that have been in existence
11 for a long time -- many of them are doing a good job.
12 Certainly all of them think they're doing a good job -- see
13 their money cut off and see their funds going to a method
14 of delivery that they think isn't good. But it's our sense
15 that that's necessary and that PAI will do a good job. And
16 we need to make plain that that's what we want to make
17 happen.

18 The other thing are the statistics. There are
19 about 20 percent of the programs on which we have audited
20 reports. And let me clarify that. We only had, I think --
21 out of about 273 basic field programs, only 180 of them had
22 audit reports that we could decipher enough to get
23 statistics out of. And out of the 180, we had about 20
24 percent had not met the 12 1/2 percent requirement. Of
25 those, about 10 percent had not even met the guideline.

1 About 10 percent of the total. So about half of the 10,
2 and another half in between the 10 and 12 1/2. That's not
3 a tremendously good record right now. I think we need to
4 make it plain to people that we're serious about this.
5 Especially the ones at the end of the scale. And I believe
6 that the data she's got on what's being spent is fairly
7 solid at this point.

8 There has been some confusion about getting it out
9 to the field to what extent everybody got it. But I think
10 everybody has finally seen it. I don't know of any real
11 corrections that need to be made in this data. I think
12 it's pretty good.

13 Now, the other thing is this. When PAI
14 involvement started in '80 and '81, the American Bar
15 Association, at least its general practice session, was
16 looking for fairly large involvement. There were -- many
17 of its proponents Congress were looking for a fairly large
18 involvement. Both ABA and the House of Representatives
19 compromised on the word substantial. There were people
20 pressing for 34 percent of the 50 percent of the budget.

21 Now, these facts are not gospel. As I said
22 yesterday, Congress speaks to its statutes at large and not
23 through what it might have liked to have done if it got the
24 votes. But I think we do need to be sensitive that there
25 were many people who were promoting this project who wanted

1 a lot more than the corporation required. What we have
2 required is what we think is a bare minimum for getting any
3 kind of a project.

4 Now, I'm sensitive to the problems of programs
5 that are trying to hit 12 1/2 percent that are slaving over
6 the books to see whether they hit it or not. But this
7 seems to me the crucial point. Anybody that is sweating
8 blood worrying about whether they're going to hit 12 1/2
9 percent on the button is not enthusiastically and
10 creatively pushing PAI. People who really are trying to
11 push this program -- and this Board is trying to push this
12 program -- are going to be comfortably above that margin.

13 There are programs in rural areas and other areas
14 that can't do it. They just can't. That's why we've got
15 the waiver provision. But there are a lot of PAI programs
16 that are not being extensively used. Most of it is pro
17 bono. And there's not a member of the Board who doesn't
18 know how important it is to help people for free.

19 But as my board chairman has stated so often, much
20 more eloquently than I, the future of legal services for
21 the poor depends on creative systems of delivery. There's
22 not enough money in the federal budget to put a staff
23 lawyer on every problem there is. There may not be enough
24 volunteers to put pro bono lawyers on every problem there
25 is. And we're going to have to come up with creative ways

1 to get lawyers to deliver legal services. We are telling
2 through this regulation each of our programs, that's what
3 we want you to do. What you have to do is hit 12 1/2
4 percent. But what we want you to do is to come up with
5 creative ways to get people involved, to deliver services
6 to the poor. And I think this is a bare minimum floor
7 under the circumstances that people should be expected to
8 do. That is my position, and I think that is why the
9 committee acted as it did.

10 MS. BERNSTEIN: I just want to add one thing to
11 what Mike said. I agree with him that we have also been
12 contacted by folks who feel that 12 1/2 percent is not
13 nearly enough. I myself think that that is a hardly a
14 definition of substantial. But this is a beginning. It is
15 something that I believe is do-able. And let me say that
16 in terms of the waiver provisions and the provisions that
17 are in the regulations, I would also like to say that if a
18 program thinks that they're going to have trouble meeting
19 the 12 1/2 percent, I would hope that our staff -- we have
20 private attorney involvement units within our corporation
21 staff. We are diversifying through experimental programs
22 with small amounts of money from the national level in
23 various areas. Here in Utah we have not only contract
24 approach, we have a law firm -- well, I know the law school
25 clinic approach as well as the staff model that we have

1 supported for many years.

2 I think it behooves programs that think they're
3 going to have trouble with this minimum to contact the
4 program and say, what kind of creative efforts would you
5 encourage in my area? And I see Pete Broccoletti back
6 there nodding. And I mean this sincerely. We want to help
7 you have this as an easy, creative, pleasant experience to
8 lever the resources in your communities for the benefit of
9 the clients. That's the bottom line. So I would just add
10 that.

11 We don't only look at the negative aspects of it.
12 We would like to emphasize that we will be glad to provide
13 whatever technical assistance we can to help you set these
14 things up.

15 MR. HOUSEMAN: Three points. First, the waivers
16 do not cover all the situations. Secondly, we do not know
17 the reasons for compliance. None of the data tells us that.
18 Third, there has not been technical assistance available.
19 There's no doubt about it. It has not been available to
20 help programs with compliance programs. You should take
21 that into account in making this decision.

22 MR. DURANT: I'm going to call the question.
23 We're voting on Mr. Eaglin's --

24 MS. BERNSTEIN: I don't know that Bob knew that
25 you were this close.

1 MR. DURANT: We are voting on Mr. Eaglin's
2 amendment to add the guideline approach that he read into
3 the record. All those in favor of Mr. Eaglin's amendment,
4 signify by saying aye. Opposed? The amendment is defeated.

5 MR. Eaglin, I understand you have an additional
6 amendment.

7 MR. EAGLIN: Two others. The next one, an
8 additional waiver in the waiver section 1614.6(c) adding a
9 7. This has to do with involving the private bar and
10 getting cooperation between the legal services office and
11 the bar association.

12 7. The recipient and the bar association or
13 associations representing a majority of lawyers in the
14 service area agree on a plan and the recipient can
15 demonstrate that the plan will provide for the substantial
16 involvement of private lawyers in providing legal services
17 to the poor.

18 And this is in addition to the enumerated sections
19 there under 1614.6 having to do with waiver circumstances.
20 And it would call for the cooperation and involvement of
21 the bar associations with the legal services offices and
22 coming up with an appropriate plan that would respond to
23 what is sought by the PAI requirement.

24 MR. DURANT: Is there a second?

25 MR. WALLACE: Well, once again, I'll second.

1 MR. DURANT: Any discussion?

2 MR. WALLACE: May I say something, and then I'll
3 let anybody else that wants to get into it. This is an
4 idea that was before the committee. I don't remember
5 seeing it precisely in this form. The ABA had passed a
6 resolution which is attached to the letter which I think
7 most of us have received from Mr. Houseman.

8 MR. EAGLIN: It's on page 2 of that letter.

9 MR. WALLACE: To the effect that when the bar
10 association and program get together, it should be
11 considered prima facie in compliance. To me, that language
12 was not enough. I don't want to delegate our
13 responsibility for passing on programs to local bar
14 associations.

15 Now, this language, I don't think I've seen it
16 before in exactly this form. And if it was before us, I
17 apologize. I'm willing to take into account that the
18 recipient and the bar association get together as long as
19 it provides sufficient involvement, then we can go ahead
20 and approve that. I have a little trouble with the word
21 substantial. And it's the same trouble Mr. Houseman had
22 before my committee yesterday when we were talking about
23 our prohibition of paying dues to a corporation, a
24 substantial purpose of which is lobbying. He didn't know
25 what substantial meant in that circumstance, and neither do

1 I. And I think we're going to clarify that in the next few
2 months. I don't know what substantial means here. I would
3 be delighted if we could clean up this language over the
4 next couple of months and come back to my committee and
5 come back to my Board and then to reach an agreement on
6 adding a seventh waiver along these lines. The lines I see
7 right here are substantially unclear to me.

8 MS. BERNSTEIN: I agree with Mike about putting it
9 off, but there's another concern here that I have. And
10 once again, I have to refer to Reese Smith's letter to us.
11 And I understand that Reese is not in accord with the ABA
12 resolution, but there's no one probably in America who's
13 been more involved in pro bono delivery than Reese Smith.
14 And his attitude was that the local bar associations should
15 have input into how the delivery would take place, not to
16 be involved with determining in a planned cooperation
17 whether it's substantial. I'm with Mike that I don't
18 believe that we can, in fact, delegate our fiduciary
19 responsibility to local bar associations. So I would very
20 vehemently oppose this amendment right now.

21 MR. MENDEZ: Mr. Chairman, based on Mr. Wallace's
22 recommendation that he have time to look at this and that
23 he wants his committee to have a chance to see if they can
24 clarify this language and taking into account the various
25 comments and Mr. Eaglin's request, I would move that we

1 table this and refer back to this specific amendment and
2 refer it back to his committee for further action.

3 MR. UDDO: Second.

4 MR. DURANT: The motion to table has priority. All
5 those in favor of tabling, signify by saying aye. Opposed?
6 The motion carries.

7 Mr. Eaglin, any additional amendment?

8 MR. EAGLIN: My final proposal, Mr. Chairman,
9 referring to page 32 of the Board book section 1614.7.
10 Referring to page 32 of the Board book, failure to comply.
11 My amendment to the motion is to strike the section.

12 MR. DURANT: Is there a second?

13 MR. WALLACE: Once again, I'll second for
14 discussion purposes.

15 MR. EAGLIN: Mr. Chairman, the purpose then in
16 trying to strike this section is to try to maintain the
17 regulation as one that is couched in positive terms. I
18 hope that we can encourage involvement through this and
19 that it would not be seen as a punitive mechanism of the
20 corporation. I think by doing that even with the waiver
21 provision in there that it would be seen as a more positive
22 phrasing of the regulation.

23 MR. MENDEZ: Paul, I've got a question. What
24 happens in the case of an organization that refuses to --
25 let's say puts in 1 percent and refuses to do any more. If

1 we strike this, what would we do about this organization?

2 MR. EAGLIN: With respect to that organization?

3 We would not be able to punish it for failure to comply.

4 But I think we'd have to look at the circumstances to

5 determine what would be the appropriate action in that

6 service area. You're saying with respect to some program

7 that says that there are some circumstances, geographic or

8 whatever, that they cannot comply.

9 MR. MENDEZ: Let's just say that they don't give

10 any justification at all. We're not going to comply. We

11 are not going to do anything with regard to this PAI

12 requirement. We are not going to give you any

13 documentation.

14 MR. EAGLIN: Then I think you have different

15 circumstances on your hand because they have a requirement

16 to provide certain information to you concerning the

17 operation of the legal services program.

18 MR. MENDEZ: All I'm talking about is the PAI, if

19 they refuse to comply with it even.

20 MR. EAGLIN: That would introduce something else,

21 then. It would be beyond PAI then, I think, if some

22 program takes that position. Although you would not have

23 the punitive provision with respect to PAI. If the program

24 takes that kind of posture with that, I think we have a

25 different circumstance.

1 MR. MENDEZ: Another hypothetical. Let's say that
2 this program that we have right now with respect to PAI is
3 a model program. And PAI, they refuse to cooperate and do
4 anything with regard to PAI. And we've looked at it and we
5 say, is there anything we can do to encourage them to
6 perform PAI.

7 MR. EAGLIN: That hypothetical, I don't see how
8 that's ever going to come about. You're going to have a
9 model program. Model in all respects, and they're going to
10 turn their backs on this. I don't see that. That's a
11 problem you have with any hypothetical. People love to
12 give hypotheticals, and this one I think is too far fetched.
13 It's hard to imagine a model program that's going to take
14 that kind of posture.

15 MR. MENDEZ: All right.

16 MR. DURANT: Any other discussion?

17 MR. WALLACE: Let me just explain again how it is
18 that this has been designed. In most cases, you're going
19 to have people who either applied for a waiver and didn't
20 get it or didn't apply for a waiver because they were close
21 enough to 12 1/2 they didn't know they needed a waiver.
22 And those are the people up in the top of 19. All in the
23 world we say to those people is, you didn't spend the money
24 last year on PAI, spend it this year on PAI. And this
25 would be a modest increment added to this year's situation.

1 The only people who have their necks out on the line are
2 the ones that without good cause failed to seek a waiver.

3 Now, there is a certain amount of judgment call in
4 that. But the only judgment call is whether or not they
5 had good cause for not seeking a waiver. And it seems to
6 me the good cause is they were close enough that they
7 couldn't know until Christmas they weren't going to make it.
8 But you're essentially making a good faith determination.
9 But we do that in other aspects of our regulation, and I
10 don't see how you can escape making a good faith
11 determination. But anybody that's acting in good faith,
12 all that happens is money that should have been spent last
13 year has to be spent next year. Anybody that's not working
14 in good faith, we're going to take that money and rechannel
15 it. I don't think that's punitive. I hope section A never
16 applies to anybody.

17 If I were running a program and I had any concern
18 whatsoever that I wasn't going to even come close to making
19 any requirement, I'd get a waiver in, and then you're not
20 going to lose your money. If anybody out in the field
21 doesn't do that, you really are in Mr. Mendez' hypothetical.
22 Most people are either going to comply or they're going to
23 seek waivers. And all in the world we're going to say is,
24 add it on to next year. And if you get to the end of next
25 year, we still have the same good faith situation. If you

1 can't make it, we still have the same good faith. Bump it
2 into the next year.

3 I would hope that if we're into a long run
4 situation where people are failing to meet their PAI year
5 after year, they ought to have a waiver because they've got
6 a good reason or we ought to get a new recipient. This
7 thing ought not to drag out for five or six years with
8 people chronically not utilizing their funds. Anybody
9 acting in good faith is okay under this regulation. I
10 think that's the way it's going to work.

11 MR. DURANT: Mr. Maxwell Miller. Do you wish to
12 address the Board on this issue?

13 MR. MILLER: Yes, I think so.

14 MR. DURANT: Would you identify yourself for the
15 record.

16 MR. MILLER: My name is Maxwell Miller, and I am
17 presently assistant attorney general for the State of Utah.
18 And prior to that, I was with Mountain States Legal
19 Foundation in Denver. And prior to that, I was managing
20 attorney in the Provo office for Utah Legal Services. And
21 I have monitored and observed a legal services program for
22 many years and have been involved with prior boards.

23 Briefly, my opinion on the amendment now before
24 the Board is that it seeks to undo what the Board just
25 passed upon. Namely, the Board debated the compliance

1 provisions, whether or not to be a guideline or whether or
2 not that ought to be mandatory, and the Board decided that
3 it ought to be mandatory. And having made that decision,
4 it seems to me that this proposed amendment now before the
5 Board would simply gut the prior decision. Whether it is
6 intended or unintended, the effect of striking the failure
7 to comply section would be simply to make what they have
8 decided unenforceable. And it has been my experience that
9 unless the provisions of either statutes or regulations
10 with respect to the Legal Services Corporation are rather
11 explicitly defined, an effort will be made to thwart them
12 or to avoid them.

13 I think it was noted that in 1981, the ABA
14 recommended to Congress that less than 2 percent was being
15 spent on private attorney involvement. And if there's no
16 enforcement provision, it seems to me that it would just be
17 language and there would be all kinds of problems with
18 respect to enforcement. And that will be a bug and a
19 terrible problem in Legal Services Corporation and
20 regulations and statutory language in the past.

21 MR. DURANT: What do you think of the 12 1/2
22 percent requirement?

23 MR. MILLER: I really don't have any opinion with
24 10 percent as opposed to 12 1/2 percent. That seems to me
25 a rather minor incremental increase. I think 12 1/2

1 percent or in that range is a rather minor commitment of
2 funds with the staff attorney model as opposed to other
3 models. I would hope -- and I am looking -- I think the
4 State of Utah is going to try and is in the process of
5 trying some creative programs. And I think in order to
6 have a program that's successful, it's going to take
7 substantial commitment of money. And I don't think 12 1/2
8 percent is a substantial commitment of money. And I don't
9 know whether one is going to see dramatic results with 12
10 1/2 percent.

11 MR. DURANT: Thank you, Mr. Miller.

12 MR. MILLER: Thank you.

13 MR. DURANT: Any other discussion on Mr. Eaglin's
14 amendment to strike the failure to comply section?

15 MS. BERNSTEIN: Call question.

16 MR. DURANT: All those in favor of Mr. Eaglin's
17 amendment signify by saying aye. All those opposed, no.
18 The motion fails.

19 Mr. Eaglin, Do you have any other amendments?

20 MR. EAGLIN: No.

21 MR. WALLACE: Mr. Chairman, I've got some
22 amendments which I think are for the most part technical.
23 I apologize for having to do them on the full Board level,
24 but there's a lot in this regulation. I will direct the
25 Board's attention to page 25 of the Board book. We are in

1 section 3(e)(1)(ii). We've got a memo from the staff. And
2 it's from the monitoring people who have to go out to see
3 whether people are following the rules. In (ii), we say, "The
4 recipient should maintain contracts on file which set forth
5 payment systems, hourly rates, maximum allowable fees, and
6 so forth."

7 Well, I agree with our monitoring people that "should"
8 ought to be "shall." And so forth really doesn't mean
9 anything. And I'd ask Mr. Nusbaum if he's here if there's
10 something else that the audit division thinks we absolutely
11 have to mandate being kept. Otherwise, it's not going to
12 be mandated. If you've got something concrete to plug into
13 this so forth, let's plug it in.

14 Let's strike so forth. My amendment would be to
15 insert the word "and" before the maximum allowable fees.
16 Then in the second line of part two, that "should" becomes
17 "shall." And in the one, two, three, four, fifth line of
18 part two, that "should" becomes "shall." And I think that
19 addresses a legitimate concern raised by the monitoring
20 office. And I would move that amendment.

21 MS. BERNSTEIN: I second it.

22 MR. DURANT: Any discussion? All those in favor
23 say aye. Opposed? Motion carries.

24 MR. WALLACE: Mr. Chairman, moving to the next
25 page, page 26, in subsection 2, we have a memo from Mr.

1 Houseman on some technical suggestions that he's made.
2 We've checked this with the audit division. After the
3 words "by establishing a separate fund," Mr. Houseman has
4 suggested that we add "or providing a separate schedule."

5 MR. VALOIS: What was that?

6 MR. WALLACE: Or providing a separate schedule.
7 We have checked with Mr. Nusbaum on this. The audit
8 division thinks that's sufficient. As I understand it, he
9 thinks that's implicit to an auditor. But since we're
10 lawyers, we're going to clarify it so we can understand it.
11 So I would move that addition to this section.

12 MR. VALOIS: Second.

13 MR. DURANT: Any discussion? All those in favor
14 say aye. Opposed? The motion carries.

15 MR. WALLACE: Down to No. 3. We've got some
16 awkward modifiers here. And Mr. Houseman has proposed
17 revising it in the following fashion. In private attorney
18 models, attorneys may be reimbursed for actual costs and
19 expenses. Attorneys fees paid may not exceed 50 percent of
20 the local prevailing market rate for that type of service.
21 The purpose of this amendment would be to make certain that
22 you get 100 percent of your actual costs and expenses and
23 that the 50 percent does not include those.

24 I will read it again.

25 In private attorney models, attorneys may be

1 reimbursed for actual costs and expenses. Attorneys fees
2 paid may not exceed 50 percent of the local prevailing
3 market rate for that type of service.

4 That's my motion.

5 MR. DURANT: Is there a second to that?

6 MR. MENDEZ: I second.

7 MR. VALOIS: There are costs and there are costs.
8 Is there anything in the regulation which would ensure that
9 costs themselves were not excessive? And all I mean by
10 this is some folks might want to stay at the Mayflower and
11 other folks might want to stay at the Hotel Washington,
12 Pepe's favorite place. And some folks might want to eat at
13 The Roof and others at Hardee's or something. You see what
14 I'm getting at?

15 MR. WALLACE: I do see what you're getting at. I
16 don't know the answer, whether we have defined costs and
17 expenses anywhere in our recommendation.

18 MS. BERNSTEIN: Isn't that implicit in the audit
19 guide?

20 MR. MENDEZ: The audit guide sets forth the daily
21 rate.

22 MR. NUSBAUM: The audit guide sets forth contracts,
23 and also implicit in the audit guide is that they be
24 reasonable and necessary. And if expenses are exorbitant
25 or totally out of line, I would believe we have a basis for

1 questioning.

2 MR. VALOIS: Are you happy with this the way it is?

3 MR. NUSBAUM: I'm happy with it.

4 MR. DURANT: Any other discussion?

5 MS. BERNSTEIN: I don't have any. I would just
6 say if there's any problem with clarification, maybe when
7 this is sent out to the programs or in the preamble, we
8 might mention that costs and expenses are of course assumed
9 to be reasonable. I don't think it has to be in the
10 regulation language.

11 MR. DURANT: Any other discussion? All those in
12 favor of the amendment signify by saying aye. Opposed?
13 The motion carries.

14 MR. WALLACE: 4(b) is on the next page, page 27.
15 It is Mr. Houseman's concern. The 3 above it is a
16 subsection of (a). But this is in fact 4(b). Mr. Houseman
17 in order to clarify as I understand it, that they do not
18 have to deal twice with the local bar association, once
19 during the development and subsequently after completion.
20 It should simply say that every year you've got to give
21 your proposed annual plan to the local bar. And I think
22 that's sufficient. His language would be "and shall
23 document each year that its proposed annual plan has been
24 presented to the local bar associations."

25 MR. BOVARD: Each year comes after the "that"?

1 MR. WALLACE: That each year. You're correct.
2 I'm sorry. And shall document that each year its proposed
3 annual plan has been presented to all local bar
4 associations. It is our concern that the bar association
5 be involved every year. I think that this clarifies our
6 intent. And I propose this adoption.

7 MR. MENDEZ: You put proposed annual plan --

8 MR. WALLACE: I mean, the purpose here is to
9 encourage cutting. And you consult when you've got a
10 proposal. When you've got a final plan, everybody's got to
11 see it. But you're not consulting any more, you've got a
12 decision.

13 MR. DURANT: Is there a second to that?

14 MR. MENDEZ: I second it.

15 MR. DURANT: Any discussion? All those in favor
16 signify by saying aye. Opposed? Motion carries.

17 MR. WALLACE: Over on page 28, (c)(2). We rewrote
18 this from the desk in Detroit trying to figure out where to
19 put "prior to initiating action." And I am not sure that
20 we modified it very well. Let me read it.

21 The private attorney, prior to initiating action
22 in the matter, has requested the recipient to advance the
23 funds or has expended such funds in accordance with the
24 schedule previously approved by recipient's governing body
25 or, prior to initiating action in the matter, has requested

1 the recipient to advance the funds.

2 Now, that's the rewriting. We inserted in Detroit
3 the idea of a schedule previously approved. It was not
4 language we considered before. But programs there told us
5 that their boards adopted schedules. And if the Board has
6 adopted a schedule, people ought to be able to rely on it.
7 If there isn't a schedule before you file a lawsuit, you
8 ought to request the recipient to advance the funds and not
9 just go out and file the lawsuit and then present them with
10 a bill for costs later. So I'm going to move the adoption
11 of that language.

12 MR. BOVARD: Just one comment. All we are doing
13 is taking the last clause or "has expended" and putting
14 that first. We're just shifting the two to make what we're
15 trying to do clearer?

16 MR. DURANT: You're substituting the language --

17 MR. WALLACE: I'm substituting what I just read.

18 MR. MENDEZ: Will you please reread that.

19 MR. WALLACE: The private attorney has expended
20 such funds in accordance with a schedule previously
21 approved by the recipient's governing body or, prior to
22 initiating action in the matter, has requested the
23 recipient to advance the funds.

24 That's the section we would substitute for what's
25 in the Board book. I so move.

1 MR. MENDEZ: I second it.

2 MR. DURANT: Any discussion? All those in favor
3 say aye. Opposed? Motion carries.

4 MR. WALLACE: I am going to skip one that I'm not
5 sure I agree with. And I'll let Mr. Houseman talk about it
6 if he wants to in a minute.

7 MR. HOUSEMAN: No.

8 MR. WALLACE: But in 6(c)(1) and (c)(2), that is
9 on 29. He suggested we clarify population of qualified
10 private attorneys. Instead of qualified lawyers, it should
11 be private here. And in section 2, qualified, private
12 attorneys. I would move that we insert the word private at
13 that point in both (c)(1) and (c)(2).

14 MR. DURANT: Second?

15 MR. MENDEZ: Second.

16 MR. DURANT: Any discussion? All those in favor
17 say aye. Opposed? Motion carries.

18 MR. VALOIS: If by private you mean non-staff
19 attorneys, then you by private might exclude -- for
20 instance, I live in the capital of a state which the
21 attorney general's office has 7 or 800 attorneys working
22 for it. They're not private attorneys as that sense is
23 used, but they might want to do some work at the legal aid
24 clinic after hours.

25 MR. WALLACE: I don't think that we have ever in

1 any existing instruction or regulation, ever defined what
2 private meant. I think it's always been assumed that it
3 means non-staff.

4 MR. VALOIS: That's my concern.

5 MR. HOUSEMAN: I agree with you.

6 MR. WALLACE: We got through six months of
7 meetings on this.

8 MR. MENDEZ: Do you want to put in staff,
9 non-staff?

10 MR. VALOIS: We're trying to encourage corporate
11 attorneys who work for some corporation to come in. I'm
12 sure they're private. In my city, we've got people who
13 work for the attorney general's office by the hundreds.

14 MR. DURANT: Do you want to offer an amendment
15 that simply states not only for this section?

16 MR. WALLACE: It should go in (1)(a).

17 MR. HOUSEMAN: The reason that I did not do that
18 is because the rest of your reg talks about private
19 attorney involvement. And it seems to me that -- I was
20 just trying to track the rest of the reg.

21 MR. WALLACE: That's why it should be in (1)(a) if
22 we're going to do it.

23 MR. DURANT: Do you want to write a sentence?

24 MR. VALOIS: Well, I could probably make it up.

25 MR. DURANT: Robert, just a second.

1 MR. MENDEZ: Just in the overall context --

2 MR. WALLACE: While you're working on that, let me
3 do about two other technical things.

4 MS. BERNSTEIN: Did we vote on that?

5 MR. DURANT: We just passed inserting the word
6 private attorneys in those two sections. Mr. Valois then
7 raised the question about the definition. He is going to
8 prepare a definition of private attorneys to be inserted in .1,
9 and Mr. Mendez has the floor.

10 MR. MENDEZ: Let's just go to the next one.

11 MR. WALLACE: In 6(d)(1) and 6(f) we talked about
12 the audit division. And I don't know what the audit
13 division is called now. Does somebody have a name for the
14 audit division of the new regime?

15 MR. NUSBAUM: I would assume it's still going to
16 be an audit division, but it's under the office of program
17 monitoring, audit and compliance.

18 MR. WALLACE: When we wrote this, we had an audit
19 division?

20 MR. NUSBAUM: We still have.

21 MR. WENTZEL: It's in the title.

22 MR. WALLACE: Audit division, it is in 6(d)(1) and
23 6(f) on page -- well, (f) is on 18, and 6(d)(1) is on 17.
24 It says waiver of the special accounting and bookkeeping
25 requirements may be granted by the audit division. If

1 we've still got an audit division, I guess that language is
2 okay.

3 Then I don't have an amendment to make except to
4 7(a). This is the last one that I want to deal with,
5 although Mr. Houseman may want to go through some of the
6 things that I had not found necessarily agreeable.

7 In 7(a), we say during the contract year. And it
8 may be for the contract. We may have some contracts that
9 are different terms than a year. And I would propose in
10 line three of 7(a) where it says "during that contract
11 year" we change it to "during the term of the grant or
12 contract."

13 MR. VALOIS: Mike, excuse me. If you'll indulge
14 me. Tell me where you are.

15 MR. WALLACE: I'm on page 18, 7(a). Third line of
16 7(a). "During the contract year" should be "during the
17 term of the grant or contract."

18 MR. MENDEZ: I'll second the motion.

19 MR. DURANT: Any discussion? All in favor say aye.
20 Opposed? Passes weakly.

21 MR. WALLACE: Mr. Chairman, I apologize. I
22 thought that was the last one. But Mr. Bovard and I at
23 breakfast worked on (e)(1) at the top of that page because
24 we want to make it clear --

25 MR. DURANT: If there are any more, we're going to

1 take a five minute break.

2 (Recess)

3 MR. DURANT: The Board is going to reconvene to
4 take up the last couple of amendments on this regulation.
5 Mr. Wallace, do you have anything further?

6 MR. WALLACE: Well, Mr. Bovard and I worked on
7 some clarifying language this morning at the top of page 32,
8 (e)(1).

9 MR. BOVARD: This is the top of page -- on the top
10 it says 18. On the bottom it says 32. The fourth line
11 after one, we'd insert the word "applications for." So it
12 would read, "Applications for waivers of any requirement
13 under this part."

14 MR. DURANT: Wait. Where are you again?

15 MR. BOVARD: The sentence presently reads waivers.
16 We're going to add as follows: "Applications for waivers
17 of any requirement under this part may be..." They were
18 going to insert the word may be made for the current year
19 or the next fiscal year. Now, we're going to insert some
20 new language. Mike had mentioned earlier in this meeting
21 that it ought to be in writing.

22 "All such applications must be in writing." And
23 then another sentence. "Applications for waivers for the
24 current fiscal year must be received by the corporation
25 during the current fiscal year."

1 MR. WALLACE: Let me say what it does.

2 MR. DURANT: Do you want to make a motion?

3 MR. WALLACE: I so move.

4 MR. MENDEZ: I second.

5 MR. WALLACE: What this makes clear is a couple of
6 things. That you may apply for a waiver for the year
7 you're in or the year you're going into. You must apply in
8 writing. And if you want a waiver for the year that you're
9 in, it's got to be received in the corporation office
10 before the end of the year. So if your year ends on
11 December 31st, you get it in on New Year's Eve, and it's
12 timely. If you do it on New Year's Day, it's not timely.
13 You do it right. Except for the writing, I think it's
14 implicit to the language that we already have.

15 MR. MENDEZ: I have some questions about this
16 because if you say for the current or the next fiscal year --
17 if the fiscal year overlaps, current years may not
18 necessarily be from one year to the other. All such
19 applications may be made in the current year if you apply
20 in '84 for '85.

21 MR. BOVARD: We're simply saying that that last
22 sentence says applications for waivers for the current
23 fiscal year. It doesn't mention waivers for the next
24 fiscal year.

25 MR. MENDEZ: Maybe I didn't copy it down connect

1 correctly.

2 MR. BOVARD: The additional language says all such
3 applications must be in writing. Applications for waivers
4 for the current fiscal year must be received by the
5 corporation during the current fiscal year. It says
6 nothing about applications for waivers for the next fiscal
7 year.

8 MR. WALLACE: Obviously, anything for the next
9 fiscal year.

10 MR. MENDEZ: But what you've done, you've changed
11 the language from the original one because you've said
12 current fiscal year, and then in the next you've said
13 current fiscal year.

14 MS. BERNSTEIN: It's simply that as far as the
15 compliance mode is concerned, that you have your waiver in
16 in time if it's in during the fiscal year for which you
17 want the waiver. Your waiver would obviously be in on time
18 if it asks for the next fiscal year if it comes in the
19 fiscal year before.

20 MR. BOVARD: That's precisely what the intent of
21 the amendment is.

22 MR. MENDEZ: That's fine.

23 MS. BERNSTEIN: My only question regarding that is
24 I would say that applications for waivers for a future
25 fiscal year. It may be appropriate especially if you're

1 dealing with a situation that is an extreme situation, my
2 only concern with this, and I'm happy enough with the
3 language to support it, Mike. But my only concern is
4 talking about the next fiscal year, I think there is some
5 element of not seeing how well we do this year before we
6 want a waiver for next year.

7 MR. WALLACE: Well, anybody can apply for it. And
8 if our staff believes that the waiver is premature because
9 we don't have a record, they'll turn it down.

10 MS. BERNSTEIN: That's the only thing that bothers
11 me.

12 MR. MENDEZ: That's the concern that I have.

13 MS. BERNSTEIN: But I think that the language is
14 okay for what it's actually saying.

15 MR. BOVARD: It's sort of the classic case whether
16 there would be a waiver for the next year is whether you
17 have a cash flow problem and it just happens because of
18 their encumbrances or the number of cases that they sent
19 out. Say they all come in on December the 30th. They get
20 their fees. And 15 percent of their money is extended
21 because it just happens that all these lawyers bill them
22 and they pay the lawyers. And they know that this year
23 therefore their figures will tend to be less. That's part
24 of it already.

25 MR. DURANT: Any other discussion? All those this

1 favor signify by saying aye. Opposed? Motion carries.

2 Any other amendments?

3 MR. WALLACE: I have no more. I understand Mrs.
4 Bernstein has an amendment to the Bernstein Smeagle
5 provisions of Detroit.

6 MS. BERNSTEIN: We're going to add a Houseman
7 component to this. But on page 33, Alan discussed with me
8 on (c) in the fourth line where it says -- the end of that
9 sentence saying, "The recipient's service area through
10 other PAI programs." That we don't want to prevent the
11 corporation making a direct grant to the PAI program that
12 had been working with the program if that is a program that
13 may be able to utilize the entire amount that the program
14 has been as forthcoming as they might have been or
15 something else. But just removing "other" makes it clear
16 that any PAI program within this service area is eligible.

17 MR. DURANT: So just through PAI?

18 MS. BERNSTEIN: Just take out "other."

19 MR. DURANT: Is that in the form of a motion?

20 MS. MILLER: I second.

21 MR. DURANT: Any discussion? All those in favor
22 say aye. Opposed? Motion carries.

23 MR. VALOIS: I propose a further amendment which
24 would go under 1614.1. You would insert it on page 2 at
25 the top, 16 at the bottom, as a new (d)(2). As used in

1 this part, the term "private attorneys" means attorneys who
2 are not attorneys of a staff program.

3 MR. WALLACE: This part is part 1614.

4 MR. VALOIS: As used in this part, the term "private
5 attorneys" means attorneys who are not attorneys of a staff
6 program.

7 MR. UDDO: Bob, why don't you say attorney
8 employed by a staff program so that there's no confusion.

9 MR. VALOIS: I thought about it, but I rejected
10 employed because employed is kind of an ambiguous term that
11 might be an agent relationship. We'd have to spend 20
12 minutes on it.

13 MR. UDDO: What about a contract private attorney.

14 MR. VALOIS: What about a contract?

15 MR. MENDEZ: You're sort of saying double.

16 Attorneys who are not attorneys are attorneys. Why don't
17 we just say means non-staff attorneys.

18 MR. VALOIS: That's fine. Non-staff attorneys is
19 okay with me.

20 MS. BERNSTEIN: Now, to make this clear.

21 MR. VALOIS: There are all kinds of relationships
22 between programs and attorneys. Some are contract. There
23 are all sorts of relationships. And I was trying to use
24 the term fairly restrictive.

25 MS. BERNSTEIN: The only question that I have

1 regarding that -- I guess I would kind of oppose it from
2 the standpoint that a staff attorney in our definitions for
3 general regulations is an attorney more than one-half of
4 whose annual income is received from Legal Services
5 Corporation grants. And I would assume that maybe we want
6 the private attorneys to be more part of the private
7 delivery than to have received maybe 49 percent of the
8 funds. I don't know.

9 MR. WALLACE: This is in 1601 somewhere?

10 MS. BERNSTEIN: It's 1600.1. Definitions.

11 MR. WALLACE: Let's look at this. Staff attorney
12 means an attorney. If we've already got a definition of
13 staff attorney, I would think what we ought to do is say a
14 private attorney is an attorney who is not a staff attorney.

15 MR. BOVARD: Also in the act, the staff attorney
16 is defined the same way.

17 MS. BERNSTEIN: What we're saying here if we get
18 this clear, then an attorney who works half time for the
19 program and worked part time in the private sector and
20 works just under half time for the program, then can
21 contract for the other half of his income with the program.
22 And if it's a contract and not "contract relationship" --

23 MR. WALLACE: But the definition of staff attorney
24 would preclude that. He's a staff attorney, and more than
25 half of his income is derived from the proceeds of a grant.

1 It doesn't matter if he's on the payroll or a contract. If
2 he gets more than 49 percent of his money from a grant we
3 give, then he is a staff attorney, and he wouldn't count
4 for PAI. If he got 49 percent of his money, then he would
5 count for PAI.

6 MR. VALOIS: What we end up with is that is if
7 somebody works 42 percent of his time as a staff attorney,
8 he can then be counted for the purposes of PAI if he
9 accepts employment under some PAI scheme.

10 MR. WALLACE: Only up to 8 percent. Because as
11 soon as he gets 9 percent, he becomes a staff attorney.

12 MR. HOUSEMAN: But that's not a problem because
13 you may be talking about in terms of Adjudicare. My
14 suggestion would be either we don't deal -- either we adopt
15 the staff attorney approach or we leave it alone and come
16 back to it. Because I think it's a quagmire.

17 MR. MENDEZ: I move to table this amendment and
18 refer it back to Mr. Wallace's committee for further
19 discussion.

20 MR. DURANT: Is there a second to that motion?

21 MR. VALOIS: Second.

22 MR. DURANT: All those in favor say aye. Opposed?
23 It's tabled.

24 MR. UDDO: I'm going to propose an amendment to
25 the agenda that would allow us to conduct our executive

1 session during the lunch break.

2 MR. WALLACE: Mr. Chairman, I think that is out of
3 order because I think my committee's report has not been
4 adopted at this point.

5 MR. DURANT: Mr. Wallace, are there any other
6 amendments that you have?

7 MR. WALLACE: I have no more amendments at this
8 time, and I thank the Board for its patience.

9 MR. DURANT: Are there any other amendments from
10 any other member of the Board? At this point your motion
11 now --

12 MR. WALLACE: As amended.

13 MR. DURANT: -- is on the floor and has been
14 seconded. Is there any further discussion? All those in
15 favor say aye. Opposed? The ayes have it. The motion is
16 carried.

17 MR. WALLACE: Mr. Chairman, if I may be heard, I
18 would move that this regulation as adopted be republished
19 in the federal register. There have been significant
20 changes from the time we started and from the time we came
21 to the room today.

22 MR. VALOIS: Second.

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

24 MS. BERNSTEIN: Wait just a minute. It has to be
25 republished for 30 days before it becomes effective. It is

1 not out of an abundance of caution, and I don't want the
2 inference to be that we're going to come back and revisit
3 this again, necessarily.

4 MR. VALOIS: With all due respect to my good
5 friend Leanne, that depends on the comments.

6 My question is just what you mean by that. As
7 Mrs. Bernstein said, we have an obligation to republish
8 before final 30 days. Does your motion intend that we
9 republish for further --

10 MR. WALLACE: What we have done on previous
11 motions that we stamp it at the end --

12 MR. HOUSEMAN: The last three previous motions,
13 you have republished for further comment.

14 MR. WALLACE: It's my recollection we've done that.

15 MR. DURANT: Assume for the moment if it is. Mr.
16 Bagenstos republishes for comment and 30 days elapses. Is
17 it then in effect?

18 MR. BAGENSTOS: If you're asking us to republish
19 for more comment, it is published, and in the end those
20 comments need to be considered by the Board for final
21 comment. Now, what you have done in the past three parts
22 that you have revisited, there was a publication for
23 comment. Then there was a consideration by the committee
24 with reference to the Board of a final -- in effect, a
25 final adoption. But since substantial changes were made

1 from the original publication, we were directed to
2 republish for further comment. In those cases, there were
3 none. And then we informed the Board of that. The Board
4 formally adopted. There was a further publication in final
5 which merely said that 30 days from the date of publication,
6 it would be in effect. That part of the regulations would
7 be in effect.

8 MR. WALLACE: It was the intent of my motion to do
9 what we've done in the past. And I believe it's especially
10 appropriate in this case since we've had two amendments
11 tabled and referred back to my committee. I expect there
12 will be further comments on this. I don't know whether my
13 committee will want to take more action.

14 MR. DURANT: Mr. Valois, you seconded the motion.
15 It was your understanding that it was to be done as we had
16 done the previously regulation?

17 MR. VALOIS: Yes.

18 MS. BERNSTEIN: Well, my comment would be that
19 there is no requirement -- and I just want to make this
20 clear. There is no requirement that even if there is
21 substantial deviation from the original proposed draft --
22 and this Board and many other boards back into the '70's
23 have made substantial changes after the comments have come
24 in and then published in it as a final regulation. Because
25 we have gone through the procedure of getting outside input.

1 Now, the question of the two sections that have
2 been tabled, those can be made as not considering the
3 entire regulation. They can be brought to the Operations
4 and Regulations Committee as amendments to the reg that has
5 been adopted and become effective. I personally would
6 prefer that we send the regulation to the federal register
7 to be published as final, and we come back to revisit the
8 two sections that we have not talked about as individual
9 sections to the regulation.

10 I think it is an aberration of the committee and
11 Board process for us to continually open this and discuss
12 it infinitum on the same issues that have had opportunities
13 for public comment. And I will oppose the motion regarding
14 adopting it for further comment and opening the entire reg
15 for further comment. If you would like to have Mr. Bovard
16 draft proposed sections for the two sections that we talked
17 about and get those into the federal register to comment on
18 in September, I think that makes sense.

19 MR. UDDO: I'd like to call question on the motion.

20 MR. DURANT: All right. Could you state the
21 motion, Mr. Wallace.

22 MR. WALLACE: It was my motion that the regulation
23 as adopted by this Board be republished for further comment
24 in the federal register.

25 MR. DURANT: It was seconded by Mr. Valois. All

1 those in favor signify by saying aye. Opposed? The motion
2 carries.

3 MS. BERNSTEIN: Could I just ask a question. Are
4 we going to do this any time an amendment is made to a
5 regulation that we deal with in a long committee process
6 and someone makes a motion to the regulation, we are going
7 to republish it for comment?

8 MR. WALLACE: Let me respond to that. I came here
9 today to do exactly what we did on the last three sets of
10 regs.

11 MS. BERNSTEIN: Mr. Bagenstos, maybe I'm wrong.
12 We have not gone back to revisit any of those last three
13 sections of the regs?

14 MR. BAGENSTOS: Yes. The Board in three other
15 instances did so. That's precisely what we did. In this
16 case the procedure has taken longer.

17 MR. HOUSEMAN: We came back before the comments,
18 the committee met and made a recommendation of the Board.

19 MR. WALLACE: It took two minutes to do because
20 there were no comments.

21 MR. VALOIS: Even though not a member of Mr.
22 Wallace's committee, I agree with part of what Leanne is
23 saying. And that is, that if the additional comment is
24 directed toward things which Mr. Wallace's committee has so
25 laboriously examined, I will ask the Chairman to appoint me

1 to that committee and would oppose reconsideration.
2 Because I would consider those things to be very, very
3 tardy to the extent that if some new matter is raised as a
4 result of the modifications made, then I think we should
5 address it in Mr. Wallace's committee.

6 MR. WALLACE: As chairman of the committee, that
7 would be exactly my intention, to do what Mr. Valois has
8 said.

9 MR. MENDEZ: I, like Leanne, don't want to
10 revisit these every time. But this is a very complicated,
11 difficult regulation. We've made some substantial changes.
12 And recalling the minutes in Detroit, we postponed this so
13 that we would have the language in writing before us before
14 we made the final decision. And we have made some changes
15 that were -- that we handwrote in. And I know that I erred
16 once in my scribbles. Before making a very final decision,
17 I want to see that in writing with all of the errors
18 cleaned.

19 MS. BERNSTEIN: I don't have any problems with
20 that. I'm talking about opening it up substantively again.
21 Because technical problems could be brought up.

22 All right. I stand overruled on my concerns.

23 MR. DURANT: Mr. Uddo, you said you had a motion.

24 MR. UDDO: Yes. I want to amend the agenda to
25 allow us to hold our executive session during the lunch

1 break rather than at the end of the agenda so that we might
2 complete that work and some of us might catch the planes
3 that we have scheduled.

4 MS. SWAFFORD: Seconded.

5 MR. DURANT: Any discussion? All those in favor
6 signify by saying aye. Opposed? Motion carries.

7 (Adjourned at 12:50 p.m.)
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1 MR. MENDEZ: Mr. Chairman, the Audit and
2 Appropriations Committee met yesterday, August 1, and
3 discussed state support. However, we took action on the
4 budget shifts on fiscal year '85 funds. Based on the
5 recommendations of the staff, public testimony and board
6 discussion, we recommend that I move the following. The
7 following on line changes, we recommend that I move.

8 One, 264,000 currently in Reggie Fellowships to
9 be shifted in the supplemental service position to
10 Supplemental Field Programs. We in essence adopt the staff
11 position.

12 Second, \$387,090 currently in Client Training
13 and Involvement be shifted to Basic Field Programs, Native
14 American, Migrant, Supplemental Field and the five State
15 Support and distributed to the approximately 306 programs for
16 training in equal amounts of \$1,265 per program. We adopted
17 the state -- the staff proposal in essence.

18 Three, \$170,688 currently in Basic Field
19 Programs be shifted and allocated to Basic Field Programs.
20 \$50,000 currently in Reserve for Special Adjustments be
21 shifted to Basic Field and be allocated. Both of these would
22 be allocated on the basis to be determined on a later date.

23 Four, \$216,477 currently in Migrant Expansion
24 Program funds be shifted to the presently existing Migrant
25 Programs to be divided equally to the Migrant stand alone and

1 the Migrant sub-grantees.

2 That's my motion.

3 MR. WALLACE: Second.

4 MR. DURANT: Any discussion?

5 MR. MENDEZ: Mr. Chairman, I would like to have
6 a couple of brief points of discussion. In our approval
7 yesterday we stated that with regard to the \$387,090 that was
8 to be shifted to Basic Field and the Native Americans that we
9 set, be granted for training purposes. I would recommend
10 that we make a friendly amendment to this to change it to
11 take out the training and just allow them to spend the funds
12 in whatever manner is appropriate.

13 MR. WALLACE: The second agreed.

14 MR. MENDEZ: Now, we recognize that in this
15 section that it says five State Support Programs and we have
16 several individuals asking us why there was the five State
17 Support and none of the others. The reason that this is
18 provided in this manner is that we're under the affirmative
19 writing provisions and that's the reason those five State
20 Support Grantees are taken.

21 MR. DURANT: Fine any other discussion?

22 MR. EAGLIN: Mr. Chairman, I voted against this
23 yesterday because I didn't have enough information to be able
24 to do what I would like to do, which is to be able to
25 formulate some proposal differently. I have a feeling that

1 there is more money that we could reallocate to Basic Field,
2 but the arrangement of materials, I found very difficult --
3 well, impossible to deal with to be able to do what I would
4 like to do. I wanted more information about the rates of
5 spending per month, although I know what they are. We're not
6 spending one-twelve percent per month, but nevertheless those
7 kinds of figures would be helpful, averages per month would
8 be helpful so that I can see what extent expending the amount
9 of money that's left over in some of these line items would
10 deviate the average rate of spending per month and I would
11 like to have more information. What kind of activities are
12 represented by some of these funds here. I had some
13 information that it was in a previous board book. I didn't
14 bring all the prior board books to be able to crossreference
15 from board book to board book and so I'm at a loss. The best
16 I can do is abstain.

17 MR. DURANT: Okay. I'm going to ask Mr. Gessner
18 if you would meet with Mr. Eaglin afterwards and answer any
19 questions he has.

20 MR. DURANT: Go ahead.

21 MR. ASHER: Mr. Chairman, I hate to take time
22 and I know you have a had a long Executive Session and we all
23 are trying to get home for the weekend.

24 MR. DURANT: We didn't do that out of training.

25 MR. ASHER: And I appreciate the friendly

1 amendment and I'll look forward to that consistently with the
2 discussions yesterday on being given to Field Programs to
3 see, in fact, how they spend it. I just have four very brief
4 points. One is concerning the program development budget. I
5 think that at least for those of us in the field there is
6 some confusion about what money is spent and what money is
7 simply committed.

8 One, some money, in fact, is expended and the
9 money that is gone, is gone.

10 Two, there are contractually committed
11 obligations and that is, I think, and that is, that's subject
12 to reallocation. It is my understanding, though, that when
13 the budget figures reflect committed funds, it also uses, in
14 that category, those funds that this Board has previously
15 allocated and committed and expended. I just want to make it
16 absolutely clear to those people in the field, in this room,
17 and to the Board, those of you who may not know that there is
18 no legal obligation to retain the committed nature of those
19 funds even though this Board did previously commit them and
20 that can be reallocated to different current purposes. It's
21 my understanding that Mr. Gessner did tell you out of the
22 \$2.1 million carry over, that I projected how much of that,
23 in fact, is legally committed and how much of that is simply
24 committed by this board. And I don't know whether that's a
25 simple issue or whether that needs to be withheld later.

1 And second, this was read to me over the phone.
2 Let me briefly refer this Board to its action in May, which I
3 did not -- was not present for in Washington, but it's my
4 understanding that there was a motion by the chair of the
5 Audit and Appropriations Committee to essentially allocate
6 the \$1.1 million in the Field, that there was 1.584, or
7 something committed and obligated funds and that 1.7
8 additional funds were put from '84 carryover into management
9 and administration and at that point Mr. Smegal made an
10 amendment to allocate 2.5 into Basic Field Programs and to
11 reduce the amount of management and administration to
12 approximately 350,000. Suggested that management's needs
13 could, in fact, be met adequately from uncommitted 1985
14 funds. And Ms. Bernstein, as I understand it, said that she
15 believed that by June -- that by the June board meeting that
16 there would be financial reports for the first two quarters
17 of the year and the third quarter budget projections. At
18 that point I understand she said that there would then, if
19 there then were any '85 carryover funds, that that would be a
20 better occasion to allocate further funds to the field. Mr.
21 Uddo expressed willingness to support the Mendez Committee
22 proposal with the understanding that the Board would be
23 provided 1985 budget data prior to the June meeting to allow
24 and permit review with Mr. Smegal's proposal in mind. At
25 which point Mr. Smegal, upon the assurance of

1 the formula, fill up the cup and everybody gets something.
2 If you take the available funds and based other differences
3 between there and minus access of 1357, everybody gets the
4 same percent, those with less get more.

5 I would ask this board to reconsider the
6 committee's recommendation and to immediately allocate these
7 funds together with those funds that were supposedly
8 allocated in May to Field Programs on a straight-across-the-
9 board-type basis and that this board now take that money
10 because the checks have not gone out and because now you
11 aren't talking about \$1.1 million, you should be talking
12 about \$3.3 million at least and that all of that money be
13 determined to go out by the end of August by this Board to
14 the Field Program by the formula fill up the cup.

15 MR. DURANT: Thank you.

16 MS. BERNSTEIN: First, I would agree to the
17 chronology as you got it over the phone. I would mention
18 though that between the time that we spoke in May and now,
19 that we have selected a President. We have also had a delay
20 in a move that was to have taken place during that period.
21 Part of the money that is still there in the management
22 budget is there for the move.

23 MR. ASHER: Which line item is the move under?

24 MS. BERNSTEIN: Management and Administration.

25 MR. ASHER: I know, but that's huge -- I'm

1 talking about Executive Office and Field Services and
2 Regional Office, i have not touched -- I didn't have have
3 time nor the expertise.

4 MS. BERNSTEIN: Let me give you my personal
5 feeling as a board member. I don't know your exact position
6 right now. Are you working with a program?

7 MR. ASHER: Director of Denver Legal Aid and
8 Representative of Funding Criteria from this region.

9 MS. BERNSTEIN: I understand you, as a executive
10 director of a program, I would hope that if you had come in
11 two weeks prior that the board would not -- without your
12 having had an opportunity to examine whether or not you -- in
13 looking at all of the line items regarding your budget --
14 felt that it was important for you to shift them all away,
15 that you would give them a little bit more time. I am simply
16 saying that there are several reasons why I am supporting our
17 dealing with the lines that we're dealing with and I support
18 Mr. Mendez's Committee recommendations.

19 MR. UDDO: Mr. Chairman. Mr. Asher, you're
20 correct in attributing to me the comments in May supporting
21 Mr. Smegal's understanding that we would look at the budget
22 on a month-to-month basis after May with an eye toward
23 determining if there was going to be a carry over. I realize
24 now that one of the major problems that you have, I've had
25 all the along, is my feeling to fully comprehend the notion

1 of committed funds in some of those line items.
2 Unfortunately I'm already late for trying to get to the
3 airport to catch the last plane I can catch back to New
4 Orleans and what I'm going to ask -- I hate to put this off,
5 again -- I'm going to obtain, at this time, and I'm going to
6 ask Mr. Gessner to please send me -- and I suspect all the
7 board members -- a clear delineation of how those figures
8 break down between legally committed obligations and
9 commitments of some other sort. Whether they be
10 commitments that the Board has made in some generic sense
11 that we still have control over or whether they are in some
12 sense legally binding commitments. I would like to know
13 that and I would like to know exactly what amounts of money
14 we're talking about, because I think that that's important
15 for me to take make a decision about my indication in May
16 that I would look at these things on a month-to-month basis
17 and try to make a determination about where we stood. I
18 don't feel that I can right now, because I don't think that I
19 have the necessary information to.

20 And I would request two things. I would like to
21 get it within a week, and I would like for it to reflect the
22 figures to this date. In other words, I would like to be
23 able to compare where we are as of August 1st with where
24 we'll be in September when I come back. Two weeks is fine,
25 but I would like it to reflect the figures as of August 1st

1 so that I'll be able to know what spending took place between
2 August 1st and September 1st.

3 With that, I'm going to have to excuse myself.

4 MR. DURANT: Any other discussion? All those in
5 favor of Mr. Mendez's motion signify by saying eye.
6 Opposed. Motion carries.

7 Mr. Mendez, do you have anything further?

8 MR. DURANT: There is nothing further.

9 The record should reflect that there is an
10 objection by Mr. Uddo and Mr. Eaglin.

11 MR. MENDEZ: Mr. Chairman, I have nothing
12 further appearing on my agenda.

13 MR. DURANT: All right. The last item on the
14 agenda is a report from the President, Mr. Wentzel. If you
15 wish to make a report.

16 MR. WENTZEL: I thank you for the invitation to
17 do so, however, I have been in the position for about two
18 weeks. I'm not -- I was not at the last meeting except for a
19 brief time and I'm not aware of any information that I have
20 that you do not fully have. I will answer any questions to
21 the best of my ability.

22 MR. DURANT: I understand you did have a meeting
23 with -- a get-acquainted meeting with Mr. Loines of the NLADA
24 and others who were at that meeting.

25 MR. WENTZEL: It was Mr. Loines and myself and

1 Vice-President to Mr. Loine, it went very well.

2 MR. MENDEZ: Mr. Chairman, I think that
3 Mr. Eaglin stated that he had a question.

4 MR. EAGLIN: That's correct, two matters for
5 Mr. Wentzel's attention and I would like for him to get back
6 to me.

7 MR. WENTZEL: I would be delighted.

8 MR. EAGLIN: It really bothered -- from Dick
9 Taylor -- I was very bothered this week and last week by
10 whether I was contacted by Dick Taylor, Rich Taylor, the
11 Executive Director of Legal Services of North Carolina, his
12 program was monitored last year and monitors returned on some
13 report, he described them to me, but I had some information
14 from Mr. Wentzel to me -- I wrote a letter to Mr. Opsut, I
15 did not know when the transition took place between
16 Mr. Opsut and Mr. Wentzel. So I think the letter I sent was
17 directed to Mr. Opsut's attention and I would like some
18 information about what's going on with this most recent
19 monitoring visit to Legal Services of North Carolina and some
20 response to a letter that Mr. Taylor has addressed to, I
21 think, you, or perhaps Mr. Opsut about the standards that are
22 being used to monitor visits. What can the programs expect
23 of the monitors in terms of their personal behavior, in terms
24 of theirs with respect to the attorney/client privilege? The
25 matters are addressed in my letter and

1 Mr. Taylor's letter.

2 MR. VALOIS: Mr. Chairman, I don't mean to
3 interrupt and I certainly want Mr. Wentzel to give an answer
4 to Mr. Eaglin's questions, but I also have extensive
5 knowledge about this subject and have had extensive
6 conversations with Mr. Taylor and with members of the
7 corporation and I would like to speak after Mr. Wentzel's
8 reply.

9 MS. BERNSTEIN: I'm sorry, Mr. Wentzel, but I am
10 troubled -- to tell you the truth, I am troubled since -- as
11 I'm hearing the tenor of what's going on -- this is moving
12 toward a possible situation in which public discussion may or
13 may not be appropriate.

14 MR. WENTZEL: I will assume -- just going to
15 respond to Mr. Eaglin that I will look into the matter and
16 respond to the letters. They were not addressed to me as I
17 understand and I have not gone over the letters at this
18 point.

19 MR. EAGLIN: Then secondly, with respect to the
20 closing of the regional offices back in April, Mr.
21 Broccoletti made a presentation concerning this. He
22 mentioned that personnel in the offices to be closed would
23 have the opportunity to apply for other positions and certain
24 procedures would be followed with respect to severance for
25 those who were not successful in getting other positions. I

1 would like some information about positions that are
2 available for them to apply for and what kind of severance
3 policy might be followed with respect to those personnel in
4 those offices who are, or are about to become our former
5 employees.

6 MR. WENTZEL: I have asked for an options paper
7 on that and I understand that I will get it next week when I
8 get back.

9 MR. DURANT: Anything else?

10 MR. EAGLIN: Those with are the two things.

11 MR. DURANT: Any other points?

12 MR. EAGLIN: There isn't a hand.

13 MR. DURANT: Any other comment from the board?
14 Eleanor Eisenberg.

15 MS. EISENBERG: On this occasion, thank you for
16 the opportunity to address and I'm speaking for PAGES, a
17 member of PAG Executive Committee. In reference to the point
18 that Mr. Eaglin just made, we understand that all notices
19 have gone to the staff at the regional offices and we would
20 like to urge that for LSC's benefit, as well as the
21 employees, that staff be retained in other positions, that if
22 they're not retained that they get out of it a severance pay
23 and there should be a benefit for hiring of those people who
24 have vast degrees of experience and years of demonstrative
25 commitment and skill in the Legal Services Corporation. And

1 if they are hired into other positions they should be
2 considered as transfers or reappointments with full retention
3 of benefits and seniority.

4 MR. WENTZEL: Thank you for bringing that to my
5 attention.

6 MS. EISENBERG: We understand that
7 Mr. Durant would have a report. I didn't understand whether
8 that would be a board meeting. You had directed
9 Mr. Broccoletti to advise you on an ongoing basis how this is
10 going to be handled. Is that going to be discussed at board
11 meetings or an Executive Session?

12 MR. DURANT: He has not given me the report as
13 yet and I have gotten only preliminary advisements along the
14 way of what's appropriate to be discussed in public meeting.
15 Indeed it will be, I think, it is of concern to the public to
16 the extent to which it goes over into personnel things, then
17 fine, but certainly the question of regional offices has been
18 presently developed as a public matter and I understand.

19 MS. EISENBERG: Thank you.

20 MR. DURANT: Any other public members?

21 MS. TEACHNOR: Thank you. Mr. Chairman, my name
22 is Sherry Teachnor and I am an attorney in private practice
23 in Tucson, Arizona. I was a Reggie in the Michigan Migrant
24 Program in 1976 and I'm here today both on behalf of Legal
25 Service Committees of the State Bar of Arizona and I am a

1 member of the Advisory Board of the Migrant Program in
2 Arizona. And I would like to thank you for having the
3 meetings out here. I was unable to go to the meetings in
4 Detroit, where I understand there were some Migrant issues
5 addressed. And my only comment -- I know you all need to
6 leave -- is that I understand your considering some
7 significant cuts to the Migrant aid and -- at the least in
8 the state of Arizona, those cuts would make a tremendous
9 difference to the ability of the program to serve the
10 migrants within the state of Arizona. In terms of the State
11 Bar activities, we're considering -- we are implementing our
12 older programs right now and I can tell you that we can not
13 make up the difference in the amount of cut that you're
14 talking about. We can't make that up with IOLTA that money
15 with private attorney involvement, it's not there.

16 MR. DURANT: What's the number of total Migrant
17 money?

18 MS. TEACHNOR: That was discussed in Detroit.
19 That's a question that I think is open.

20 MR. DURANT: Has anything been put together by
21 the Bar regarding that particular issue?

22 MS. TEACHNOR: What we have done in Arizona with
23 the IOLTA Program is we are in the process of commissioning
24 people to look at the numbers, not only the issue of really
25 facts Migrant and Native Americans in Arizona -- quite

1 frankly, there's rivalry within the Bars. Does that money go
2 just to sort of traditional people or does it also go to the
3 minority groups? And we're looking at the populations not
4 only of those populations, but within the major communities
5 themselves.

6 MR. DURANT: When things are put together, would
7 you send that to me and also Mr. Wentzel?

8 MS. TEACHNOR: Sure, I would be glad to.

9 MS. BERNSTEIN: Mr. Valois saying him too.

10 MR. DURANT: Mr. Valois, Chairman of our Program
11 Committee.

12 MS. TEACHNOR: That would be no problem, but we
13 do urge you to think about it, it's a significant cut.

14 MR. DURANT: You're not alone.

15 MR. WENTZEL: Mr. Chairman, I do have one
16 additional matter. I've just been handed a note concerning
17 two letters that have been delivered to the corporation from
18 the Congress of Neal Smith, Chairman of the Appropriations
19 Subcommittee regarding the internal corporation
20 reorganization. One letter states, I have no option -- the
21 Committee has no option and they appreciate being kept
22 informed. And the other letter, regarding that the Regional
23 Committee has no objection to the proposal and thanks keeping
24 us informed, et cetera, et cetera. Thank you Mr. Chairman.

25 MR. DURANT: Thank you Mr. Wentzel.

1 MR. LOINES: Good afternoon, Dwight Loines,
2 L-O-I-N-E-S, National Organization of Legal Services, I work
3 at District 65 UAW, NOLSW. Just very, very, quickly to add
4 to a couple points that previously was made on the lay-offs
5 that have occurred in the program, I don't know if everybody
6 knows, but it's my understanding that these notices went out
7 as of Wednesday and that people have been put on
8 administrative leave with some opportunity at the Regional
9 Offices. I feel that those people should be kept on for any
10 particular purpose. I don't know how many people have been
11 obtained, but I think you should know that everybody, with
12 perhaps those exceptances have been put on administrative
13 leave. So when Mr. Durant indicated that he is awaiting a
14 report, I would just urge that everybody involved, received
15 expiditiously with that since people's lives and livelihood
16 are on the line. I would just -- as you consider this
17 question -- my understanding is that there is a group policy
18 that at one time was considered by your predecessors and I
19 believe, in fact, voted on, which I think something, you
20 should probably look at in this matter. But I just -- I
21 guess the last point I want to make is just to reiterate what
22 was previously said and that is that these people have years
23 of experience with the corporation and I see no reason why
24 they shouldn't be given extraordinary consideration in
25 filling vacancies that might have occurred or will occur in

1 the near future in the corporation. And the last point on
2 that is that it's my understanding that there are a number of
3 positions that you know will be filled very shortly and that
4 those decisions are being considered at this point, so I
5 would urge that before those positions get filled, if those
6 of comparable positions, of people currently in the field in
7 the Regional Offices would be qualified them for, whether
8 they be considered for those positions before anything else
9 happens.

10 MR. WENTZEL: I think you have better
11 information than I do.

12 MR. LOINES: Sometimes that happens.

13 MR. DURANT: Dwight, thank you very much. Is
14 there any other public comment?

15 Seeing none or hearing none, I want to thank you
16 all for being here, I want to thank the Board for doing a lot
17 in a short period of time. When we next meet again -- I
18 think it's in Washington. See you all then. The meeting is
19 adjourned or I'll entertain a motion.

20 MR. MENDEZ: I don't hear one. All those in
21 favor?

22 (Concluded at 3:15 p.m.)

23

24

25

1 REPORTER'S CERTIFICATE

2
3 I, Carolyn Tanner Sullivan, do hereby certify that
4 the foregoing pages 3-89 inclusive, comprise a transcript
5 of the proceedings on August 2, 1985.
6

7 DATED this 8th day of August, 1985.
8

9 
10 COURT REPORTER

REPORTER'S CERTIFICATE

I, Robin Conk, do hereby certify that the foregoing pages 90 - 107 inclusive, comprise a transcript of the proceedings of August 2, 1985.

DATED this 8th day of August, 1985.

Robin Conk

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